

Neutral Citation No. - 2025:AHC-LKO:19531

Court No. - 5

Case :- FIRST APPEAL No. - 60 of 2016

Appellant :- Up Zila Nirvachan Adhikari Panchayat L.Kheri And Anr.

Respondent :- Punjab Tent House Bus Station Road L.Kheri And Ors.

Counsel for Appellant :- Saurabh Lavania, Rakesh Kumar Chaudhary

Counsel for Respondent :- Mohd. Aslam Khan

Hon'ble Abdul Moin, J.

1. Heard Sri Rakesh Kumar Chaudhary, Advocate assisted by Sri Rajani Kant Pandey, learned counsel for the appellants, Mohd. Arif Khan, learned Senior Advocate assisted by Sri Akhtar Ali, learned counsel for the respondents no. 1 & 2 and Sri Hari Govind Upadhyay, learned Additional Chief Standing counsel for respondent no. 3.
2. Instant first appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") has been filed against the judgment and decree dated 19.02.2016 passed by the learned Civil Judge (Senior Division), Lakhimpur Kheri in Case No.40 of 2004 Inre; Punjab Tent House & Ors Vs. Uttar Pradesh Zila Nirvachan Adhikari (Panchayat), Lakhimpur Kheri and Ors.
3. By the judgment and decree dated 19.02.2016, a copy of which is part of appeal, the learned trial Court has awarded a sum of ₹ 74,99,120/- in favour of the respondents no. 1 & 2 herein along with interest @ 6 % per annum.
4. Bereft of unnecessary details, the brief facts as case set forth by the learned counsel for the appellants are that a tender was issued by the appellants on 04.06.2000 (page 52 of the appeal) inviting tenders for the purpose of the forthcoming Three Tier Panchayat Elections, 2000. The Punjab Tent House (tent house) was awarded the said tender. A work order was issued on 11.06.2000. The tent house is said to have submitted its bills for ₹ 82,99,120/- out of which the

appellants claimed to have made a payment of ₹ 8,05,690/-while the balance amount was not paid.

5. Being aggrieved, the Punjab Tent House gave a notice under Section 80 of the CPC and upon not finding any response on the same was constrained to file a Civil Suit no. 40 of 2004 for recovery of an amount of ₹ 74,99,120/- along with interest @ 18 %per annum.

6. A written statement was filed by the defendants/appellants denying the claim of the Punjab Tent House on various grounds.

7. The said grounds did not find favour with the learned trial Court which by means of the impugned judgment and decree dated 19.02.2016 has allowed the suit directing for payment of an amount of ₹ 74,99,120/-along with interest @ 6% per annum.

8. Being aggrieved, the instant first appeal has been filed by the appellants/defendants.

9. The argument of the learned counsel for the appellants is that a letter dated 18.01.2000 had been issued by the Deputy Commissioner, State Election Commission, U.P, Lucknow which was filed before the learned trial Court which had fixed a maximum amount for being paid to the contractors as Rs. 11,25,000/- and as such, the learned trial Court has failed to appreciate that irrespective of the bills raised by the plaintiffs in pursuance to the tender notice, the maximum amount payable would be capped at Rs. 11,25,000/-.

10. The further argument is that the bills which were raised by the plaintiffs were to be mandatorily certified by the Junior Engineer and countersigned by the Block Development Officer and the learned trial Court has failed to appreciate this aspect of the matter.

11. It is further argued that the DW-1 Shiv Narain Lal Rathore who was examined clearly indicated that for various bills, correction had been made and the same were not countersigned as per the procedure prescribed and further for certain works, no work order had been issued and in case any bill was raised for the said work, the

defendants/appellants were not responsible for making any payment.

12. Another argument is that the plaintiff, as a proprietorship firm, could not have filed a suit considering the provisions of Order 30 Rule 1, 3 & 10 of the CPC and further the notice under Section 80 of the CPC did not adhere to the provisions of Section 80 (3) (a) & (b) of the CPC.

