2025:PHHC:045924

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

**RSA No.4774 of 2019 (O&M)**
**Date of Decision: April 03, 2025**

**M/s Coatec India (Regd) . . . . Appellant**

Vs.

M/s Rofin-Sinar Laser GMBH .. . . RESPONDENT

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:-** Mr. Akhilesh Vyas, Advocate for the appellant.

**DEEPAK GUPTA, J.**

Suit for mandatory injunction filed by the plaintiff was dismissed by the trial Court on 20.01.2016 and the appeal filed by the plaintiff was dismissed on 18.09.2018 by the First Appellate Court. Against these concurrent findings of the Courts below, plaintiff -firm has approached this Court by way of the present regular second appeal.

2. The brief facts as emerging on the perusal of the paper-book are that plaintiff-firm had purchased some machinery from the defendant-company located in Germany. The said machinery was installed at Mohali. Certain defects appeared in the working of the machinery. Plaintiff approached the defendant either to get the machinery replaced or to reimburse the loss suffered by it. Defendant had even encashed the bank guarantee, which was submitted earlier by the plaintiff. Defendant failed to redress the grievance of plaintiff, compelling it to file present suit seeking decree of mandatory injunction to direct the defendant either to replace the machinery with the new working unit or to reimburse the amount of losses suffered by the plaintiff including the bank guarantee got encashed by it.

3. Defendant contested the suit on merits and also by raising preliminary objection that the Civil Court at Mohali did not have the territorial jurisdiction to entertain the suit, inasmuch as, as per the contract

entered between the parties, only the Courts at Germany had the jurisdiction.

4. Necessary issues were framed. Evidence produced by the parties was taken on record. Both the Courts below came to the conclusion that it is only the Germany Courts, which had the territorial jurisdiction to entertain the matter. Not only this, both the Courts below also considered the matter on merits and found that it is the plaintiff, which was at fault and so, it was not entitled to the relief of mandatory injunction, as claimed by the said plaintiff. Consequently, the decision of the trial Court dismissing the suit on 20.01.2016 was upheld by the First Appellate Court by dismissing the appeal of the plaintiff-appellant on 18.09.2018.

5. Assailing the aforesaid findings, learned counsel for the appellant contends that as per the quotation (Annexure A-1), the Courts at Germany had the jurisdiction only regarding the dispute arising directly or indirectly from the contractual relationships. Learned counsel for the appellant contends that the said jurisdiction was not a bar as far as the rights in defects of the machinery are concerned.

6. Even if the abovesaid contention of learned counsel for the appellant is found to be correct and the case is considered on merits, it is found that the Courts below have not committed any error in dismissing the suit.

7. It will be apt to reproduce the observations made by the First Appellate Court, based on evidence on record, in this regard. These read as under:-

> "12. It has been contended that the learned civil Court has failed to notice the categoric averment that the plaintiff had installed machine as per the guidelines. Even defendant had not at any point of time provided the manual to the plaintiff which are alleged to be prerequisite before the installation of the machine. But this plea is against the facts and circumstances of the case. It has come on record that the plaintiff installed a

laser machine of its own. A service technician of defendant visited the plaintiff from 25.4.2011 to 29.04.2011 to test laser machine and he found out that the plaintiff had installed laser without filter and without inadequate hoses and has not provided for the required minimum safety measure against the radiation. Even the plaintiff attended training on laser handling in Hamburg from 14.07.2010 to 16.07.2010. Thereafter at the time of visit by technician of defendant in April 2011, the plaintiff was using a cooling system that was not in line with the specifications stated in the manual which was provided alongwith the laser. PW-1 Gurvin Singh has admitted in his cross-examination that technician of the defendant visited the company to check the machine. He also admitted that when he left, the machine was working properly. There was problem in the machine and he rectified the same. He has not denied this fact that manual describing detailed safety measure was not provided to him, rather, he does not remember if the defendant provided the same. He gave evasive replies to the questions suggesting the fact that he has been concealing the material facts, truth from the Court especially when he admitted that technician of the defendant visited the plaintiff company and when he left, the machine was working properly. Even the installation of the A.C. which was purchased by him later on is also suggestive of the fact that he has not taken care of controlling humidity in the machine. Thus, the learned trial Court has rightly held that there is no fault on the part of the defendant especially on the basis of examination of DW-1 Lebercht Von Trotha who has proved the test report as well as proved manual Ex.D1 and Ex.D2 respectively vide which safety measure which were required to be observed by the plaintiff but he failed to do so.

13. A perusal of the record shows that out of 94,000 Euro price of the machine to be delivered at New Delhi by Sea Freight, the plaintiff could only pay some amount and amount of 36,698.34 Euro were balance towards the defendant. He has not been able to show that he has made entire payment to the defendant, rather, he shown ignorance that he has received any notice from the defendant qua the remaining balance payment. Even he also showed ignorance regarding his reply sent against the above notice to the defendant on 10.09.2012. The plaintiff has admitted this fact that no

payment was released to the defendant thereafter, as such, full amount to the defendant has not been paid despite the fact that when the technician of the defendant visited the premises of the plaintiff, machine used to work properly. All this lead to irresistible conclusion that the plaintiff is guilty of his own wrong and has not come to the Court with clean hands. Hence, he was rightly declined the relief sought by him. So there is no flaw in the findings of the learned trial Court which rightly dismissed the suit of the plaintiff.

14. The ld. Counsel for the appellant could not point out as to how the conclusion, recorded by the ld. Trial court, was either contrary to the position on record or suffer from any material irregularities that being so there hardly exist any ground, atleast plausible in law to interfere with the decree being assailed in the present appeal. Thus, there is no merit in the appeal and the same is hereby dismissed, with costs. Decree sheet be drawn. The trial court file be sent back and appeal file be consigned to the records after due compilation."

8. It is evident from the aforesaid observations, which are based upon the proper appreciation of evidence on record that plaintiff installed the laser machine in question at its own. When the service technician of the defendant visited the premises of the plaintiff to test the machine, it was found that the same had been installed by the plaintiff without any filter and without adequate hoses. Plaintiff had not even provided required minimum safety measures against the radiation. It was also noticed that though the plaintiff had attended the training of the laser handling in Hamburg (Germany), still at the time of visit by the technician of the defendant, it was found that the cooling system being used by the plaintiff was not in line with the specification stated in the manual, which was provided along with the laser machine. Not only this, PW1 – Gurvin Singh, the partner of the plaintiff-firm during his cross-examination admitted that after the visit of the technician of the defendant-company, the machine was working properly, as the said technician had rectified the same. The Courts below have also referred to the testimony of DW1-Lebercht Von Trotha examined by the

defendant, who proved test report as well as the manual as Ex.D1 and D2 respectively, proving the safety measures, which were required to be observed by the plaintiff, which the plaintiff had failed to do. Not only this, plaintiff had even failed to make the complete payment of the machine as has been observed in para No.13 of the judgment of the First Appellate Court.

9. In the aforesaid facts and circumstances, this Court is of the view that there is no illegality or perversity in the concurrent findings of facts as recorded by the Courts below, which are based upon proper appreciation of evidence on record, warranting any interference by this court. As such, holding the appeal to be devoid of any merit, the same is hereby dismissed.

**April 03, 2025** **(DEEPAK GUPTA)**
*Sarita* **JUDGE**

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No