



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

**RSA No.3641 of 2015 (O&M)
Date of decision : 08.04.2025**

M/S BUDHIRAJA ELECTRICALS

....Appellant

Versus

DEPARTMENT OF ENGINEERING AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

**Present : Mr. Anuj Raura, Advocate
for the appellant.**

**Mr. Anil Kumar Sharma, Advocate
for the respondents.**

PANKAJ JAIN, J. (ORAL)

Challenge is to the judgment and decree passed by Lower Appellate Court, dated 20.05.2015, whereby the Lower Appellate Court accepting the appeal filed by the defendants, reversed the judgment and decree passed by the Trial Court invoking provisions as contained under Order XXVII Rule 5A of the Code of Civil Procedure, 1908 and dismissed the suit filed by the plaintiff for want of impleadment of Government.

2. Plaintiff filed suit for recovery of Rs.9,83,084/- along with interest @ 9% per annum w.e.f. 24.12.2004 till the filing of the suit and *pendente lite* interest @ 9% per annum and future interest @ 6% per annum.

2.1. As per the plaintiff, he was awarded work of electrification in



respect of 500 bedded teaching hospital in Sector-32, Chandigarh. The work was completed within the extended period of time. However, the payment required to be paid to the plaintiff, was not released.

3. Suit was contested by the defendants claiming that the amount is not payable for want of joint inspection. The bill having not been approved after joint inspection, amount was not payable.

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

- “(1) Whether the plaintiff is entitled for recovery as prayed for?
OPP
- (2) Whether the suit is not maintainable? OPD
- (3) Whether the parties has not come to the court with clean hands, if so to what effect? OPD
- (4) Whether there is no cause of action accrued to the plaintiff?
OPD
- (5) Whether the suit is barred by limitation? OPD”

5. Trial Court while deciding issue No.1 held that the defendants were not justified in withholding the payment due to the plaintiff for the work completed by him and held plaintiff entitled to recover amount of Rs.9,83,084/- along with interest and decreed the suit.

6. Dissatisfied, defendants approached Lower Appellate Court.

7. Lower Appellate Court without considering the merits of the case, invoked provision as contained under Order XXVII Rule 5A of the CPC holding that Chandigarh Administration, the Government, ought to have been impleaded and without impleading Government, the suit was bad.



The appeal was allowed and the suit filed by the plaintiff was dismissed observing as under :

“13. However the question for determination arises whether the suit filed by the plaintiff was maintainable without resorting to Order 27 Rule 5-A of the Code of Civil procedure. The answer would be in negative concededly, the plaintiff did not comply with the provisions of Order 27 Rule 5-A of the Civil Procedure Code 1908, which reads as under:

"Government to be joined as a party in a suit against a public officer- where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit."

14. However, the learned counsel for the respondent-plaintiff has vehemently contended that the plaintiff entered into an agreement with the Department of Engineering and due to that reason suit for recovery has been filed through the Chief Engineer, Executive Engineer and Sub Divisional Engineer and, therefore, Government was not required to join as a party in this case. He has further submitted that he has sought the relief against the Department of Engineering and not against the Union of India or Government. This argument put forth by the learned counsel for the plaintiff appears to be attractive but without any substance.

15. The officers/ officials of the department had entered into an agreement with the plaintiff-respondent in their official capacity and not as individual persons. IN such a scenario, the Union of India was required to be joined as a party to the suit.

16. Here, learned Govt. Pleader for the appellants has rightly placed reliance on the case law reported as **Raghbir Singh Vs. Baljit Singh Buttar and others, 2014 (5) R.C.R. (Civil) 945**, wherein our own Hon'ble High Court has held that there was no error in the judgment and decree of the lower Appellate Court in dismissing the suit of the plaintiff as the suit had been filed without



resorting to Order 27 Rule 5-A CPC. No contrary law or citation has been cited by the learned counsel for the respondent- plaintiff on that score. Consequently, this court is of the considered opinion that the Court of first instance was not justified in decreeing the suit of the plaintiff holding that the suit of the plaintiff was maintainable.”

