203 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2889-1996
Date of Decision: 16.09.2025

FOOD CORPORATION OF INDIA

....Appellant

Versus

PARKASH CHAND GOYAL

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Maninder Arora, Advocate and
Mr. Harmeet Singh, Advocate
for the appellant.

Mr. Sanjeev Goyal, Advocate and
Mr. Karandeep Singh, Advocate
for the respondent.

Parmod Goyal, J. (Oral)

Plaintiff/appellant has filed the present Regular Second Appeal being aggrieved by impugned judgment and decree dated 24.05.1996, passed by learned District Judge, Faridkot, vide which appeal preferred by defendant was accepted by the First Appellate Court and suit preferred by plaintiff/appellant was dismissed, which stood decreed vide judgment and decree dated 22.02.1994, passed by learned Sub Judge, First Class, Faridkot.

2. Plaintiff had preferred a suit for recovery of Rs.1,29,975.38/- along with future interest @18% p.a. on account of loss suffered due to failure of defendant to execute contract awarded to him. The said suit for recovery was duly decreed and counter claim of defendant was rejected vide judgment and decree dated 22.02.1994, passed by learned Sub Judge, First Class, Faridkot, however, on appeal first Appellate court reversed the judgment and decree dated 22.02.1994 and was set aside. The suit preferred

by plaintiff/appellant was dismissed and appeal of defendant was allowed vide impugned judgment and decree dated 24.05.1996. While allowing the appeal preferred by defendant, the First Appellate Court had not only dismissed the suit preferred by plaintiff/appellant, but also decreed the counter claim preferred by defendant to the extent of recovery of surety amount, which defendant had deposited with the plaintiff.

3. The case of plaintiff/appellant is that for construction of office block at F.S.D. Kotkapura, District Faridkot, tender amounting to Rs.3,67,129.28/- (24% above the estimated cost of Rs.2,96,072/-) was awarded to defendant. He had duly tendered earnest money of Rs.7,402/-. Tender was awarded vide letter dated 30.06.1988. As per terms and conditions of tender, defendant was bound to start construction on 07.07.1988 and was also bound to complete work within three months.

4. It is the case of appellant/plaintiff that despite award of tender, defendant had failed to carry out his obligation to construct office block and accordingly appellant had to re-tender the work which was allotted for an amount of Rs.4,67,793.76/- and accordingly FCI-plaintiff/appellant had sought recovery of Rs.1,00,664.48/- along with interest which on the date of filing of suit was Rs.1,37,377.38/- and after deducting security amount of Rs.7,402/- lying with it, suit for recovery of Rs.1,29,975.38/- was filed.

5. On notice, defendant has contested the suit and asserted that as per tender dated 30.06.1988, it was appellant who was to supply cement and without supply of cement the construction was neither possible nor could be carried out. Construction was to start on 07.07.1988, however, despite request by defendant cement was not supplied and accordingly, the construction could not be carried out by defendant. It is the case of defendant that construction was to be completed within three months and,

therefore, time was essence of contract and after expiry of three months the contract stood cancelled for default on the part of appellant and, therefore, he is not liable to any risk purchase as was done by plaintiff/appellant.

6. Learned Court of first instance concluded that time was not essence of contract and had decreed the suit in favour of plaintiff/appellant, whereas learned First Appellate Court concluded that time was essence of contract and, therefore, making cement available after three months fixed under the tender would not extend the tender unilaterally and on expiry of three months tender stood cancelled due to fault of plaintiff/appellant itself.

7. On consideration, I do not find any error in the conclusion drawn by learned Appellate Court. Facts are not in dispute in the present case. Admittedly, tender was issued by defendant on 30.06.1988, construction was to start w.e.f. 07.07.1988, on condition of supply of cement by plaintiff. Admittedly, cement could not be supplied by plaintiff. It is the case of plaintiff that it was only on 17.12.1988 that cement was available and a letter was written to defendant to execute the work to which defendant had refused.

8. As per tender construction was to start on 07.07.1988 on supply of cement by plaintiff, which plaintiff has failed to supply. Construction was to be completed within three months i.e. by 07.10.1998 as per tender. For the first time cement was made available on 17.12.1988 after two months of expiry of time fixed for completion of work under the contract and, therefore, the learned First Appellate Court has rightly held that time was essence of contract. Therefore, defendant could not be faulted for not executing the tender as cement was not supplied to it. Learned counsel for appellant has argued that there was a Clause for extension, however, no rights under that Clause were created in favour of plaintiff as defendant had

never agreed to extend the agreement. Therefore, no fault with the impugned judgment passed by First Appellate Court can be found. No question of law arises. The appeal is without merit and hence dismissed.

(PARMOD GOYAL)
JUDGE

16.09.2025
chiranjeev

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No