

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.18 of 2021

Sri Satyajit Saha,
M/S. Hara Sundari Stores, 71/4,
Central Road, P.S. West Agartala,
P.O. Agartala, District: West Tripura
Authorised Importer of Cement of M/S. Premier
Cement Mills Limited, T.K. Bhawan (4th Floor), 13
Kuwaran Bazar, Dacca- 1215, Bangladesh

---- Appellant (s)

Versus

- 1. The State of Tripura,**
Represented by the Joint Secretary,
Rural Development Department,
Civil Secretariat, Agartala
- 2. The Principal Secretary,**
Rural Development Department,
Government of Tripura, Agartala,
West Tripura
- 3. The Chief Engineer,**
Rural Development Department,
Government of Tripura, Agartala,
West Tripura
- 4. The Executive Engineer,**
Rural Development Store Division,
Pandit Nehru Complex, Gurkhabasti,
Agartala, West Tripura

---- Proforma-Respondent (s)

For Appellant(s) : Mr. B. N. Majumder, Sr. Adv.
Mr. S. C. Sen, Adv.
Mr. B. Paul, Adv.

For Respondent(s) : Mr. Kohinoor N. Bhattacharya, G.A.

Date of Hearing : **14.03.2024**

Date of delivery
of Judgment
and Order : 04.04.2024

Whether fit for
Reporting : YES/NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred challenging the judgment dated 25.03.2021 and decree dated 07.04.2021 delivered by Learned District Judge, West Tripura District, Agartala in Title Appeal No.39 of 2016. By the said judgment Learned District Judge, West Tripura, Agartala has uphold the judgment dated 21.03.2016 and resultant decree thereof passed by Learned Civil Judge (Senior Division), Court No.1, Agartala, West Tripura in Title Suit No.05 of 2011.

02. Heard Mr. B. N. Majumder, Learned Senior counsel assisted by Mr. S. C. Sen, Learned counsel for the appellant and Mr. Kohinoor N Bhattacharya, Learned G.A. representing the state-respondents. Before entering into the merit of the appeal let us project the subject matter of the dispute for which the appellant-plaintiff has filed the suit before the concerned civil court.

03. The appellant as plaintiff filed one suit before the court of Learned Civil Judge (Senior Division), Court No.1, Agartala, West Tripura claiming him to be the authorized importer of cement of M/S. Premier Cement Mills Limited, T.K. Bhawan (4th Floor), 13 Kuwaran Bazar, Dacca, Bangladesh hereinafter referred as the cement mills and according to him in pursuance of the tender issued by the respondents the said Premier Cement Mills Limited got selected as L1 bidder and entered into the agreement with

the Executive Engineer, Rural Development Department Store Division, Agartala for supply of 16,550 M.T. cements for an amount of Rs.8,48,57,823/-. The security deposit of the said agreement was fixed to Rs.5,00,000/- (deposited by the plaintiff with the said Executive Engineer, i.e. the defendant No.3). In course of supply of cements some problem arose with the allegation that the defendants did not make part payment against the supply of cements and more so, there were labour problem in Bangladesh for which the total quantity of cements could not be supplied. Part bill as was payable to said company was Rs.2,29,21,886/-. But the Chief Engineer, RD Department (the defendant No.2 of the main suit) issued a show cause notice to said M/S. Cement Mills on 11.05.2010 and it was stipulated that if required quantity of cement was not supplied by the said cement company/supplier then punitive action as per clause 27(8) of the agreement would be applied for realizing the additional expenditure from the said company which would be required for collection of those quantity of cement from other sources. The appellant-plaintiff thereafter met the Chief Engineer and expressed their inability due to labour problem as well as non-payment of part bill by the department. It was further asserted that the Chief Engineer had no authority to issue such show-cause notice to the party as he was not party to the contract and more so, the show-cause notice was issued to the party when period of

agreement had already expired. However, the concerned Executive Engineer issued another memorandum on 03.06.2010 proposing penalty for excess amount incurred by the department in acquiring the balance quantity of supply order through alternative arrangement. Said penalty was proposed to be recovered from the security deposit/pending bills. But before issuance of such memorandum, according to the appellant-plaintiff, no show cause notice was issued by the Executive Engineer. After that the appellant-plaintiff issued one notice under Section 80(1) of CPC seeking redress to the department and in reply the concerned Executive Engineer vide letter dated 28.10.2010 regretted the representation of the appellant-plaintiff. So the appellant-plaintiff filed the suit before the Learned Trial court with the following reliefs:

(i) to declare that the show-cause notice issued by the Chief Engineer, Rural Development Department, Agartala vide No.F.3(10)-EE/RDSD/2009-10(P) dated 11.05.2010 was illegal, malafide, without jurisdiction and void;

