



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA-4237-2010(O&M)
Date of decision: 21.07.2025

The Pandori Sidhwan Co-operative Labour & Construction Society Ltd.

...Appellant(s)

Vs.

The Punjab State & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Dheeraj Mahajan, Advocate
for the appellant.

Mr. M.S. Teji, AAG Punjab.S

NIDHI GUPTA, J.

CM-3389-C-2016

This is an application under Section 41 Rule 27 read with Section 151 CPC for permission to produce judgment and decree, Annexures A1 to A4, as additional evidence.

After going through the contents of the application, which is supported by affidavit of the applicant, the same is allowed, subject to all just exceptions and Annexures A1 to A4, are taken on record.

MAIN CASE

Present Second Appeal has been filed by the plaintiff against the judgment of reversal passed by the learned Additional District Judge, Amritsar thereby allowing the Civil Appeal filed by the respondents/defendants against the judgment and decree dated 16.12.2008



passed by learned Civil Judge (Junior Division), Amritsar, decreeing the suit for recovery filed by the appellant.

2. Brief facts of the case are that the appellant/plaintiff-society is a Registered cooperative society. The amended suit was filed by the plaintiff for recovery of Rs.1,46,858/- as amount to be paid by the respondents/defendants for the works executed by the appellant; along with interest @ 18% per annum with costs of the suit. It was the pleaded case of the appellant that the respondents had issued notice inviting tenders in respect of work order namely "*Reconditioning of Amritsar Disty R.D. 615568 to 71750*" in response to which the plaintiff had submitted the tender rates. As rates of the appellant were lowest, the aforesaid work was allotted to the plaintiff by the defendant department. In that respect a work order No.81, Book no.47 dated 11.5.2000 with estimate cost of Rs. 1,50,000/- was issued. After the allotment of work, the plaintiff started work in right earnest manner and completed the same subject to the satisfaction of the concerned authorities/officials of the department as per the terms and conditions of the work order. The aforesaid work in question was executed within stipulated period. After completion of the same, the plaintiff requested the department orally as well as in writing to release the payment of the executed work, but the department without any sufficient reason and cause did not release the same despite receiving funds from the higher officials. The plaintiff-Society accordingly served legal notices dated 27.12.2002 and 28.03.2005 upon the



respondents. Despite that, Department did not make any payment to the plaintiff. Accordingly, the plaintiff filed the present suit on 20.05.2005.

3. Upon notice, the defendants appeared and filed written statement resisting the suit by raising various preliminary objections. On merits it was averred that payment was not released to the plaintiff as there were no funds. Respondent department took the stand that work was not approved and in the absence of contract no work can be legally implemented. It was further stated that the plaintiff society had offered a tender in respect of work "Reconditioning of Amritsar Distributory R.D.61558 to 71750" but the same was not approved by the competent authority of the defendant-department and plaintiff was never instructed by competent authority to start the work as work was not allotted to the society. It was also stated that the alleged work order No.61 book No.47 dated 11.5.2000 was never executed between the defendant and plaintiff because the same was neither signed by the then Sub Divisional Officer, Khalra Subdivision, UBDC, Amritsar nor the same was signed by Approval Authority i.e. defendant No.3. Moreover, no work order can be legally implemented or enforced unless the contract is complete i.e. there should be an offer from the department and acceptance of the contractor. Therefore, the plaintiff society was not authorised to start the alleged work. It was also submitted that the alleged work orders bears the signatures of plaintiff but it clearly shows that plaintiff in-conivance with Sh.Bachan Singh and Sh.Rachhpal Singh (both J.Es.) had



got wrongly prepared the alleged work order and thereafter made wrong entries regarding completion of alleged work in the M.B.s. Denying all other averments, prayer for dismissal of the suit was made.

4. Replication was filed by the plaintiff wherein all averments of the written statement were denied and those of the plaint were reiterated.

5. On the basis of pleadings of the parties, following issues were framed: -

“1. Whether the plaintiff is entitled to a decree for recovery of Rs.1,46,858/- as prayed for? OPP.

2. Whether the plaintiff is also entitled to interest, if so at what rate? OPP.

3. Whether the suit is bad for non joinder of necessary parties? OPD.

4. Whether the plaintiffs have no cause of action to file the present suit? OPD.

5. Whether the suit is within limitation? OPP.

6. Relief.”

6. Upon appraisal of oral as well as documentary evidence adduced by the parties, the learned Civil Judge (Junior Division), Amritsar vide judgment and decree dated 16.12.2008 decreed the suit of the plaintiff. Against the above-said judgment and decree of the learned trial Court, Civil Appeal No.32 dated 28.02.2009 was filed by the respondents. Vide the impugned judgment and decree dated 06.05.2010, the learned Additional District Judge, Amritsar has allowed the appeal of the respondents. Hence, present Second Appeal by the plaintiff.



7. It is inter alia submitted by learned counsel for the plaintiff that the learned Lower Appellate Court was in patent error in allowing the respondents' appeal as in doing so, it ignored that notice inviting tender dated 9.3.2000 (Ex.P17) related to 99 items of work including 10 items of reconditioning of Amritsar distributory. The work orders were prepared on 11.5.2000 and the contractors were instructed to start the work, while formal approval of the authority has been sought. As the work was of urgent nature, the works were started by all the tenderers on instructions of the Department. Approval to the work done by the plaintiff-society was granted by the Superintending Engineer vide letter dated 4.9.2000 (Ex.P18) approving estimated cost of work as Rs. 1,46,858/-. The work was completed, and entries were made in the MB and Bills for any payments that were made. Liability for the work done is included in the List of Liabilities prepared on 6.1.2003 (Ex. P22). It is contended that once the work has been done, the plaintiff-Society was entitled to payment for the work done as the same was never done gratuitously. The trial court decreed the suit holding that the plaintiff-Society is entitled to payment of the amount for the work done as per provision of Section 70 of the Contract Act. But the Id. First Appellate Court has reversed the finding without making reference to any of the exhibited documents and correspondence, inter se, between the departmental authorities approving the work done by the plaintiff-society and entitlement for payment of the work done. Findings of the Additional



District Judge, therefore, suffer from perversity as material documentary evidence in the form of Ex.P7 to P24 were completely ignored while reversing findings recorded by the trial court. The impugned judgment and decree passed by Additional District Judge, therefore, cannot be sustained.

8. Ld. Counsel further submits that the findings of the Additional District Judge that the work order and entries in the Measurement book are not in accordance with the provision of Irrigation Manual of Orders and as such the plaintiff is not entitled to payment of the work done, cannot be sustained. It is argued that the preparation of documents is internal arrangement of the Department. Even if documents are not prepared in accordance with the Rules, payment of the plaintiff cannot be withheld.

9. It is further submitted by learned counsel for the appellant that the Additional District Judge further ignored that tender notice was not with respect to one work, but with respect to 99 different items of work for which separate tenders for each item had been submitted. Notice inviting tenders included 10 works relating to reconditioning of Amritsar Distributory; and plaintiff was allotted work only with respect to one work out of 10. The departmental authorities have already made payment of work done relating to other items including reconditioning of Amritsar Distributory. Same procedure was followed in case of all items of work. In all tenders, work orders were prepared, approval of estimates were obtained subsequently, and works started, and on completion of works, payments have been made



to the contractors. Thus, plaintiff-Society cannot be deprived payment of work done by it. In this regard, learned counsel for the appellant refers to the judgments and decrees (Annexure A1 to A4), whereby similar suits as the present one filed by the similarly placed plaintiffs were decreed. No appeals/second appeals were filed by the respondents and the said decrees had attained finality; in pursuance to which, payments have also been released to the similarly placed plaintiffs. Ld. counsel submits that this fact has been admitted by the respondents in their reply filed to the above-said application for additional evidence. It is contended that accordingly, no ground is made out to deny payment to the plaintiff.

