



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

**242**

**RSA-24-2017 (O&M)**

**Date of decision: 29.09.2025**

**M/s. Oberoi Construction Company**

**...Appellant(s)**

**Vs.**

**M/s. Nitasha Construction**

**...Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Arjun Lakhanpal, Advocate for the appellant.

**NIDHI GUPTA, J.**

**CM-41-C-2017**

Prayer in this application filed under Section 5 of the Limitation Act read with Section 151 CPC is for condonation of delay of 177 days in filing the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by an affidavit of the Proprietor of the applicant/appellant-Company, the same is allowed and delay of 177 days in filing the appeal is condoned.

**RSA-24-2017 (O&M)**

Present Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the appellant for rendition of mutual and current accounts; **and** for decree for mandatory injunction for payment of amount



found due after rendition of accounts, has been dismissed by both the Courts below.

2. Brief facts of the case as pleaded by the plaintiff/appellant in the plaint are that the plaintiff-Company is engaged in construction work. The defendant is originally a partnership firm under the name and style of M/s. Nitasha Construction later incorporated as M/s. Nitasha Enirotech Pvt. Ltd. The defendant firm was Government contractor of electrical, mechanical and civil work. While working as Nitasha Construction, the defendant had undertaken work of Incinerator Building at PGIMS, Rohtak (hereinafter referred to as 'Rohtak Work') and asked the plaintiff for submitting quotations for carrying out the above said works as Sub-Contractor. By mutual Agreement vide letter dated 12.06.1994 sum of Rs.5,30,000/- was agreed to be paid in lump sum for carrying out the work. It was the case of the plaintiff that it had executed extra work beyond the agreed works for an amount of Rs.1,80,000/- for which payment was received by the defendant from the Department, however, was not released to the plaintiff. As such, defendant was liable to render the accounts, but the same has not been rendered despite several requests.

3. It was further pleaded that in 1996-1997, plaintiff was again engaged by the defendant for Incinerator Building work at RBTB Hospital, Delhi (hereinafter referred to as "RBTB work") and AIIMS, Delhi (hereinafter referred to as "AIIMS work") for which quotations were accepted by the defendant vide letter dated 24.10.1996. As per the



Agreement, defendant was to make advance payment of Rs.50,000/- per Work however, the same was not paid to the plaintiff. Plaintiff completed RBTB Work on 31.03.1997 and AIIMS Work on 30.06.1997. Defendant had failed to pay for the materials and instead made direct payments to the supplier/labour and without transparency kept mutual accounts but never settled them. Thus, plaintiff had sent a demand notice of Rs.10 lacs for both the works. In response to which defendant vide letter dated 24.06.1999 demanded proper bill but never rendered the accounts. The plaintiff sent bills vide letter dated 19.04.2000 but accounts of the plaintiff were not settled. Even legal notice dated 03.06.2002 was issued by the plaintiff to the defendant. However, neither account statement was supplied, nor any amount was rendered, nor any dues were paid. Hence, present Suit was instituted 16.07.2002 praying that *“a decree for rendition of mutual and current account for carrying out the Rohtak work, RBTB work and AIIMS work, be passed in favour of the plaintiff and against the defendant. It was further prayed that by way of mandatory injunction, the defendant be directed to make the payment of dues with interest at the rate of 18% p.a. on the amount of rendition of accounts.”*

4. Against the suit of the appellant, defendant filed a counter claim alleging therein that the plaintiff had already received Rs.18,66,929/- by way of cheque. It was denied that any extra work was carried out by the plaintiff or that there was relationship of Sub-Contractor. It was alleged that over payment was sought and the defendant had only refused the excess payments sought by the plaintiff.



5. Vide judgment and decree dated 14.03.2012, the learned Civil Judge Judge (Senior Division), Rohtak had dismissed both, the suit of the plaintiff, as well as the counter claim of the defendant. Against the same, plaintiff filed Civil Appeal No. 10 dated 12.04.2012; and Defendant had also filed an Appeal against dismissal of its counter claim; both of which were dismissed by the learned first Appellate Court vide common judgment and decree dated 12.02.2016. Hence, present Second Appeal by the plaintiff.

6. It is *inter alia* submitted by learned counsel for the appellant that the learned Courts below are in error in non-suiting the appellant on the ground of limitation as in the present case the real dispute between the parties started after the respondent firm replied to the notice of the appellant. In this reply the respondent firm sought submission of final bills. However, the appellant firm was not in a position to submit the final bill since it did not have the detailed records regarding the work carried out at the site. The appellant firm through its proprietor approached the respondent firm 1 of times asking for the details of the work carried out but the same was never provided. It was only after making these efforts that the present suit came to be filed. It would be pertinent to mention here that the present suit was filed duly within the prescribed time period after receiving reply/notice from the respondent firm for submission of the final bill. Therefore, the present suit has been filed within the prescribed limitation periods.