13. As per the arguments raised by the learned counsel for the appellants, the points for determination are found to be as follows:-

(a) whether in terms of the letter dated 18.01.2000 that has been issued by the Deputy Commissioner, State Election Commission, U.P, Lucknow which purportedly fixed a limit of ₹ 11, 25,000/- beyond which the payment could not be made was also applicable on the tender that had been issued by the defendants and whether the learned trial Court has failed to appreciate the aforesaid letter and in having awarded an amount over and above the sum of ₹ 11,25,000/- as fixed by the State Election Commission?

(b) whether as per the work order, all the bills were to be certified by the Junior Engineer and countersigned by the Block Development Officer and despite the said condition not having been fulfilled, the learned trial Court has erred in awarding the aforesaid amount to be paid to the plaintiffs?

(c) whether in terms of Order 30 Rule 1, 3 & 10, the proprietorship firm i.e the plaintiffs could have filed a suit against the defendants? and;

(d) whether the notice under Section 80 of the CPC as issued by the plaintiffs adheres to the provisions of Section 80 (3) (a) & (b) of the CPC?

14. No other ground has been urged by the learned counsel for the appellants and as such, no further determination is required.

15. So far as point of determination i.e (a) is concerned namely

whether in terms of the letter dated 18.01.2000 that has been issued by the Deputy Commissioner, State Election Commission, U.P, Lucknow which purportedly fixed a limit of ₹ 11,25,000/- beyond which the payment could not be made was also applicable on the tender that had been issued by the defendants and whether the learned trial Court has failed to appreciate the aforesaid letter and in having awarded an amount over and above the sum of ₹ 11,25,000/- as fixed by the State Election Commission, a perusal of the judgment and decree passed by the learned trial Court would indicate that the learned trial Court has framed an issue no. 1 namely as to whether the plaintiffs are entitled to a sum of ₹ 74,99,120/- along with 18 % interest.

16. While discussing the said issue, the learned trial Court has in fact considered the limit of ₹ 11,25,000/- fixed by the Election Commission. The learned trial Court was of the view that as no such condition was stipulated in the tender notice that had been issued by the defendants/appellants consequently, the said letter would not stand as an impediment in the plaintiffs claiming the said amount.

17. The Court may clarify the position. It is settled proposition of law that the parties concerned are bound by the terms and conditions of the contract meaning thereby that in case no such condition was existing in the tender that had been issued by the appellants/defendants prescribing a maximum limit over which the amount was not payable as such, the said plea could not have been taken by the appellants in order to negate the claim of the plaintiffs, the same not being part of the tender and the agreement.

18. In this regard, it would be apt to refer to the landmark judgment of the Apex Court in the case of **Ramana Dayaram Shetty vs The International Airport Authority Of India- 1979 (3) SCC 489** wherein the Apex Court has held that the words used in a document are not superfluous or redundant but must be given some meaning and

weightage.

19. For the sake of convenience, the relevant observations of the Apex Court in the case of **Ramana Dayaram Shetty (supra)** are as under:-

"It is a well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the court should not be prompt to ascribe superfluity to the language of a document "and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use"

20. When the facts as set forth by the plaintiff in the plaint are seen in the context of the law laid down by the Apex Court in the case of **Ramana Dayaram Shetty (supra)** it clearly emerges that the tender dated 04.06.2000 that had been issued by the defendants/appellants did not contain any stipulation that the maximum amount payable would be Rs. 11, 25,000/- and consequently, once no words to this effect were contained in the tender as such, a letter purporting to fix a limit on the said payment which was not part of the tender could not be relied upon for limiting the payment to be made to the plaintiffs. **(See also:- Venkataraman Krishnamurthy and anr Vs. Lodha Crown Buildmart Private Limited- (2024) 4 SCC 230)**

21. At this stage, learned counsel for the appellants argues that the limit of ₹ 11,25,000/- as had been fixed vide letter dated 18.01.2000 issued by the State Election Commission should have been framed as an issue and the learned trial Court patently erred in not framing the said issue.