10. It is further contended that the findings of the Additional District Judge that it is impossible to carry out the work of berm cutting of channel on 22.7.2000 cannot be sustained. This finding is beyond pleading. It was not the case of the parties that the work was done after 140 cusecs of water was left in the channel or it was impossible to carry out the work of berm cutting. Thus, finding of the Additional District Judge is not only beyond pleading, but is also beyond evidence and as such cannot be sustained. It is submitted that therefore, the impugned judgment and a decree cannot be sustained being contrary to the evidence on record and settled principles of law as also being beyond the pleadings.

11. Per contra, learned counsel for the respondent-State submits that the impugned judgment and decree of the learned First Appellate Court



does not suffer from any infirmity. It is submitted that no doubt, the appellant had placed on record the Work Order (Ex.PX/2) and Measurement Book (Ex.PX/3, Ex.PX/10), however, Rules do not approve such like practice and same is against the provision of Paragraph 1.10 of Chapter-1 of Irrigation Manual of Orders. It is further submitted that the learned First Appellate Court correctly opined that it is impossible to carry out any work of berm cutting of the channel on 22.07.2000 because 140 cusecs of water was running in the channel of that from it.

12. Learned State Counsel further contends that the plaintiff in connivance with two JEs namely Bachan Singh and Rachhpal Singh had executed the work without the sanction of the defendant-Department. It is submitted that the said JEs have even been charge-sheeted and the amounts have been subtracted from their salary. It is further submitted that the learned trial Court in passing the judgment dated 16.12.2008 had not taken into account the evidence of DW2 and Document (Ex.D2).

13. Learned State Counsel further submits that payments were released to other persons/plaintiffs similarly situate as the present appellant, in view of the fact that their Work Orders were found to be genuine. Learned counsel accordingly prays for dismissal of the present appeal.

14. Learned counsel for the appellant in rebuttal submits that DW1 in his cross-examination has admitted the Work Order as also the Work executed by the plaintiff. It is further submitted that the submission of



learned State Counsel that payments have been given to other plaintiffs because their Work Orders were genuine, is contrary to the evidence led by the respondents themselves. It is further submitted that the submissions of the learned State Counsel are beyond the pleadings as the ostensible reason cited by the respondents for not making payment to the appellant was that no money was released by the Government. Learned counsel accordingly reiterates his prayer that present appeal be allowed.

15. No other argument is made on behalf of the parties.

16. I have heard learned counsel and perused the case file in detail. I have given my thoughtful consideration to the rival submissions made on behalf of both the parties. I find merit in the submissions made on behalf of the appellant/plaintiff.

17. The reasons for which the learned Lower Appellate Court has reversed the findings of the learned trial Court are contained in Para 10 of the impugned judgment and decree, which reads as follows: -

"10. In order to appreciate the rival contentions, I have gone through the relevant provisions of the Public Works Department Code, placed on record by the appellants-defendants department. Rule 2.79 of Chapter VIII of the said Code title as "Piece Works" shows that the piece works should be in the form of works orders. Such agreements are not "Contracts". Sanction regarding the above said piece works or work orders is not be given without the prior permission of the Superintending Engineer or Divisional Officer. In the instant case no sanction has



been taken from the competent authority i.e. Superintending Engineer or Divisional Officers. The Sub Divisional Officer has authority to sanction the work orders only to the extent of Rs.5000/- and as such the instant work was to be approved by the Divisional Officer for the latter's counter signatures before the commencement of the work, as has been mentioned in paragraph 2.22(4)©. Thus, when the work order was not approved by the competent authority then the respondent society was not having any authority to commence or execute the work in question."

