

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****216****RSA-2144-1997 (O&M)****Date of Decision : 07.03.2025**

The Managing Director, Punjab State Warehousing Corporation, ChandigarhAppellant

VERSUS

Hari Mohan Contractor and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amritpal Singh Gill, Advocate for the appellant.

Respondent Nos.2 and 3 proceeded against *ex parte* vide order dated 12.05.1998.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by defendant No.3 challenging the judgment and decree dated 10.01.1997 passed by the First Appellate Court reversing the judgment and decree dated 30.05.1995 passed by the Trial Court.

2. The brief facts relevant to the present *lis* are that plaintiff-respondent No.1 herein filed a suit for declaration, permanent injunction and mandatory injunction averring in the plaint that defendant No.1 i.e. respondent No.3 herein had allotted the work for special repairs of godown buildings at Patiala, Dhuri, Rajpura, Malerkotla, Sunam, Jagraon and Machhiwara vide letter dated 12.06.1986 for Rs.5,57,450/- and the time limit was two months. It was further the case set up that defendant No.1 (respondent No.3 herein) failed to provide the site for carrying out the work for special repairs to the godown buildings as the same were not vacant and repairs could not be carried out. Several requests were made to the defendant

No.1 (respondent No.3) vide letter dated 20.06.1986 and again vide letter dated 02.07.1986 but neither defendant No.1 (respondent No.3) provided any site for carrying out the repairs to the godown buildings nor defendant No.1 (respondent No.3) replied to the letters. Defendant No.1 (respondent No.3) issued a letter dated 07.10.1986 levying 10% compensation amounting to Rs.55,735/- by alleging that clause No.2 of the agreement has been invoked. Further, the compensation @ 1% was levied against plaintiff-respondent No.1 vide letter dated 21.07.1986 and the compensation from 1% to 10% has been increased, which comes to Rs.55,735/- and now the defendants have started recovery proceedings for Rs.55,735/- against plaintiff-respondent No.1. The amount was deducted/recovered from other bills pertaining to other work done by plaintiff-respondent No.1. It was further the case that the recovery could not be made.

3. The suit was contested by the defendants alleging therein that plaintiff-respondent No.1 was to carry out the repairs and that plaintiff-respondent No.1 was informed vide letter dated 13.06.1986 that since the repairs had been allotted to him and the work had to be finished within two months, he should start the work immediately. On 18.06.1986 a telegram was sent to plaintiff-respondent No.1 to start the work at Dhuri and Sunam without any delay. It was reiterated vide letters dated 27.06.1986, 14.07.1986, 09.07.1986, 21.07.1986 and telegram dated 25.06.1986. It was denied that defendant No.1 (respondent No.3) failed to provide the site for carrying out the work for special repairs to the godown buildings. The letters written by plaintiff-respondent No.1 were denied by the defendants as not having been received by them. Replication was filed.

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

1. Whether the impugned orders of the department regarding the recovery of amount etc. are void, illegal and not binding on the plaintiff ? OPP
2. Whether the suit is not properly valued for the purposes of court fee and jurisdiction ? OPD
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the impugned orders have been validly made in terms and conditions of the agreement ? OPD
5. Relief.

5. The Trial Court vide judgment and decree dated 30.05.1995 dismissed the suit. Aggrieved by the same, an appeal was preferred, which was allowed by the First Appellate Court vide judgment and decree dated 10.01.1997. Hence, the present regular second appeal.

6. None has put in appearance on behalf of plaintiff-respondent No.1 despite service.

7. Learned counsel for the appellant would contend that the site was provided to plaintiff-respondent No.1, who failed to carry out the work. It is further the contention that numerous letters were written to carry out the work within the timeframe, however, since plaintiff-respondent No.1 failed to comply with the same, the suit ought to have been dismissed.

8. Heard.

9. In the present case various letters were written by plaintiff-respondent No.1, one of being Ex.P1, wherein he specifically stated that the

godown building had not been vacated. Postal receipt qua the said letter was proved on record as Ex.P2. Similarly, a letter (Ex.P3) was also written qua which a postal receipt was proved on record as Ex.P4. During the course of arguments, learned counsel for the appellant, on a query by the Court as to whether any reply was given to the said letters, states that the stand taken by the defendant No.3 (appellant herein) was that the said letters were not received. He is, however, not in a position to deny that the receipts were duly exhibited on the record. Not a single document has been referred to by learned counsel for the appellant to show that any response was given qua the site not being vacant, which was a repeated request of plaintiff-respondent No.1 that he be handed over vacant possession of the godown buildings to carry out the special repairs. In the absence of any evidence, no fault can be found with the judgment and decree passed by the First Appellate Court.

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. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

07.03.2025

jk

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO