IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

156 **RSA-1572-2023 (O&M)**
Date of decision: 05.03.2026

Salil Gupta **...Appellant(s)**

Vs.

Bimal Ghosh **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sandeep Verma, Advocate
for the appellant.

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NIDHI GUPTA, J.

Defendant is in Second Appeal against the concurrent judgments and decrees of the ld. District Courts; whereby suit filed by the plaintiff/respondent for recovery of Rs.22,18,332.66 alongwith damages as detailed in the plaint, has been partly decreed for an amount of Rs.19,07,565.26, by both the Courts below.

2. Brief facts of the case as averred in the plaint are that the plaintiff is a construction contractor. Appellant/defendant is running a sole proprietorship firm which takes construction projects on contract basis. Defendant had taken a contract of construction of Hartron Building in Sector-2, Panchkula and hired plaintiff to do some work. The said project had continued for a period of about 2 years as detailed in the plaint. During the said time, plaintiff had executed various construction related works at the said site for the defendant; and bills with regard to the work were furnished for an amount of Rs.18,93,837/- out of which defendant

had occasionally made payments amounting to Rs.5,50,000/- to the plaintiff. It was further averred that the defendant had promised that the dues of the plaintiff for each project will be cleared as soon as he receives payments for the said project. However, defendant had stopped making further payments. Plaintiff had stopped working for the defendant w.e.f. 12.12.2012 by which time, an amount of Rs.20,63,565.26 was pending and payable against the defendant. As dues against the defendant were mounting and plaintiff had to further pay his workers as a result of which the plaintiff had landed in a financial mess and also suffered huge losses. With these pleadings, present suit was filed in the year 2013.

3. Upon appraisal of the pleadings and the evidence led by the parties, vide judgment and decree dated 01.03.2017, the learned Civil Judge (Junior Division), Chandigarh had partly decreed the suit of the plaintiff holding the plaintiff "*entitled to recover an amount of Rs. 19,07,565.26/- along with interest @9% per annum w.e.f. 12.12.2012 on the principal amount of Rs. 19,07,565.26/-till the filing of the suit along with pendente-lite and future interest @ 6% per annum till the realization of money.*" The Civil Appeal filed by the defendant was dismissed with costs by the learned Additional District Judge, Chandigarh vide judgment and decree dated 18.01.2023. Hence, present second appeal by the defendant.

4. It is *inter alia* submitted by learned counsel for the appellant that the learned District Courts are in error in decreeing the suit of the plaintiff as they have failed to appreciate that the bills submitted by the

plaintiff on the basis of which suit of the plaintiff has been decreed, were undated and unsigned. Even no details have been mentioned as to on which date, plaintiff had executed the said work. The bills submitted by the plaintiff were not even proved in accordance with law. Plaintiff has even been unable to prove that the said bills were received by the appellant/defendant. It is contended that therefore, suit of the plaintiff could not have been decreed.

5. It is further submitted that the learned District Courts were in patent error in deciding the case on the basis of alleged admission made by the appellant as the District Courts have failed to appreciate that the plaintiff as PW1 in his cross-examination has admitted that he has not mentioned the name of the owners from whom he has taken the works. He has also admitted that the bill maker has neither said nor mentioned his name and designation alongwith address, he has not mentioned date of inspection of the site. He has further admitted that he cannot tell the date and time of the said inspection undertaken by him. He has further admitted he cannot produce any receipt of the payment made by labourer for undertaking above said work. Learned District Courts have failed to appreciate that appellant/defendant had pleaded that the plaintiff was engaged to supply the labour to Hartron Site at Sector 2 Panchkula and for the said purpose he was to receive 8% commission from the defendant of the total amount of works done at Hartron. It was further deposed that the plaintiff has received amount in excess payment and the amount being claimed by him in the present suit had never become due to him.

Therefore, it was mandatory on the part of the plaintiff to prove bills in question which has not been done. Moreover, the bills produced on record are photocopies and therefore could not have been exhibited in the present case.

