



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

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**RSA-2849-2018 (O&M)
Date of Decision : 04.11.2024**

BHARAT SANCHAR NIGAM LTD Appellant

VERSUS

STATE OF PUNJAB AND OTHERS Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh Gupta, Advocate for the appellant.

Mr. Pawan Kumar, DAG Punjab for respondents No.1 and 2.

ALKA SARIN, J. (ORAL)

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and the decree dated 25.01.2017 passed by the Trial Court and the judgment and the decree dated 21.09.2017 passed by the First Appellate Court.
2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for recovery of ₹10,70,650 i.e. ₹6,91,000 as principal amount; ₹2,40,000 as damage to the underground cables and ₹1,39,650 as interest @ 18% per annum. The plaintiff-appellant i.e. Bharat Sanchar Nigam Limited - a Government undertaking - filed the present suit averring therein that the defendant-respondents had laid underground pipes in various Villages of Sub-Division Malout and while digging the land had caused damage to the underground cables and caused a loss of ₹2,40,000 in the area of Village Ghumiara Khera and ₹6,91,000 in the area of Village

Ratta Khera, Panniwala Fatta, Mohlan etc. In this respect the plaintiff-appellant raised demands vide letter dated 14.02.2014 but despite the said demand, the defendant-respondents did not make the payment. A legal notice was served on 07.03.2014 under Section 80 Code of Civil Procedure, 1908 but despite the said notice as well the defendant-respondents failed to make the payment.

3. On notice the defendant-respondents appeared and filed their joint written statement. It is to be noted that in the judgments and decrees passed by the Trial Court as well as the First Appellate Court and even in the memo of parties filed before this Court, the depiction of the parties is not correct. The parties, as stated in the plaint, are as under :

‘1. *Bharat Sanchar Nigam Ltd., Malout through its Divisional Engineer Telegraph Sh. Pritpal Singh.*

2. *Bharat Sanchar Nigam Ltd. Malout, through its S.D.E. Sh. Surinder Kumar Yadav*

Versus

1. *State of Punjab through Secretary Water Supply and Sanitation Department, Punjab Civil Secretariate Chandigarh.*

2. *Executive Engineer, Water Supply and Sanitation Department, Malout.*

3. *Sub-Divisional Engineer, Water Supply and Sanitation Department, Malout.*

4. *Sub-Divisional Engineer, Water Supply and Sanitation Department, Lambi’.*

In the joint written statement various preliminary objections were raised including the suit being bad for non-joinder of necessary parties as Ashok Kumar, Sanjiv Kumar and Manohar Lal, the contractors, who had carried out the work and were liable for the loss of damage, if any, arising from their act were not impleaded as parties. It was further averred that notices had been issued by defendant No.3 i.e. Sub-Divisional Engineer, Water Supply & Sanitation Department, Malout to the contractors for causing damage to the underground cables. On merits it was admitted that the defendants had undertaken the work through the contractors and that the contractors were necessary parties. It was further averred that neither any bill nor any proof regarding loss or damage had been appended with the plaint.

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

- I. Whether the plaintiff is entitled to recovery of ₹10,70,650 ? OPP
- II. Whether the plaintiff is entitled for interest at the rate of 18% per annum ? OPP
- III. Whether suit is not maintainable ? OPD
- IV. Whether the suit is bad for non-joinder of necessary parties ? OPD
- V. Whether the plaintiff has no locus standi to file the present suit ? OPD

VI. Relief.

5. On issue No.4, which is the issue regarding non-joinder of necessary parties, the Trial Court returned a finding that no arguments had been raised by the counsel for the plaintiff-appellant nor DW-1 had been cross-examined on the point of non-joinder of necessary parties. Even on merits it was found that the details of the cost incurred on the replacement of the damage cables were not produced on the record and hence the suit was dismissed by the Trial Court vide judgment and decree dated 25.01.2017. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 21.09.2017. Hence, the present regular second appeal by the plaintiff-appellant.

6. Learned counsel for the plaintiff-appellant would contend that damage had been caused to the cables while the work had been carried out by the defendant-respondents and that they themselves would be responsible even though a contractor had been engaged to carry out the work.

7. *Per contra*, learned counsel for the State-respondents No.1 and 2 would contend that a specific plea regarding non-joinder of necessary parties was raised in the written statement, however, despite the said objection, the contractors were not impleaded as parties. It is further the contention that not an iota of evidence was led regarding the amount spent on the repair undertaken while laying down the underground pipes.

8. Heard.

9. In the present case both the Courts concurrently found that the contractor, who was the necessary party, was not impleaded despite specific objection being taken in the written statement. Further, there was no argument which was addressed by the plaintiff-appellant qua the said objection. The plaintiff-appellant did not even cross-examine DW-1 on the said point. Further still, both the Courts concurrently found that there was not an iota of evidence on the record to show the loss caused to the plaintiff-appellant. In the absence of any documentation/proof of the loss incurred by the plaintiff-appellant coupled with the fact that the contractors were not impleaded as parties, no fault can be found with the judgments and decrees passed by both the Courts.

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

04.11.2024

Aman Jain

(ALKA SARIN)

JUDGE

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