

State of Rajasthan

Vs

Botamal Sachdeva (Dead) Through his Lrs

Civil Appeal No. 1044 (N) of 1972

(M. H. Kania, Dr. T. K. Thommen JJ)

02.08.1989

JUDGMENT

KANIA, J. -

1. This is an appeal on a certificate under Article 133(1)(a) of the Constitution before its amendment. The respondent (original plaintiff) was given a contract by the appellant (original defendant) for carrying out construction work on a certain project. According to the appellant, the respondent did not complete the construction work in time and some part of it had to be completed departmentally, as a result of which some excess cost was incurred. The suit filed by the respondent was decreed by the trial court in the sum of Rs. 15,652.42 only. Both the parties preferred appeals to the High Court. The High Court by its impugned judgment, partly allowed the respondent's appeal and dismissed the appellant's appeal. The decree passed by the trial Court was modified insofar as the principal amount thereof was raised to Rs. 1,16,496.45. We have heard learned counsel for the appellant at length. He has, however, not been able to convince us that the High Court has committed an error in the conclusion at which it arrived. The only contention urged by learned counsel for the appellant was that the appellant was entitled to forfeit the amount kept back by the appellant as security deposit out of the amount payable to the respondent for the work done by the respondent as the respondent did not complete the work within the stipulated time.

2. We find that there is no term in the agreement between the parties enabling the appellant to forfeit the security deposit. The only right given to the appellant was to deduct out of the security deposit the amount of loss incurred by the appellant which was caused to them by reason of non-completion of the work by the respondent in time and to recover the extra cost of the work which had to be completed by the appellant departmentally on account of default of the respondent, subject to certain limits. The appellant has neither proved the amount of damage incurred by it nor has it proved the extra amount of cost incurred by it for getting the uncompleted work done departmentally. Thus, the argument that the appellant was entitled to forfeit the security deposit or any part of the same, must fail. Moreover, there is no letter addressed to the respondent stating that the security deposit has been forfeited. There is no merit in the appeal. In the result, the appeal fails and is dismissed with costs.

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