

(2009) 07 P&H CK 0212
In the Punjab And Haryana At Chandigarh

Moti Ram Gupta

APPELLANT

Vs

Haryana Vidut Prasaran Nigam Limited and Others

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Limitation Act, 1963 — Section 3, 9

Citation : (2009) 156 PLR 71 : (2010) 8 RCR(Civil) 789

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sham Sunder, J.—This appeal is directed, against the judgment and decree, dated 13.9.2006 rendered by the Court of District Judge, Karnal, vide which it accepted the appeal, against the judgment and decree dated 15.10.2005 rendered by the Court of Civil Judge (Junior Division) Karnal, and dismissed the suit of the plaintiff/appellant.

2. The facts, in brief, are that Moti Ram Gupta, plaintiff/appellant was a registered contractor for carrying out the civil construction work, and for supply of river borne gravel, in the Haryana Vidut Prasaran Nigam Limited. Defendant No. 3 invited tenders for numerous civil works. As many as three works depicted, in the plaint, were allotted, to the plaintiff/appellant for execution. It was stated that the aforesaid works, were carried out, as per the terms and conditions of the tender and completed according to PWD specifications, to the entire satisfaction of the Engineer-incharge, who supervised the works. It was further stated that the job orders/construction works, regarding Begga and Kundli, were completed, to the satisfaction of the defendants, in the month of May, 1996, while supply, and stacking of the river borne gravel, was completed, in the Month of July, 1995 itself. It was further stated that the entire lay out designs/plans, necessary for the requisite construction, and the building material, besides necessary facilities like electricity water etc. were to be provided by the defendants, but there were a number of lapses, such as considerable delays, in

supplying the layout plans/designs of the works allotted to the plaintiff/appellant, as also delay, in providing the water and electricity connection in time. It was further stated that the work was delayed due to rainy season, from 7/95 to 9/95 as rainy water accumulated around the buildings/quarters, and the construction work could not be resumed. It was further stated that, the delay, in completing the above two constructions jobs was solely, on account of the omission and commission on the part of the defendants. It was further stated that, it was agreed that, 10% of the running payment against bills, was" to be deducted and kept as a security, against the aforesaid jobs, which under the agreement, was refundable after three months of the completion of the aforesaid jobs but the same was not paid. It was further stated that the requisite security amounts, in the sum of Rs. 80,860/- against the construction work at Begga, Rs. 17,759/- against the construction work at Kundli and Rs. 7813/- against the supply and stacking of river borne gravel, were outstanding, against the defendants, after the expiry of three months of the completion of respective jobs. It was further stated that there was no lapse, on the part of the plaintiff/appellant, in executing the above jobs. It was further stated that no notice, for delay, in the completion of work, on the part of the plaintiffs, was ever served, by the defendants, during the execution of the work, as per Clauses 2 and 3 of the conditions of contract, nor any penalty, was ever imposed, which showed that the delay, if any, whatsoever, was condoned by the defendants. It was further stated that the defendants refused to refund the security amounts, referred to above, alongwith interest, vide their letter dated 10.01.2002, which led, to the filing of a suit for declaration.

3. The defendants/respondents, put in appearance, and filed written statement, wherein, they took up various objections, and contested the suit. It was pleaded that the suit, was not maintainable. It was further pleaded that the plaintiff had no locus-standi to file the suit. It was further pleaded that the plaintiff had no cause of action, to file the suit. It was further pleaded that the plaintiff was estopped, by his act and conduct, from filing the suit. It was further pleaded that the Civil Court, had no jurisdiction, to entertain and try the suit. It was further pleaded that the suit was barred by time. It was denied that the plaintiff, was a registered contractor of Haryana Vidut Prasaran Nigam Limited. It was admitted that the works mentioned, in para 2 of the plaint, were allotted the plaintiff. It was stated that, as per the contract agreement, the work relating to construction of quarters at Bagga, was to be completed, on 31.01.1996, but it was delayed by 529 days. It was further stated that the defendants, made correspondence, detailed in para No. 2(a) to (k) of the written statement, in this regard. It was further stated that the construction of two numbers of category II and category III residential quarters, at Kundli, was to be completed, within four months, but the work, was delayed by 533 days, and the correspondence, mentioned in para No. 2(a) to (k), was made, with the plaintiff. It was further stated that the work of the supply and stacking of river borne bajri, was delayed by 197 days, and the correspondence mentioned, in paras 2(a) to 2(e), was made with the plaintiff. It

was further stated that the works, were not completed, in time, as a result whereof, the delay occurred, on the part of the plaintiff, and penalty, was rightly deducted, from the final bill of the plaintiff. It was further stated that, there was no clause, in the contract agreement, for which, time extension, could be considered, due to rainy season. It was further stated that it was clearly mentioned in Clause 2 of the agreement that, in case, the work, was not completed, within the scheduled period, the penalty, at the rate of 10% maximum, was required to be imposed, on the. plaintiff. It was further stated that, in pursuance of that clause, the amount at the rate of 10%, was withheld, as penalty, due to non-compliance of work, in time. It was further stated that, as per Clause 25 of the agreement, in case of any dispute, the plaintiff/contractor, should have applied for arbitration.

