**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****107****RSA-3018-2019 (O&M)****Date of decision: 24.01.2025****Jasbir Singh Kohli****...Appellant(s)****Vs.****Bharat Sanchar Nigam Limited and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Anurag Arora, Advocate for the appellant.***********NIDHI GUPTA, J.**

The present second appeal has been filed by the plaintiff against the concurrent findings of the learned Courts below, whereby the suit of the appellant/plaintiff for recovery of Rs. 1 lac on account of damages, has been dismissed by learned Civil Judge (Junior Division), Jalandhar vide judgment and decree dated 22.12.2016; and the appeal filed by the plaintiff has been dismissed by the learned Additional District Judge, Jalandhar vide judgment and decree dated 31.08.2018.

2. At the very outset, it may be pointed out that the present appeal is of the year 2019. However, notice has not yet been issued in the same as the matter has been adjourned due to non-appearance of learned counsel for the appellant on 09.12.2019, 04.03.2020 and 24.08.2022; and at request of learned counsel for the appellant on 13.02.2023, 11.09.2023, 14.02.2024, 12.07.2024 and 24.10.2024.

3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondents are the 'defendants'.



4. The brief facts of the case as set out in the plaint are that the plaintiff had entered into an Agreement of Contract dated 06.11.1991 with the defendant No. 1, as per which the plaintiff was required to complete the work awarded by 15.5.1992. It is the case of the plaintiff that due to hindrances created by the defendants alone, the plaintiff was able to complete the work only by 12.03.1996 after the removal of hindrances created by them. Despite the fact that there was no delay on the part of the plaintiff in completion of work, the defendant No. 4 issued a show cause notice dated 12.3.2004 to the plaintiff making him liable for compensation under clause 2 of the above said Agreement of Contract. Aggrieved thereof, the plaintiff filed the present *"Suit for recovery of Rs. 1 lac on account of damages for issuing illegal and unlawful show cause notice dated 12.3.2004 and letter of recovery dated 25.08.2004 to the plaintiff and illegally deducting of Rs.73,364/- from the awarded amount of some other contract and for declaration of the cancellation of the illegal show cause notice dated 12.03.2004 and letter of recovery dated 25.08.2004."*

5. Upon notice, the defendants had put in appearance and resisted the suit of the plaintiff on various grounds. On the basis of the pleadings of the parties, following issues were framed by the learned trial Court vide order dated 17.9.2013:-

"1. Whether the plaintiff is entitled to the recovery of Rs. One lac on account of damages for issuing illegal and unlawful show cause notice dated 12.03.2004? OPP

2. Whether the plaintiff is entitled to the declaration of the cancellation of the illegal show cause notice dated 12.03.2004 and letter of recovery dated 25.08.2004? OPP



3. Whether the suit is barred by limitation? OPD

4. Whether the present court has no territorial jurisdiction to adjudicate the matter? OPD

5. Whether Sh. JS Kohli no locus standi to file the suit? OPD

6. Whether the suit is filed against defendant no. 4 by name is not maintainable? OPD

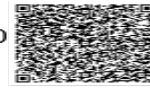
7. Whether the order for recovery passed against the plaintiff has got the finality and is not challengeable under the present suit? OPD

8. Whether proper court fee has not paid? OPD

9. Relief”

6. On the basis of the pleadings, and the oral and documentary evidence adduced by the parties, the learned trial Court dismissed the suit of the plaintiff vide judgment and decree dated 22.12.2016. The appeal filed by the plaintiff before the learned Additional District Judge, Jalandhar was also dismissed vide judgment and decree dated 31.8.2018. Hence, the present second appeal.

7. Learned counsel for the plaintiff submits that the plaintiff has been non-suited on incorrect ground as the learned Courts below failed to appreciate that the show cause notice dated 12.3.2004 was absolutely illegal, unwarranted, unjustified, without jurisdiction, and with an ulterior motive. Moreover, the same was issued almost 8 years after completion of work. It is submitted that the delay in completion of work awarded was entirely due to hindrances and latches created by the defendants and not because of any delay on the part of the plaintiff firm. Moreover, the defendants had deducted the alleged recovery of compensation of Rs.73,364/- when the payment of award of some other work was made.



This clearly indicates the malafide intent of the defendants. Learned counsel accordingly prays that the impugned judgments and decrees of the learned Courts below be set aside.

8. No other argument is raised on behalf of the appellant.

9. Heard learned counsel for the appellant and perused the case file in great detail.

10. Perusal of the record of the case reveals that no doubt, the plaintiff had entered into work agreement of contract dated 06.11.1991 with the respondent/defendant No.1. The said work of contract was to be completed by 15.5.1992. However, the work was admittedly completed only on 12.3.1996 allegedly due to hindrances created by the defendants. Accordingly, the defendant No. 4 issued show cause notice dated 12.3.2004 to the plaintiff firm; and thereafter passed order dated 25.8.2004 for levy of compensation to the tune of Rs.73,364/-.

11. However, it is important to note that the said recovery amount was released back to the plaintiff in pursuance to order dated 27.01.2011 passed by the learned Additional District Judge, Jalandhar.

12. As regards the legality and illegality of the show cause notice dated 12.3.2004, it may be pointed that in respect of the disputes between the parties recourse was taken to Arbitration proceedings in which the Arbitration Award was published on 18.9.2005 (Annexure 29), in favour of the plaintiff as per which it was observed by the Arbitrator that the delays were mutual; and a sum of Rs.71,994/- was granted to the plaintiff firm.



This fact has been admitted by the plaintiff in his cross-examination before the learned trial Court.

13. In view of the admitted facts that the plaintiff has already received compensation of Rs. 71,994/- in respect of the impugned show cause notice dated 12.3.2004 in pursuance to arbitration proceedings, there was no cause of action for the plaintiff in the present suit. The contention of the plaintiff that the cause of action arose to the plaintiff when a deduction of Rs.73,364/- was made by the defendants on 14.02.2009; and further cause of action arose to the plaintiff on 31.03.2011 when the said amount was refunded to the plaintiff; is untenable as admittedly, the deduction of the said amount of Rs.73,364/- was in respect of another contract and did not relate to the Agreement of Contract dated 06.11.1991. In any event, the said amount has been refunded back to the plaintiff.

14. Learned counsel for the appellant does not deny the above said factual position.

15. In view of the above facts and findings, no ground is made out that calls for interference in the concurrent findings of the learned Courts below.

16. The present regular second appeal is hereby **dismissed**.

17. Pending applications, if any, stand disposed of.

24.01.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No