7. It is further submitted that the defendant has admitted the work carried out by the appellant on the asking of the defendant. The terms were also proved by the letter written by the defendant itself. As such, the only conclusion that can be derived is that there was contractual relationship between the appellant and the respondent. As such, appellant could not have been non-suited. It is submitted that no doubt the appellant carried out the work without any proper paperwork being there. This attests to the trust which appellant reposed in the respondent. From this it is also evident that the appellant was not the one who was maintaining any detailed records regarding the work carried out by it. It is for this reason only that even in the plaint only a tentative amount was mentioned, and it was pleaded that the rendition of accounts should be made by the respondent firm. However, on the one hand, the respondent firm denied having any detailed records regarding the work but also put forward a counter claim against the appellant in which ample details were given by them of the work carried out at the site. It is contended that this further attests to the fact that entire records of the work carried out at the site by the appellant were indeed available with the respondent firm however, they denied having custody of any records once they realized that the same were not available with the appellant.

8. It is further submitted by learned counsel for the appellant that the Ld. Courts have dismissed the suit of the appellant only on the ground that he has not been able to produce enough of evidence to substantiate the liability of the respondent firm to make any payment to



the appellant. However, the facts and circumstances of the case clearly establish the fact that the appellant was indeed working as a subcontractor for the respondent firm and in that capacity had every right to seek rendition of accounts. It is contended that the respondent firm was working for the Government and without preparing detailed bills and other documents of the work carried out at the site, it could not have submitted its claims to the Government. Therefore, clear and complete accounts are present in the custody of the respondent firm and the same should have been submitted. The non- submission of these accounts further establishes the intention of the respondent firm to conceal the actual picture. If they had nothing to conceal, they should have revealed all the details.

9. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

10. No other argument is raised on behalf of the appellant. I have heard Id. Counsel and perused the case file in great detail. I find no merit whatsoever in the submissions made on behalf of the appellant.

11. Perusal of the record of the case shows that irrespective of the claims made by the plaintiff, as per the documentary evidence available on record, plaintiff was unable to prove any outstanding claim beyond the settled lump-sum for the Rohtak Work. This fact has been admitted by Yogeshwar Oberoi PW10, the Proprietor of the plaintiff firm that Rohtak

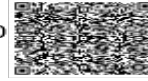


Work was settled for lump sum of Rs.5,30,000/- which was received by the plaintiff through cheque and draft. Admission is the best evidence.

12. With regard to extra payment of work, plaintiff had relied upon testimony of PW1 R.K.Mehta, who had produced details of payment which were prepared for extra items of Rohtak Work per M.B.Book Ex.P3. However, it has been admitted by PW10 Yogeshwar Oberoi himself that the said extra payments were made by the Department to Contractor Yogeshwar Oberoi and not to Nitasha Construction as alleged.

13. Besides the above, the plaintiff also relied upon statement of PW2 Sanjay Kumar who has produced Ex.P4 which is the record of payment done for Rohtak Work. However, it was admitted by PW2 that the original record was not produced. Ex.P4 is not the original document but the carbon copies which bears additions. Therefore, he was unsure whether it reflected full or part payment. The learned Courts below also found the own pleadings of the plaintiff to be inconsistent as in the plaint, the plaintiff had claim that Rs.1,80,000/- was due against the defendant; whereas the arguments suggested a sum of Rs.2,02,291/-. Another inconsistency was legal notice dated 01.06.2000 'Mark PD' did not mention any claim relating to Rohtak Work and did not indicate any outstanding claim in respect of Rohtak Work. Thus, no further claim for Rohtak work survives.

14. As regards RBTB Work and AIIMS Work, plaintiff had relied upon PW3 Surender Kumar Verma and the Checking Report Ex.P5. However, the same was also not of any help to the plaintiff as, PW3 was engaged privately by the plaintiff firm without the permission of the defendant. Even



otherwise, the said Report Ex.P5 was submitted by PW3 by placing reliance upon documents 'Mark A' to 'Mark E' being drawing bills etc., which documents were not duly proved. For this reason, as well Checking Report Ex.P5 could not be relied upon. Furthermore, PW10 in his examination has admitted that no bills were annexed with the plaint; no account books, cash books were produced. It was claimed that list of claims was stolen, however, no police report in respect of the said allegedly stolen claims, was produced; and it was further admitted that the accounts were oral approximation and not shown in Income Tax Returns of the appellant. It has been admitted by PW10 Yogeshwar Oberoi in his cross-examination that his entire account was oral and he himself also never kept any accounts of expenditure and income. Plaintiff was required to prove specific amount with cogent evidence, which he has failed to do. From the above facts, it is clear that the plaintiff was unable to make out that any amounts were due against the defendant.

15. As regards claim of the plaintiff that it was Sub-Contractor for executing the works of the defendant, the same forms no basis for rendition of accounts. It has been concurrently found by both the learned Courts below that the plaintiff was unable to prove that there was relationship of principal agent between the parties in the nature of the partnership; and as such, plaintiff was not entitled to rendition of accounts of the defendant. It is trite law that for rendition of accounts special relationship between the parties is required which includes element of sharing of profit amongst the partners, however, from the evidence on record, it was only found that the



parties had entered into contract for Rohtak Work upon lump sum payment of Rs.5,30,000/- which amount has been admittedly been received by the plaintiff. There was nothing on record to indicate that the plaintiff was Sub-Contractor of the defendant, in the RBTB and AIIMS Works. As such, plaintiff had miserably failed to prove his case.

16. Even otherwise, present second appeal is liable to be rejected as this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559***; has held as under: -

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

*"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."*

17. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below.

18. The present Regular Second Appeal is hereby **dismissed**.

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

**29.09.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

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