18. First and foremost, the above said reasoning of the learned Additional District Judge is unsustainable being beyond the pleadings. It is no one's case that the Work Order was a "Piece Work" and not a contract. The written statement filed by the respondents to the suit reveals that no objection regarding "Piece Works" was taken by them. In fact, the reason given by the respondents in the written statement, for not releasing payment to the appellant was that funds had not been released by the Government. Nowhere has it been pleaded by the respondents that as per the Public Works Department Code 'Piece Works' are required to be in the form of work orders and are not 'Contracts'. As such, in non-suiting the appellant, the learned 1st Appellate Court has gone beyond the pleadings. Such a judgment /decree cannot be sustained.

19. The said reason of the learned 1st Appellate Court is also contrary to the record, and therefore unsustainable. From a perusal of the



comprehensive documentary evidence produced by the appellant as well as the respondents it is irrevocably established that defendants had allotted the Work Order No.81 dated 11.05.2000 to the plaintiff. This fact has been admitted by DW1 Balwinder Singh (SDO present sting operation) in his cross-examination that the Work in question was allotted to the plaintiff-Society by Kulwinder Singh, the then SDO of the defendants-Department. DW1 has also proved Ex.P22 (wrongly mentioned as Ex.P21 in the impugned judgments) viz the Official Letter of the respondent-Department along with the Liability List. In the Liability List dated 6.1.2003/Ex.P-22 (available at page 325 of the LCR), the name of the appellant is found at item No.36 (at page 331 of the LCR); and it is recorded in the said Liability List that a sum of Rs.1,46,858/- is due against the appellant and Department has not yet paid the amount due to non-receiving of funds from the Government. It is, but trite that if the aforesaid amounts were not due to the appellant, then why is the name of the appellant and the liability against him, mentioned in the Liability List. Learned counsel for the respondents is unable to explain this. DW1 has further proved that the Work allotted to the plaintiff was never cancelled. DW1 has further stated in his cross-examination that no Letter was written by the Department to the plaintiff-Society directing them not to execute the Work or to stop the Work. Relevant extract of the cross-examination of DW1 Balwinder Singh, SDO (available at page 179 of the LCR) is reproduced hereinbelow:-



“The work in question which the plaintiff's society executed, was executed on the tenure of Sh. Kulwinder singh, the then SDO of the defendant department after its allotment. I have seen Ex.P21, the official letter of the deptt. alongwith the liability list and as per this liability list dated 6.1.2003, a sum of Rs./1,46,858/- is due and department has not paid yet due to non receiving of funds from the Govt.It is correct that It is the sole responsibility of the deptt.to procure the funds of every work. The tender of this work was called by the deptt. Tenders are called if there is necessity of the work at the site. It is correct that before calling the tenders, the report was submitted by the concerned SDO of the deptt. regarding necessity of work. I have seen Ex. P12 tender notice on the court file. Same is correct. Work in question is mentioned at Sr.no.7 of the tender notice. I have seen Ex P12, Ex. P18, Ex. P13, Ex. P14 on the court file. Same is correct. Estimate of this work was 146858/-. I have seen Ex. P9 on the court file regarding approval of rates by the Higher authorities of the deptt. I have seen Ex.P10 on court file in which the execution of work was recorded by concerned official of the deptt. It is correct that without recording the entry in the measurement book, payment cannot be made. It is correct that once the entry is recorded in the measurement book of execution of work, deptt. is bound to make the payment. It is correct that measurement book in original always remain in the custody of the concerned J.E of the deptt. and it is the responsibility of the concerned J.E to make entry of execution of work in the same. It is further correct that original work order book always remain in the custody of the deptt. and it is the responsibility of the



concerned SDO to sign the same after getting signatures of the contractor on the work order. No such letter was written by the local deptt. to the Head office showing the willingness of not getting the work executed. I cannot say whether the work was executed as per terms and conditions of the work order or not. This work order which the deptt. issued in favour of plaintiff's society was never cancelled thereafter by the deptt. or by the then SDO till date. No any report was given by the then SDO regarding the validity of the work order. As per the departmental record entry the work has been executed by society. I have seen Ex.P23 on the court file. It bears signature of Sh. Rakesh Anand then Executive Engineer of Majitha Division. I have also seen Ex. P24 on the court file. Same is correct.”

20. Thus, from the own evidence of the respondents, it is proved that the plaintiff has rendered services to the defendants. In this circumstance, reference may be made to judgment of the Hon'ble Supreme Court in **Food Corporation of India v. Vikas Majdoor Kamdar Sahkari Mandli Ltd., (SC) : Law Finder Doc ID # 133369**; wherein it is held that: -

“A. Contract Act, 1872, Section 70 - A person who does work or who supplies goods under a contract, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the goods supplied.

Xxx

C. Contract Act, 1872, Section 70 - Obligation of person enjoying benefit of non-gratuitous act - Contractual matters -



Work done beyond the terms of the Contract - If a party to a contract has done additional construction for another not intending to do it gratuitously and such other has obtained benefit - The former will be entitled to compensation under Section 70 - The question whether a particular work is extra will depend upon the terms of conditions of the contract."

21. Reference may also be made to judgment of this Court in **Market Committee v. M/s. General Trade Supplies, (P&H) : Law Finder Doc ID # 79538**; wherein it is held that:-

"C. Contract Act, Section 70 - Punjab Agricultural Produce Markets Act, 1961, Section 22 - Breach of contract - Compensation for breach of contract - Irrespective of the fact that legally no contract was executed between the parties, the compensation under Section 70 of the Contract Act is to be granted on the basis of fact that something done by a party for another has been voluntarily accepted by the other party - The accepting party have to compensate the other for the work done."

22. Thus, the legal position is very clear that irrespective of whether any contract was executed between the parties, all that has to be seen is whether any services have been rendered by the contractor. If yes, contractor is liable to be compensated for the work done. The aforesaid case laws apply ipso facto to the facts of the present case. The reasoning of the learned Lower Appellate Court that as the Work Order in question was not sanctioned/approved by the Authority, and therefore, the



appellant/Society was not having any authority to commence/execute the work, is ill-founded in view of the above-said judgment of the Hon'ble Supreme Court. Moreover, in this regard reference may be made to Ex.P11 (wrongly mentioned as Ex.P13 in the judgment of the Lower Court dated 04.09.2000; and available at page 271 of the LCR) issued by the Superintendent Engineer to the Executive Engineer giving approval to the Work Order allotted to the plaintiff.

23. Learned counsel for the respondent-State has relied upon the evidence of DW2 Harjeet Singh (concerned SDO of the Work). However, even Harjeet Singh in his cross-examination has admitted the document (Ex.P13) which is the attested copy of the Estimate of Work in question, which was passed by the Department. DW2-Harjit Singh also admitted in the cross-examination that he did not sign the work order due to its non-sanctioning, however further admitted that the estimate of this work was later on sanctioned by the Chief Engineer and this fact is crystal clear from the approval of rates on 21.03.2002 Ex.P9 whereas the work order Ex.P8 is dated 11.05.2000. However, this evidence has been ignored by the learned 1st Appellate Court. In fact, a perusal of the impugned judgment and decree of the First Appellate Court also shows that there is no discussion on the voluminous documentary evidence adduced by the plaintiff.

24. Learned counsel for the respondents-State has stated that payments were made to persons similarly placed as the present plaintiff, as



their Work Orders were found to be in order. However, record reveals that the stand of the respondents-State in not releasing payments to the plaintiff is that funds had not been released from the Government. As such, there is also discrimination against the present plaintiff. The said argument of the respondents is also misconceived in view of the above referred Ex.P11 issued by the Superintendent Engineer to the Executive Engineer giving approval to the Work Order allotted to the plaintiff. Even otherwise, there is no truth/correctness to the above stand of the respondent – State. The plaintiff/appellant has filed CM No.3389-C of 2016 for additional evidence in which the notice was issued by this Court on 31.03.2016 for bringing on record certified copies of judgments and decrees passed in the suits filed by identically situated societies who executed the same work and were denied payment by the department by taking a similar stand. In similar cases, it is clarified as follows: –