22. The said argument may not detain the Court inasmuch as while framing the issue no. 1, the learned trial Court has discussed threadbare the purport of the letter dated 18.01.2000 and the limit that had been fixed by the State Election Commission i.e ₹ 11,25,000/. Thus, once the said limit has been considered in issue no. 1 as framed by the learned trial Court consequently, even if no separate issue may have been framed by the learned trial Court in this regard, the same

would not vitiate the judgment of the learned trial Court. Accordingly, the said ground is rejected.

23. So far as ground (b) is concerned, namely as per the work order, the bills have not been certified by the Junior Engineer and countersigned by the Block Development Officer, in this regard, reliance has been placed by the learned counsel for the appellants over the statement of DW-1 Sri Shiv Narain Lal Rathore. A perusal of the said statement would indicate that DW-1 had deposed as an example that the bills which were presented by the plaintiffs for the waterproof *pandal* for them, no work order had been issued.

24. Learned counsel for the appellants has argued that although this is one of the instances that had been given by DW-1 in order to indicate that there were certain supplies that had been made by the plaintiffs without any work order being issued yet a further perusal of the statement of the said defence witness would indicate that the defence witness has been shown paper no. 212 Ka/1-238 which were the original bills that had been submitted by the plaintiffs. The witness stated that certain corrections had been made by him in a red pen and thereafter he had been transferred.

25. Thereafter, the witness has stated that for partial waterproof *pandals*, the work orders have been issued for three development blocks and has further deposed in the cross examination that all the bills which have been annexed by the plaintiffs have been checked by him. Thus, there is a clear contradiction in the deposition of the defence witness in one part of his statement being contradicted during the course of the cross examination wherein he specifically admits of work orders having been issued for waterproof *pandals*.

26. Even otherwise, the Court has gone through the bills that had been filed by the plaintiffs before the learned trial Court with the assistance of the learned counsel for the appellants, Sri Rakesh

Chaudhary as well as Sri Mohd. Arif Khan, learned Senior Advocate, learned counsel for the respondents. Learned counsel for the parties fairly agree that all the bills are found to be certified by the Junior Engineer and duly countersigned by the Block Development Officer and consequently, it is apparent that the bills were validly raised and checked by the concerned authorities and thus the said ground raised by the learned counsel for the appellants is also rejected.

27. So far as ground (c) is concerned namely whether in terms of Order 30 Rule 1, 3 & 10, the proprietorship firm i.e the plaintiffs could have filed a suit against the defendants, suffice it to say that a perusal of Order 30 Rule 1 of the CPC would indicate that the same pertains to a suit being filed by the partners. This is clearly apparent from the use of the words "suing of partners in the name of firm". Thus, the same does not pertain to filing of a suit by a proprietorship. Thus, the said ground is also rejected.

28. So far as ground (d) is concerned namely that a notice under Section 80 of the CPC does not adhere to the provisions of Section 80 (3) (a) & (b) of the CPC, a perusal of the notice under Section 80 of the CPC as annexed as annexure 4 (page 57 of the appeal) would indicate that the said notice is carrying the name, description and residence of the plaintiffs as well as the cause of action for the relief claimed by the plaintiff.

29. Even otherwise, while filing the written statement and despite a specific averment to the notice issued under Section 80 of the CPC having been given in the plaint, no rebuttal to the same has been given in the written statement as filed by the defendants/appellants rather there is only a bald averment/denial that had been given in the written statement without elaborating the same. Thus, the said ground is also rejected.

30. Sri Mohd. Arif Khan, learned Senior Advocate has argued that

in terms of the Order 8 Rule 2 of the CPC, the denial has to be specific inasmuch as it is not sufficient for a defendant in his written statement to deny generally the ground alleged by the plaintiff but the defendant must deal specifically with each allegation of fact which he does not admit the truth, except damages.

31. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the appeal is dismissed.

32. Let the learned trial Court record be returned by the office.

Order Date :- 7.4.2025

Pachhere/-