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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA NO. 4829 OF 2018 (O&M)

DATE OF DECISION: 20.01.2023

Punjab State through Secretary and others	...Appellants
Versus	
M/s Brightway Contractor and Developers	...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Rozer Kumar Aggarwal, AAG, Punjab.

Mr. Dheeraj Mahajan, Advocate for the respondent.

ARUN MONGA, J. (ORAL)

CM-13029-C OF 2018

For the reasons stated in the application, same is allowed and delay of 163 days in filing the appeal is condoned.

MAIN CASE

State of Punjab has preferred the instant regular second appeal against the judgment and decree of First Appellate Court dated 16.10.2017 affirming the judgment and decree dated 11.07.2016, whereby suit of plaintiff/respondent herein, for recovery of Rs.11,20,907/- along with interest and costs, was decreed.

2. At the outset, learned counsel for the respondent points out that similar controversy between the same parties has already been dealt with by this Court in RSA No. 3194 of 2017 titled as “**Punjab State and others v. M/s Brightway Contractor and Developers**” decided on

17.04.2018 and the instant second appeal may also be dismissed in the same terms.

3. I have heard learned counsels of the parties and have gone through the case file.

4. For ready reference, the relevant extract of judgment dated 17.04.2018 passed in RSA No. 3194 of 2017, is reproduced herein below:

“xxx

6. *Having given considerable thought to the submissions made by learned State counsel, this Court finds the instant appeal completely devoid of any merit for the reasons to follow:*

7. *DW-1 Avtar Singh, Sub Divisional Officer of the appellant-defendant in his cross-examination specifically admitted that in sanction/work order Ex.P8, there was no mention that Notice Inviting Tender (NIT) would be a part and parcel of the sanction/work order. Therefore, both the Courts below have rightly held that when the terms and conditions of NIT were not part of sanction/work order, there was no ground available with the appellant-defendant to deny the payment to respondent-plaintiff within reasonable time.*

8. *It is well settled that any condition in the tender notice which is against public policy or arbitrary has no legal force. Therefore, any condition in the NIT that the payment would be made to respondent-plaintiff for work done as and when the funds would be available with the Government, was completely illegal and arbitrary which could be enforced or given effect. The appellant-defendant had no legal right to delay the payment, when the work allotted was completed by respondent-plaintiff to its satisfaction within time.*

9. *I have gone through the judgments of both the Court below and do not find any illegality or perversity in the same.*

10. *In view of discussion made above, the instant Regular Second Appeal is dismissed.”*

5. The controversy herein is similar to the case, *ibid*. I see no reason why in the present case as well, similar order be not passed, as aforesaid.

6. In the premise, the instant regular second appeal stands dismissed in terms of judgment dated 17.04.2018 *ibid*.

7. Pending applications, if any, shall also stand disposed of accordingly.

JANUARY 20, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**