25. In respect of work pertaining to RD No. 71750 to 81500 which is a part of same tender notice dated 09.03.2000 Ex.P17, work was allotted to the Bhojian Cooperative Labour and Construction Society Limited. Civil Suit No.273 dated 26.11.2007 was duly decreed on 07.01.2013. No further appeal has been filed and rather the appeal filed by the concerned society claiming the grant of interest from the date of suit till its realization was allowed vide judgment and decree dated 17.02.2014 by the learned ADJ, Amritsar and the payment has also been released to the said society.



26. Similarly in case of Gandiwind Cooperative Labour and Construction Society Limited filed civil suit.No.219/2009 in respect of work for RD No.93308 to 100980 which was duly decreed on 15.11.2011 and further appeal filed by the department was also dismissed on 02.02.2013.

27. The identically situated society Thathgarh Labour and Construction Society Limited filed civil suit No.346 of 2009 which was also decreed on 06.02.2013 and no further appeal was filed by the State.

28. The certified copies of the judgment are perse admissible and the same clearly demolishes the stand of the department and further shows how the plaintiff has been discriminated by the department with respect to the amount to which he is lawfully entitled in respect of the work.

29. Relevant findings of the learned trial Court are contained in Para 16 of the judgment dated 16.12.2008, which reads as follows: -

"16. The defendant department invited tenders in respect of work namely "Reconditioning of Amritsar Disty RD 61558 to 71750". The plaintiff submitted the tender rates and after found to be lowest the work was allotted to the plaintiff by the defendant department in respect of work under No.81, Book No.47, dated 11.5.00, with estimate cost of Rs. 1,50,000/- issued/ executed. The work was executed within stipulated period of time and after that plaintiff requested the defendant for payment, but the defendant did not release the same. The President of Society proved on record resolution Ex.P1, legal notice served by the Society upon the defendant Ex.P2, acknowledgment Ex.P3, postal receipts Ex.P4 to Ex.P6, another



notice Ex.P7, work order Ex. P8. The document Ex.P8 apparently shows that the work executed by Pandori Sidhwan Society - plaintiff or "Reconditioning of Amritsar Disty RD 61558 to 71750. The plaintiff has also proved official letter of defendant deptt. Ex.P9, entries made in the M.B. Ex. P10 which reveals that the name of the plaintiff company figure in this document which the document of defendant department letter Ex.P11 written by the Superintendent Engineer to Executive Engineer dated 4.9.00 estimate of work by the department Ex.P12 passed by the defendant, Ex.P13 and estimate for reconditioning of Amritsar disty. RD 61558 to 71750 Ex.P14. This witness also proved representation dated 12.6.04 submitted to the defendant Ex.P15, letter dated 17.12.2003 ex. P16, attested copy of tender notice Ex. P17, attested copy of representation dated 4.9.00 Ex.P18, representation dated 12.8.04 Ex. P19, letter dated 17.12.03 Ex.P20 and letter No.645 Ex.P21 and liability Chart Ex. P22, Other witness PW2 Bachan Singh proved that the defendant department executed the work to the plaintiff. From the perusal of document produced by the defendant as well as evidence produced by the plaintiff reveals that the defendant had allotted the work order No.81 dated 11.5.00 to the plaintiff. Ld. counsel for the plaintiff contended that work in question was allotted by the defendant to the plaintiff society and the same has been executed well within time. The defendant witness i.e. DW1 Balwinder Singh in his cross examination has admitted that the work in question was executed to the plaintiff society by Sh.Kulwinder. Singh, the then SDO of defendant department. Meaning thereby, this witness has admitted this fact that the defendant had executed