6. It is further submitted by learned counsel for the appellant that the Courts below have failed to appreciate that the name of the bill maker has not come on record and no witness has been examined to prove the same, and for sake of cover up, PW-2 has been examined who has deposed in his cross-examination as under :-

> *"I do not know how many pages of the bills which, I have supplied and prepared as lot of time has elapsed, I have not seen the prepared either in the court today or on the court file, the day I tendered my evidence. I had not signed any bill prepared by me. On point A to Point A1 on exhibit P-1 the handwriting is not in my hand."*

7. Learned counsel for the appellant reiterates that the Ld. Courts below have totally ignored that as per the Evidence Act, Annexure P-1 to Annexure P-9 (photocopies) are not admissible in evidence and cannot be treated as primary evidence under Section 60 of the Indian Evidence Act. No application for leading secondary evidence has been moved by the plaintiff. Therefore, the documents being relied upon for the purpose of the present suit are not proved on the basis of which the said suit has been partly decreed. Hence the evidence is erroneous.

8. It is further submitted by learned counsel for the appellant that the Ld. Courts below have not read the deposition of the defendant in entirety. In his deposition the defendant has clearly stated as under: -

> *"It is correct that exhibit P-1 has the details of the works done at the Hartron site but I cannot comment about the measurement without consulting the records of Hartron."*

9. From the aforesaid it is crystal clear that the defendant has nowhere admitted the execution of the work done by plaintiff as per rate mentioned in the said bills rather the defendant has only talked about the bill of Hartron site Sector 2, Panchkula. Therefore, the erroneous interpretation by the courts have caused grave prejudice to the appellant and therefore, findings of the courts below are bound to be set aside.

10. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of District Courts be set aside.

11. No other argument is raised by learned counsel for the appellant. I have heard ld. counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellant.

12. It has firstly been contended by learned counsel for the appellant that the oral evidence of the appellant has been misread by learned District Courts. The said contention is factually incorrect and based on a piecemeal reading of the cross-examination of the appellant. The relevant extract of the cross-examination of the appellant while appearing as DW1 is as under: -

"It is correct that the plaintiff and his team of workers worked at the Hartron Site for me from January 2010 to December 2012. It is correct that the works mentioned in para 3 of the plaint had been undertaken during the said period i.e. January 2010 to December 2012. The plaintiff did not work for me at 323, Phase 1 Industrial Area and at RM Aesthetic at Amritsar. It is correct that the work executed at Amritsar was in respect of the laying of tiles. It is incorrect to suggest that the said work at Amritsar was executed by the plaintiff on my instruction and the plaintiff raised a bill in respect of the said work to me. The witness was confronted with Ex.P-5, to which he said the said bill is not related to the work executed at Amritsar. The witness was confronted with Ex.P-2, however he has denied that the works mentioned in Ex.P-2 have been executed at the said site i.e. plot No. 323 Industrial Area Phase 1 Chandigarh. I have the record of the works executed at the said site and I can bring the same on the next date of hearing. I have no record of the work at Amritsar."

13. Furthermore, a complete reading of the cross-examination of DW1 shows that the appellant has categorically admitted that the works and sites mentioned in bills Ex.P-2 to Ex.P-9 submitted by the plaintiff for works undertaken by the plaintiff at various places, had been undertaken during the period when the work at Hartron Site was going on. Appellant has further admitted that plaintiff and his team workers worked at Hartron Site for him w.e.f. January 2010 to December 2012. Therefore, the appellant had admitted that plaintiff has undertaken all the works mentioned in the documents Ex.P1 to Ex.P9.

14. The argument of the appellant that the bills Ex.P1 to Ex.P9 submitted by the plaintiff were unsigned and undated et cetera are rendered nugatory in view of the fact that the appellant has admitted the said bills in his cross-examination. Needless to say, it is settled position in law that admission is the best evidence, and the admitted facts do not need to be proved. As per Section 58 of the Evidence Act, admission is the best evidence. The Hon'ble Supreme Court in **Divisional Manager, United India Insurance Co. Ltd. & anr. vs. Samir Chandra Chaudhary (SC) Law Finder Doc Id # 83537**, has held that an "*admission of fact is good evidence"* against the person admitting the same unless it is legally explained away to be made under a bona fide mistake. That is not so in the present case.