(ii) to declare that the memorandum bearing No.3(10)-EE/RDSD/2009-10 dated 03.06.2010 of the Executive Engineer, RD Store Division, Agartala was illegal, arbitrary, malafide, without jurisdiction and void;

(iii) to pass a decree canceling/quashing the show cause notice issued bearing No.F.3(10)-EE/RDSD/2009-10 dated 11.05.2010 of the Chief Engineer, R.D. Department, Agartala and memorandum bearing No.F.3(10)-EE/RDSD/09-10 dated 03.06.2010 of the Executive Engineer, RD Store Division, Agartala;

(iv) pass a decree of perpetual injunction restraining the defendants in taking any action in any manner what-so-ever on the face of the said illegal, arbitrary and perverse order of penalty as indicated above;

(v) pass such further or other order or orders as seem fit and proper having regard to the circumstances of the matter;

(vi) to grant cost and incidental to the plaintiff;

04. The respondents as defendants contested the suit by filing the written statement wherein they totally denied the assertions of the appellant-plaintiff and submitted that the suit was not maintainable. It was further submitted that in the agreement there was no such condition that in the event of any dispute the same shall be referred to Chief Engineer whose decision will be final and he also shall at the liberty to refer the matter to the arbitration. It was also admitted by the answering defendant that the appellant-plaintiff was the authorized importer of said cement mills who participated in the tender for supply of ISI mark PVC cement and accordingly supply order was issued and agreement was made between the parties on 19.12.2009. It was further submitted in the written statement that as per clause 31 of the agreement the answering respondent-defendants were not under any legal obligation to make any advance payment and rather it was agreed that the payment only be made after successful execution of the supply order. However, it was also mentioned that the running bill would be entertainable if the fund is available with the department and payment was made to the supplier i.e. M/S. Hara Sundari Stores, Agartala, i.e. the establishment of appellant-plaintiff based on the availability of the fund. It was further referred that as per clause-31 of the agreement the Chief Engineer was

authorized to issue show-cause notice and according to them the supply order was issued on 09.12.2009 to supply 16550 M.T. cements within 31.03.2010, but they failed to supply the materials as per said agreement. Therefore, crisis of the cement continued and hindrance took place in executing the government works in the rural areas. Even according to the answering defendants inspite of extension of time for 25 days was also allowed without any penalty to supply the materials within 25.04.2010. But despite the same, they supplied only 36% of the required quantity and according to the answering respondents as the supplier failed to supply 100% of the materials. So as per clause-27(8) of the agreement they were liable to pay penalty. The clause 27(8) further stipulates that in the event of failure to supply the cement by the supplier the same will be procured through alternative management and the security money or the difference of cost of subsequent purchase whichever is higher will be recovered from the supplier. Therefore, penalty was imposed by the Executive Engineer vide memorandum dated 03.06.2010 and prior to that a show-cause notice was issued by the authority on 11.05.2010. So the contesting defendants through their written statement prayed for dismissal of the suit with costs.

05. Upon the pleadings of the parties the Learned Trial Court framed the following issues:

(i) Whether the show-cause Notice issued by the Chief Engineer, Rural Development Department, Agartala

vide., No.F.3(10)EE/RDSD/2009-10(P). dated 11.05.2010 was illegal, malafide without jurisdiction and void;

(ii)Whether the memo bearing No.3(10)-EE/RDSD/2009-10. Dated 03.06.2010 of the Executive Engineer, RD concerned Division, Agartala was illegal, Arbitrary, malafide without jurisdiction and void;

(iii)Whether the Plaintiff is entitled for decree cancelling/quashing the show-cause notice dated 10.05.2010 issued by the Chief Engineer R.D. Department and the memo bearing No.F.3(10)-EE/RDSD/2009-10, dated 03.06.2010 issued by Executive Engineer, R.D. Department, Agartala;

(iv)Whether the plaintiff is entitled to get a decree of perpetual injunction restraining the defendants;

(v)Whether the plaintiff is entitled to get any other relief/reliefs, as prayed for.

06. To substantiate the issues the appellant-plaintiff examined as PW-1 and he also relied upon some documentary evidence in support of his case before the Learned Trial court which were marked as exhibits as under:

(A) Plaintiff-Appellant's Witness:-

PW-1:- Satyajit Saha

(B) Plaintiff-Appellant's Exhibits:-

- (1) Certified copy of agreement, dated 19.12.2009 in 67 pages [Exbt.1 (series)].**
- (2) Original copy of show-cause notice, dated 11.05.2010 (Exbt.2).**
- (3) Original letter, dated 13.05.2010 in two pages (Exbt.3 series).**
- (4) Original memorandum, dated 03.06.2010 (Exbt.4).**
- (5) Original letter, dated 27.01.2010 in two pages (Exbt.5)**
- (6) Original Letter, dated 09.07.2010 in two pages (Exbt.6, series)**
- (7) Copy of Notice, dated 18.09.2010 issued as per provisions of Section 80 (c), CPC in five pages (Exbt.7) and**
- (8) Copy of reply dated, 28.10.2010 in three pages (Exbt.8, series)**

