

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

**RSA No.2627 of 2012  
Date of Decision : 21.10.2024**

Mohammad Qasim

.....Appellant

Versus

M/s. Seeta Singh and Sons Engineers

.....Respondent

**CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Manoj Kaushik, Advocate  
for the appellant.

Mr. Abhishek Sharma, Advocate  
for the respondent.

**PANKAJ JAIN, J. (ORAL)**

Plaintiff is in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondent as the defendant.

3. Plaintiff filed suit for recovery of an amount of Rs.4,86,049/- pleading that he was engaged by defendant for fabrication work on contract basis for a period commencing from April, 1996 till March, 1997. He completed the job and was entitled to for a sum of Rs.7,62,500/- but was paid only an amount of Rs.2,46,701/- in cash and Rs.45,000/- by way of two cheques. Sum of Rs.4,86,049/- was illegally withheld by defendant.

4. Suit was contested by the defendant admitting that the plaintiff was engaged for fabrication work but claimed that plaintiff was rather liable to pay an amount of Rs.3,67,363.65 paise to the defendant/Company. It was claimed that raw material worth amounting to Rs.12,09,838/- provided to the plaintiff for fabrication work was damaged. Defendant made effort to salvage some amount by selling the material in scrap. The same could be sold only to the tune of Rs.2,69,899.75 paise. After adjusting the aforesaid amount, plaintiff is liable to pay an amount of Rs.3,67,363.75 paise.

5. On the basis of the pleadings, following issues were framed :

- 1) Whether plaintiff is entitled to recover a sum of Rs.4,86,049/- from the defendants on the grounds as alleged? OPP.
- 2) Whether present suit is not maintainable in the present form? OPD.
- 3) Whether the suit has not been properly valued for the purpose of court fee? OPD.

6. Trial Court while answering issue No.1 relied upon purchase orders Exhibit D-1 to D-5 issued by defendant and concluded that the fabrication work done by the plaintiff was rejected on account of poor quality and structure. Statement of account, Exhibit D-8, was proved by the defendant which shows that the defendant rather suffered loss after plaintiff executed work of poor quality and dismissed the suit filed by the plaintiff.

7. In appeal preferred by the plaintiff, the findings stand affirmed by the Appellate Court.

8. I have heard counsel for the parties and have carefully gone through records of the case.

9. Purchase orders/job work are not in dispute. The same explicitly provided as under:

“05. If any structure flooring rejected by our Q.C. or by Customer Inspector due to poor quality or version from the specification and drawing. The whole material cost and other expenses will be debited in your A/c accordingly.”

10. Defendant has proved that the work executed by the plaintiff was rejected on account of poor quality. Communications Exhibit D-6 and D-7 have been proved on record. The same are reflected in the account statement Exhibit D-8. The aforesaid documentary evidence adduced by the defendant has remained un rebutted.

11. Counsel for the appellant is not in position to point out any cogent piece of evidence led by the plaintiff that remained unconsidered or was misread by the Courts below.

12. Pure finding of facts have been recorded by the Courts below. Scope of second appeal under Section 41 of the Punjab Court's Act stands explained by the Supreme Court in the case of **Randhir Kaur versus Prithvi Pal Singh & Ors. 2019(17) SCC 71** observing as under :-

“14. The Division Bench of Punjab and Haryana High Court in a judgment reported in **Sadhu v. Mst. Kishni, 1980 AIR (Punjab) 85** set aside the judgment of the learned Single Bench in an intra

court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:

"12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanymayya [AIR 1959 Supreme Court 57.]**, **Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 Supreme Court 1633.]**, **Bithal Dass Khanna v. Hafiz Abdul Hai [1969 S.C. Notes 481.]** and **Afsar Shaikh v. Soleman Bibi [(1976) 2 SCC 142 : AIR 1976 Supreme Court 163.]**. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.

XX XX XX

14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We

thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by the District Judge. The parties are, however left to bear their own costs.

15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

13. The said dictum was further elaborately echoed by three Judges Bench in **Satyender and others vs. Saroj and others, 2022 AIR (Supreme Court) 4732** as under:

“XXXX XXXX XXXX

17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

14. In view of above, this Court finds no reason to interfere in the pure finding of facts recorded by the Courts below. Resultantly, the instant appeal is dismissed.

|                         |                           |   |                      |
|-------------------------|---------------------------|---|----------------------|
| <b>October 21, 2024</b> |                           |   | <b>(Pankaj Jain)</b> |
| <b>Dpr</b>              |                           |   | <b>Judge</b>         |
|                         | Whether speaking/reasoned | : | Yes/No               |
|                         | Whether reportable        | : | Yes/No               |