IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 87 of 2001

M/s. Sunrise Builders (Pvt.) Ltd. v. Federation of Pakistan & others

Date of hearing: **06-12-2021**

Date of decision: **06-12-2021**

Mr. Ghulam Murtaza Korai, Advocate for the Applicant.
Mr. Abdul Rahman Baloch, Advocate for Respondents No.3 & 4.
Mr. Muhammad Hamzo Buriro, Deputy Attorney General.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. **–** Through this Civil Revision, the Applicant has impugned judgment dated 30-05-2001 passed by the Additional District Judge (Hudood), Sukkur in Civil Appeal No.16 of 2000, whereby, the judgment dated 30-11-1999 passed by the 2nd Senior Civil Judge, Sukkur in F.C. Suit No.152/1994 (Old No.118 of 1993) has been maintained, through which the Suit of the Applicant was dismissed.

2. Learned Counsel for the Applicant submits that the Courts below have failed to appreciate the evidence; that no point for determination was made by the Appellate Court in terms of Order XLI Rule 31, CPC; that no admission was made by the Applicant for recovery of the amount in question; that it is a case of misreading and non-reading of the evidence, hence, this Revision Application.

3. On the other hand, Respondents' Counsel has supported the impugned judgments.

4. I have heard both the learned Counsel and perused the record.

5. It appears that the Applicant was aggrieved by letter dated 07-06-1992 issued by the Respondents / Defendants, whereby the Applicant was informed that the competent authority, whose decision was final and conclusive pursuant to the agreement in question, has not given approval for composite rates of the revised estimates though the same has been paid; therefore, the amount is to be recovered. The Applicant impugned the letter and also made a prayer for settlement of accounts through a Suit.

6. It appears that prior to issuance of this letter, admittedly, the Applicant had replied and undertaken to pay the excess amount so

recovered. Issue No.1 was relevant and it is a matter of record that certain admissions were made by the Applicant's witness. The relevant finding of the learned Trial Court is as under:

> **"***It may be have pointed out that plaintiff's witness has admitted during his cross examination that, he had written a letter to defendant No.2 for agreeing the proposed recovery as per revised project estimate within the provisions existing in their contract agreement for the subject work. The plaintiff's witness has produced this letter as Ex.80. I have gone through Ex.80 which is letter issued by plaintiff to the defendant No.2 mentioning that according to the revised project estimate some over payment is involved in respect of R.C.C pipes and so some amount is paid to be recoverable from plaintiff, in the said letter the plaintiff had agreed to the proposed recovery as per revised project estimates within the provision existing in their contract agreement for the subject work. On perusal of Ex.80 it transpires that the certain amount was outstanding against the plaintiff in respect of contract in question.*
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> *In view of the above discussion it is quite clear that the rates for pipes of ASTM specification were provisionally approved for the advance payment and were subject to final approval of defendant No.2. In view of above referred documents Ex.92 it also clearly transpires that, the defendant No.2 was competent authority to approve final payment regarding contract in question. It is also worth to note that the plaintiff had written the letter Ex.80 directly to defendant No.2. The question arises that in case the advance payment was not made to plaintiff subject to final approval of defendant No.2, then as to why the plaintiff had written/addressed the letter Ex.80 to defendant No.2.***"**

7. Perusal of the aforesaid finding of the learned Trial Court clearly reflects that the Applicant not only agreed to pay the proposed recovery as per the revised estimate, which was within the mandate of the agreement, but himself produced such letter as Exhibit 80, and therefore, apparently, there was no cause of action for the Applicant to impugn the letter dated 07-06-1992 by way of a Suit. It further appears that clause 5(h) of the agreement also provided to cater such issue, as apparently, the type of pipes which were agreed upon and which were supplied had different specifications; hence, the excess amount was required to be paid by the Applicant. The judgment of the Trial Court has been maintained by the Appellate Court, and there appears to be no justifiable ground to interfere in the judgments of the Courts below; whereas, neither it is a case of any misreading or non-reading of the evidence; hence, no case is made out, and therefore, by means of a short order, this Revision Application was **dismissed** with pending application in the earlier part of the day and these are the reasons thereof.

J U D G E

Abdul Basit