15. The Hon'ble Supreme Court **in Union of India vs. Moksh Builders and Financiers Ltd and others 1977 AIR, SC 409, Law Finder Doc Id # 105456** has held that "*admissions duly proved are admissible evidence irrespective of whether that party making them appeared in the witness box or not.*"

16. Further in **Hub Lal Singh (D) represented by LRs and Another vs. Sheo Balak Singh and others, 2014 (10), RCR (Civil), 1573, Law Finder Doc Id # 470026** Allahabad High Court has held that "*An admission has been considered to be best evidence for the reason that section 58 of the Evidence Act, 1872 states that the fact admitted need not be proved. An admission in pleading means admission of an averment by the opposite*

parties. However, party making admission cannot take advantage of it, and on the contrary, the party in whose favour it is made, may get its benefit."

17. Reliance may also be placed upon judgment of the Hon'ble Supreme Court in **Vathsala Manickavasagam v. N. Ganesan (SC) 2013(4) RCR (Civil) 22, , Law Finder Doc Id # 461299**wherein it is held as under:-

> *"24. As far as the principle to be applied in Section 17 is concerned, the Section as it reads is an admission, which constitutes a substantial piece of evidence, which can be relied upon for proving the veracity of the facts, incorporated therein. When once, the admission as noted in a statement either oral or documentary is found, then the whole onus would shift to the party who made such an admission and it will become an imperative duty on such party to explain it. In the absence of any satisfactory explanation, it will have to be presumed to be true. It is needless to state that an admission in order to be complete and to have the value and effect referred to therein, should be clear, certain and definite, without any ambiguity, vagueness or confusion. In this context, it will be worthwhile to refer to a decision of this Court in* ***Union of India v. Moksh Builders and Financiers Ltd. and others, AIR 1977 Supreme Court 409*** *wherein it is held as under :*
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> > *"It has been held by this Court in* ***Bharat Singh v. Bhagirath [1966] 1 SCR 606*** *that an admission is substantive evidence of the fact admitted, and that admissions duly proved are "admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions." In taking this view this Court has noticed the decision in* ***Ajodhya Prasad Bhargava v. Bhawani Shanker, AIR 1957 Allahabad 1 (FB)*** *also.""*

18. The Hon'ble Supreme Court in **Mritunjoy Sett v. Jadunath Basak (D) by Lrs. (SC) 2011 AIR SC (Civil) 1418,** has held as under:-

> *"16. In the light of Respondent's own admission, it leaves no doubt in our mind that it will hold good as long as it was not withdrawn or clarified by him. It is too well settled that an admission made in a court of law is a valid and relevant piece of evidence to be used in other legal proceedings. Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced, it is the best possible form of evidence. In the factual context of this case, it may also be noted here that the 'rent receipts' issued by Smt. Kamala Sett, the predecessor-in-interest of the Appellant herein, being the documentary evidence adduced by the Respondent to prove his contention that the tenancy was as per the Bengali Calendar, was never substantiated by the witness' testimony of the abovenamed Smt. Sett in the course of hearings."*

19. Furthermore, from the various payments made by the defendant from time to time, it is clear that there was *inter se* relationship between the parties of works carried out by the plaintiff on behalf of the defendant on various sites. This was further proved from the fact that the claim of the plaintiff that defendant had paid an amount of Rs.5,50,000/- through various cheques on different points of time was proved to be true. In fact, it was found that defendant had made various payments through cheques for an amount of Rs.7,06,000/-, which amount was accordingly deducted by learned District Courts from the total amount sought to be recovered by the plaintiff. The learned District Courts have

found that the defendant and the witnesses examined by the defendant had failed to connect the entries in respect of the amount credited in the account of the plaintiff with the transactions in dispute. Thus, the learned District Courts had concluded that the defendant had not only failed to rebut the plaintiff's claim but had also failed to substantiate his own claim. On the other hand, bills Ex.P1 to Ex.P9 submitted by the plaintiff were duly proved from the evidence of PW2 Narain Dass. Plaintiff as PW1 and the plaintiff's witnesses had successfully withstood the rigours of cross-examination; whereas defendant during his cross-examination had admitted the works and sites mentioned in the bills Ex.P2 to Ex.P9.