the work to the plaintiff company. The witness also proved Ex.P21 i.e. official letter of the department alongwith the liability list and as per this liability list dated 6.1.2003, a sum of Rs. 1,46,658/- is due and department has not paid yet due to non receiving funds from the Govt. This witness has categorically stated in his cross examination that the tenders are called and the report regarding this was submitted to the SDO of the department. He also proved Ex.P12 tender notice. He further deposed that the work the question is mentioned of Sr.No.7 of the tender notice. He also proved document Ex. P12, Ex.P18 Ex.P13 and Ex.P14. This witness also admitted that estimate of this work was 1,46,858/-. This witness also proved document Ex.P11. This witness also proved that the work allotted to the plaintiff never cancelled till today. This witness also proved documents Ex.P24 and Ex.P23. This witness also specifically stated in his cross examination that no letter was written by the department to the society not to execute the work or to stop the same. Therefore, it is admitted that plaintiff had rendered service to the defendant and plaintiff had executed the work in question. DW2 Harjit Singh in his cross examination also admitted the document Ex. P13 and Ex.P14 which is related to his department. This witness also admitted the approval of rates.

Ld. counsel for the plaintiff has also placed reliance upon the authoritative pronouncement 2005(1) RCR (Civil) pg.19 titled as Market Committee and another Vs. M/s. General trade Supplies in which it is held that "Contract Act Section 70-Punjab agricultural Produce Markets Act, 1961, Section 22-Breach of contract-Compensation for breach of contract-irrespective of



the fact that legality no contract was executed between the parties, the compensation under section 70 of the Contract Act is to be granted on the basis of fact that something done by a party for another has been voluntarily accepted by the other party-The accepting party have to compensate the other for the work done."

It is also clear under this decision that if in pursuance of the said void contract, the plaintiff has performed its part and the defendants have received the benefit of the performance of contract by the plaintiff, section 70 of the contract Act would justify the claim made by plaintiff against the defendants. Section 70 of the Contract Act enables, the person who actually supplies goods or renders services not intending to do so gratuitously to claim compensation from the person who enjoys the benefit of the supply made or services rendered. It is the liability which arises on equitable grounds even through express agreement or a contract may not be proved. I rely upon the case law cited supra by plaintiff. In the present case, the plaintiff society has lawfully rendered services by the defendants department while rendering such services, the plaintiff society was not intending to act gratuitously and the defendant department had received services of the plaintiff. Therefore, in terms of the provisions of section 70 of the contract Act, the defendants department have liability to compensate the plaintiff society with the price of work in question. The plaintiff society has claimed interest 18% p.a. on the amount, but the aforesaid interest is exorbitant and is not reasonable. The plaintiff has the failed to prove any documentary evidence in this regard. Therefore, plaintiff is



entitled to interest @ 9% p.a. on amount of Rs. 146858/-. Therefore, finding on the above-said issues is returned in favour of the plaintiff and against the defendants.” (emphasis added).

30. Thus, even if the contract was not signed by the Sub-Divisional Officer, however, the attendant circumstances show that the appellants had executed the work in question as is clear from the Measurement Books on record, duly approved by the JEs of the Department. From the evidence led by the plaintiff it categorically stands proved on record that the work was allotted, which was duly executed by the appellant, entitling them to claim the amount of the executed work in terms of Section 70 of the Contract Act. Even the entire case of the plaintiff has been admitted by the defendant/witnesses in their cross examination. As such, the appellant-Society is entitled to receive payment in lieu of the work done by them as held by the Hon’ble Supreme Court in the above-cited judgment. A perusal of the impugned judgment and decree of the First Appellate Court shows that there is no discussion on the voluminous documentary and other evidence adduced by the plaintiff.

31. Keeping in view the above-said factual and legal position, present Second Appeal stands **allowed**. Suit of the plaintiff is decreed; and the plaintiff is held entitled to recover Rs.1,46,858/- from the defendants along with interest @ 6% per annum from the date of institution of suit till realisation.



32. Pending application(s) if any also stand(s) disposed of.

21.07.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No