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

i) Whether the plaintiff is entitled to a decree for declaration to the effect that he is entitled to the refund of securities fully detailed in para No. 7 of the plaint alongwith interest at the rate of 24% per annum. If yes, to what effect? OPP

ii) Whether the plaintiff is further entitled to a decree for declaration to the effect that order dated 10.01.2002, is illegal, null and void, inoperative and not binding upon the plaintiff. If yes, to what effect? OPP

iii) Whether the suit of the plaintiff is not maintainable in the present form? OPD

iv) Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD

v) Relief.

5. The parties led documentary evidence, in support of its case. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, decreed the suit of the plaintiff/appellant.

6. Feeling aggrieved, the defendant/respondents, preferred an appeal, whereas, plaintiff/appellant, filed cross-objections. The appeal, was accepted by the Court of District Judge, Karnal, on the ground, that the suit, was barred by limitation.

7. Feeling dissatisfied, the instant Regular Second Appeal, has been filed by the plaintiff/appellant.

8. I have heard the Counsel for the parties, and have gone through the documents, and record of the case, carefully.

9. The counsel for the plaintiff-appellant, submitted that, the cause of action, accrued to the appellant, to file the suit w.e.f. 10.01.2002, when his claim, was finally rejected, by the defendants/respondents. He further submitted that the works, in question, were completed, in the Month of May, 1996. He further submitted that, no issue, that the suit, was barred by time, was struck, by the trial Court, and, as such, the Appellate Court, illegally held, that the suit, was

barred by time.

10. On the other hand, the Counsel for the respondents, submitted that, a specific plea, was taken by the defendant/respondents in the written statement, that the plaintiff/appellant, served a notice, more than 4 years, after the completion of the works, and, as such, the suit, was barred by time. He further submitted that, if no, issue was struck, in that regard, that hardly mattered. He further submitted that, as per Section 3 of the Limitation Act, 1963, it is for the Court, to see, as to whether, the suit was filed, within limitation, or not, even-if, no objection, with regard to the same, was taken by the defendants. He further submitted that, since the works, were completed, in the year 1996, and the plaintiff/appellant, also continued writing letters, in the year 1996, the cause of action arose, to him,, to file die suit, in the year 1996. He further submitted that the cause of action, did not arise, to the plaintiff, in the year 2001. He further submitted-that the suit, having been filed, on 08.10.2002, was, thus, barred by limitation. He further submitted that, the Appellate Court, was, thus, right in holding, that the suit, was barred by limitation. He further submitted that the judgment and decree of the Appellate Court, being based, on the correct appreciation of evidence, is liable to be upheld.

11. After giving my thoughtful consideration to the rival contentions, raised by the Counsel for the parties, in my considered opinion, the appeal deserves to be dismissed, for the reasons to be recorded, hereinafter. Admittedly, the works, in this case, were completed, in the year 1996. The plaintiff/appellant, wrote letters dated 24.03.1996, copies whereof, are P44 to P46, for the refund of security. He also sent letters on 19.11.1996, copies whereof, are P47 to P49, for the refund of security. Thus, the cause of action, accrued to the plaintiff/appellant, to file the suit, within three years, from May, 1996, when the works were completed. The cause of action, did not arise, to him, in the year 2001, when according to him, his claim, was rejected. Once the limitation started running, to file the suit, from May, 1996, no supervening event, could prevent the running thereof, as per the provisions of Section 9 of the Limitation Act, 1963. No doubt, no issue, was struck, as to whether, he suit, was barred by the limitation. However, according to Section 3 of the Limitation Act, 1963, it was, for the Court, to see, as to whether, the suit filed was within limitation, or not. Non-striking of an issue, in that regard, was hardly of any consequence. It was for the plaintiff/appellant, to see, as to whether, he had filed the suit, within the period of limitation, provided by the Limitation Act, 1963, and if he claimed exclusion of some-time, then to plead the grounds, in respect, thereof. The Appellate Court, in my opinion, was, thus, right in coming to the conclusion, that the suit, was barred by limitation. The findings of the Appellate Court, in this regard, are based, on the correct appreciation of evidence, and law, on the point, and do not warrant any interference. The submission of the Counsel for the plaintiff/appellant, being without merit, must fail, and the same stands rejected.

12. No question of law, much less substantial, has arisen, in this appeal, for the

determination of this Court.

13. For the reasons recorded above, the instant Regular Second Appeal, being devoid of merit, must fail, and the same is dismissed with costs.