20. The relevant findings of the learned First Appellate Court as contained in para 21 of the judgment dated 18.01.2023 are as under: -

> *"21. On the other hand, the defendant's plea is not corroborated by any independent evidence. No doubt, defendant Salil Gupta while appearing in the witness box as DW1 has reiterated the version contained in his written statement. But, during his cross-examination, he admitted that he has never executed agreement with anyone for supply of labour on commission basis for any project. The plaintiff and his team of workers had worked at Hartron from January, 2010 to December, 2012. The works mentioned in para No.3 of the plaint were undertaken by them during the said period. He further admitted that work executed at Amritsar was in respect of laying of tiles. He brought the record in respect of bill Ex. P2. He proved the purchase order and two bills Ex.DW1/PA to Ex.DW1/PC. He admitted that neither the purchase order nor the bills given by him mentioned in detail the work undertaken at the said site. The details of the work*

done at the Hartron site were mentioned in Ex.P1. The works and sites mentioned in Ex. P2 to Ex.P9 were undertaken during the period the work at the Hartron site was going on. He had not given any notice or written communication to plaintiff to reclaim the excess amount given to him as per his version in the written statement. He has claimed the said excess amount for the first time in the written statement filed by him. He admitted that when the Hartron work was going on, the plaintiff had employed a driver to drive the car owned by him. He feigned ignorance of the fact that as he failed to pay the plaintiff, as such plaintiff could not further make payments to his workers who deserted him or he lended in a financial mess or his entire set up collapsed. He admitted that all the payments made by him to the plaintiff were by way of either account payee cheques or bearer cheques.

DW2 Jaswant Singh, during his cross-examination stated that from the record available with the bank, he could not tell as to in which bank or account number, the amount was credited in respect of the entries mentioned by him. He admitted that he could only tell about the debit entries of an account holder of the bank.

DW3 admitted in his cross-examination that from the record it could not be ascertained as to who was the drawee of the cheque in question. It could also not be ascertained as to in which bank the cheques were debited qua the entries Ex.DW3/1.

DW4 stated in his cross-examination that entries highlighted in the statement of account were made by him. He admitted that the statement of account Ex.DW4/1 was not of account No.31133796259.

In this manner, the witnesses examined by the defendant have failed to connect the entries proved by them

with the transaction in dispute. From the aforesaid discussion, the court is of the opinion that defendant has failed either to rebut the plaintiff's claim or to substantiate his own. The business relationship between the parties is not disputed though defendant has pleaded that no written agreement was executed in this regard. The plaintiff has categorically admitted the receipt of Rs.5.5 lacs. Admittedly, the defendant never raised claim of the alleged excess payment. Rather he has projected his claim for the first time in the written statement filed in the present case. PW2 Narain Dass has duly corroborated the plaintiff's version while proving bills Ex.P1 to Ex.P9 prepared by him. Though cross examined at length, plaintiff as well as his witnesses have successfully stood the test of their cross-examination so far the facts deposed by them. At the same time, the defendant through his cross-examination has admitted that the works and sites mentioned in Ex.P2 to Ex.P9 were undertaken during the period when the work at the Hartron site was going on. Thus, all the works/projects executed by the plaintiff are admitted by the defendant. Once all the bills are admitted by the defendant himself, no other evidence is required to be led by the plaintiff. However, as has been rightly held by the Ld. Trial Court, the amount of Rs.7,06,000/- is liable to be deducted from the amount sought by the plaintiff. Even the plaintiff has not filed any counter appeal to challenge the findings of Ld. Trial Court for deducting the said amount."

21. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings.

22. Even otherwise, present Second appeal is liable to be dismissed on the short ground that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellants.

23. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned District Courts. The present Regular Second Appeal is accordingly **dismissed.**

24. Pending applications, if any, stand disposed of.

05.03.2026 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No