8. Plaintiff is in second appeal. Along with appeal, an application under Order 1 Rule 10 CPC (CM No.8916-C of 2015) has been filed seeking permission to implead Chandigarh Administration through Secretary, Department of Electrical, U.T., Civil Secretariat, Sector 9, Chandigarh as respondent No.4.

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

10. The solitary issue involved is regarding maintainability of suit in the light of provision contained under Order XXVII Rule 5A CPC. The bare provision reads as under:

“5-A. Government to be joined as party in a suit against a public officer.— Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.”

11. ‘Government’ has been defined under Order XXVII Rule 8B. The same reads as under:



“8B. Definitions of “Government” and “Government pleader”.—In this Order 4 [unless otherwise expressly provided] “Government” and 1 [“Government pleader”] mean respectively—

- (a) in relation to any suit by or against 5*** the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this order;

6* * * * *

- (c) in relation to any suit by or against State Government or against a public officer in the service of a State. the State Government and the Government pleader 7 [as defined in clause (7) of section 2], or such other pleader as the State Government may appoint, whether generally or specially, for the purposes of this Order.]”.

12. Section 79 of the Code of Civil Procedure, 1908 deals with suits by or against Government. The provision reads as under :

“79. Suits by or against Government.—In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be—

- (a) in the case of a suit by or against the Central Government, 4 [the Union of India], and
(b) in the case of a suit by or against a State Government, the State.]”

13. Section 3(60) of the General Clauses Act, 1897 defines ‘State Government’. The same reads as under:

“(60) “State Government”,— (a) as respects anything done before the commencement of the Constitution, shall mean, in a Part



A State, the Provincial Government of the corresponding Province, in a Part B State, the authority or person authorised at the relevant date to exercise executive government in the corresponding Acceding State, and in a Part C State, the Central Government; 1

(b) as respects anything done 2 [after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956], shall mean, in a Part A State, the Governor, in a Part B State, the Rajpramukh, and in a Part C State, the Central Government;

3[(c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union territory, the Central Government;

and shall, in relation to functions entrusted under article 258A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article];”

14. UT is defined under Section 3(62A). The same reads as under:

“(62A) “Union territory” shall mean any Union territory specified in the First Schedule to the Constitution and shall include any other territory comprised within the territory of India but not specified in that Schedule;]”

15. The plaintiff has been non-suited on the ground that the Government i.e. U.T., Chandigarh having not been impleaded as party, the suit is bad for non-joinder of necessary party relying upon Order XXVII Rule 5A. Memo of parties appended to the plaint, shows that Department of



Engineering was impleaded as defendant No.1 through Chief Engineer, Chandigarh Administration.

16. In the considered opinion of this Court, the provision deals with the situation where only a public officer has been impleaded. Perusal of memo of parties in the present case would reveal that apart from the officials, the department itself was arraigned as defendant No.1. It is not disputed that Department of Engineering itself is part of Government.

17. In view thereof, this Court finds that the Lower Appellate court erred in invoking Order XXVII Rule 5A CPC to non-suit the plaintiff. Moreover, since it is the department itself, who was a contracting party, the stand of U.T., Administration could not have been different from the one that was taken by the department by filing written statement. Resultantly, this Court finds that judgment passed by the Lower Appellate Court dismissing the suit, is not sustainable and is hereby set aside.

18. The matter is remanded back to the Lower Appellate Court to decide the appeal afresh in accordance with law. Since, this Court has already held that Department of Engineering itself is a part of Government, this Court finds that no order is required to be passed on the application filed under Order I Rule 10 CPC. Parties are directed to appear before the District Judge/ADJ-I, Chandigarh on 12.05.2025.

19. Since the matter pertains to the year 2007, this Court is quite sanguine that the Lower Appellate Court shall decide the appeal preferably



within a period of **three months** from the date of receipt of certified copy of this order.

- 20. Appeal is allowed in the aforesaid terms.
- 21. Pending application, if any, shall also stand disposed off.

April 08, 2025
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes