

2024:PHHC:114162



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

**RSA-457-1997 (O&M)
Reserved on : 20.08.2024
Pronounced on : 03.09.2024**

FOOD CORPORATION OF INDIA

....Appellant

VERSUS

GOBIND RAM

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Sidhi Bansal, Advocate for
Mr. Sunish Bindlish, Advocate for the appellant.

Respondent proceeded against *ex parte*
vide order dated 04.07.1997.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 08.08.1996 passed by the First Appellate Court partly modifying the judgment and decree dated 24.02.1989 passed by the Trial Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed the present suit for recovery of ₹70,474.96. It was pleaded that the defendant-respondent was engaged as Mandi Labour Contractor in Mandi Lehragaga vide letter dated 05.10.1982 for a period of one year from 15.10.1982 to 14.10.1983 @ 34% below the District Food and Supplies Controller basic rate. In compliance of the acceptance of his offer, the defendant-respondent deposited a sum of ₹1,000 as earnest money and ₹1,500 as security. Agreement was executed on 11.10.1982. On 06.11.1982

the defendant-respondent made an application that there was no arrangement of labour with him and therefore he was unable to undertake the work. Since the defendant-respondent failed to undertake the work, notice was issued to him on 23.11.1982 stating therein that since he had failed to carry out the work the same was being done at his risk and costs from the District Food and Supplies Controller at District Food and Supplies Controller's rates w.e.f. 07.11.1982. Holding the defendant-respondent liable for the losses incurred, the plaintiff-appellant filed the present suit for recovery of ₹70,474.96 from him.

3. The defendant-respondent filed the written statement denying the averments made in the plaint. It was pleaded that the agreement was not a valid agreement and against the principles of natural justice and equity. It was further the pleaded case that in case of default only the earnest money and the security could be forfeited.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the defendant entered into agreement with the plaintiff as a Mandi Contractor dated 05/11.10.1982 at Lehragaga. If so, its terms and conditions ? OPP
2. If issue No.1 is proved, whether the defendant performed his part of the agreement ? OPD
3. What amount is the plaintiff entitled to recover from the defendant ? OPP

4. Relief.

5. The Trial Court decreed the suit vide judgement and decree dated 24.02.1989. Aggrieved by the same an appeal was preferred by the defendant-respondent and vide judgment and decree dated 08.08.1996 the appeal was partly allowed by the First Appellate Court and the judgment and decree of the Trial Court was partly modified. The First Appellate Court held that the plaintiff-appellant could only recover costs and labour work at the District Food and Supplies Controller basis rates. Hence, the present regular second appeal by the plaintiff-appellant.

6. The defendant-respondent was proceeded against *ex parte* vide order dated 04.07.1997.

7. The learned counsel appearing on behalf of the plaintiff-appellant would contend that since the defendant-respondent failed to carry out the work, the work had to be got executed from an outside agency by paying 40% above the District Food and Supplies Controller's basic rates and hence the First Appellate Court has erred in modifying the judgment and decree passed by the Trial Court. It is urged that the Trial Court had correctly decreed the suit as prayed for and the First Appellate Court modified the judgement and decree of the Trial Court on erroneous grounds.

8. I have heard the learned counsel appearing on behalf of the plaintiff-appellant.

9. In the present case it was the pleaded case of the plaintiff-appellant itself that when the defendant-respondent failed to carry out the work, a notice was issued to him on 23.11.1982 (Ex.P-5) as per which it was

stated that since the defendant-respondent had refused to take up the mandi labour contract work w.e.f. 06.11.1982, the work was being got done at his risk and costs from the District Food and Supplies Controller's contractor at District Food and Supplies Controller's basis rates w.e.f. 07.11.1982. However, actually the plaintiff-appellant got the work done at rates which were 40% above the rates of the District Food and Supplies Controller. Once having stated in the notice (Ex.P-5) that the work was being got done at the District Food and Supplies Controller's basis rate, there is no explanation coming forth for having got the work done at a rate 40% above the District Food and Supplies Controller's rates. It is an admitted case that before giving the work to the other contractor no tender was called for and the work was entrusted arbitrarily. Learned counsel for the plaintiff-appellant has not been able to convince this Court that there is any illegality and infirmity in the judgment and decree passed by the First Appellant Court. No other point was argued.

10. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

03.09.2024

Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No