The contesting respondent-defendants also adduced oral/documentary evidence on record which are as follows:

(C) Defendants Witnesses:-

DW-1:- Smt. Maiytrayee Deb

(D) Defendants Exhibits:-

- (1)Original agreement, dated 19.12.2009 in 67 sheets (Exbt.A series).
- (2)D. NIT dated 14.10.2009 in 33 (thirty three) sheets (Exbt.B series).
- (3) Supply Order, dated 09.12.2009 (Exbt.C),
- (4) Show-cause Notice, dated 11.05.2010, (Exbt.D),
- (5)Memo dated 03.06.2010 (Exbt.E),
- (6) Reply dated 13.05.2010 (Exbt.F),
- (7) Letter dated 06.04.2010 issued by the Executive engineer, R.D. Store Division, Gorkhabasti, Agartala (Exbt.G),
- (8)Show-cause Notice, dated 16.03.2010 (Exbt.H),
- (9)letter, dated 27.01.2010 issued by the Executive Engineer, R.D. Store Division, Agartala (Exbt.I) and
- (10) Reply, dated 28.10.2010 against Notice under Section 80, CPC, three sheets (Exbt.J, series).

07. Finally after conclusion of trial the Learned Trial court by judgment dated 21.03.2016 dismissed the suit of the appellant-plaintiff. The operative portion of the judgment of the Learned Trial court runs as follows:

"In the result the suit stands dismissed on contest with cost.

This suit stands disposed of accordingly on contest."

08. Challenging that judgment the plaintiff as appellant has preferred the appeal before the court of the Learned District Judge, West Tripura, Agartala and the Learned District Judge by a judgment dated 25.03.2021 delivered in Title Appeal No.39 of 2016 dismissed the appeal of the appellant-plaintiff and uphold the judgment and decree of the Learned Trial court below. For the sake of convenience, I would like to refer herein below the operative portion of the order of the Learned First Appellate court which runs as follows:

**"The appeal is accordingly dismissed with cost in favour of the respondents.
The appeal is disposed of on contest.**

**Prepare decree accordingly within stipulated time.
Re-consign the lower court record with copies of this
judgment and decree.
Enter the result both in CIS and in relevant register."**

09. Being dissatisfied with the judgment and decree the plaintiff as appellant has preferred this appeal before the High court. At the time of admission of appeal following substantial question of law was formulated by order dated 16.11.2021 as under:

"Whether the First Appellate Court was correct in holding that the plaintiff appellant had no authority in filing the suit in spite of expressed authorization made by M/S. Premier Cement and when the Respondents had acknowledged the capacity of the Plaintiff appellant as an authorized/local agent?"

10. In course of hearing of argument Learned Senior counsel Mr. B. N. Majumder assisted by Mr. S. C. Sen, Learned counsel appearing on behalf of the appellant-plaintiff submitted that both the courts below without application of proper mind dismissed the suit. Learned Senior counsel further submitted that the Learned Trial court and the First Appellate court came to an observation that the appellant-plaintiff was a stranger to the suit. But in this regard no such issue was framed by the Learned Trial court. Even there was no such plea taken by the contesting respondents that the appellant-plaintiff was a stranger and furthermore the contesting respondents also did not challenge the authority of the plaintiff to file the suit. Even in the pleading of the contesting respondents nowhere it was pleaded that State of Tripura was a necessary party to the suit. Learned senior counsel further submitted that

Section-8(2) of the Arbitration and Conciliation Act was not followed by the contesting respondents and referring the documents submitted by the appellant-plaintiff along with the plaint Learned Senior counsel fairly submitted that the appellant-plaintiff being the lawful agent of the bidder i.e Premier Cement Company Limited, Dacca, Bangladesh did all the acts on behalf of the company but the Learned courts below without determination of the issues properly came to an erroneous finding that the appellant was a stranger to the suit and most arbitrarily dismissed the suit and the Learned First Appellate court also followed the same principle and without appreciating the subject matter of the dispute uphold the judgment of the Learned Trial court for which the intervention of the court is required.

11. Learned Senior counsel further drawn the attention of the court the original tender document, agreement, the Power of Attorney and also the terms and conditions of tender, show-cause notice and also some other documents. Referring those documents Learned Senior counsel further submitted that the judgment of the Learned courts below are suffers from infirmities and perversities for which the Learned Senior counsel urged for setting aside the judgments passed by both the courts below and prayed for granting decree in favour of the appellant-plaintiff.

12. Per contra, Learned G.A. Mr. Kohinoor N Bhattacharya appearing on behalf of the state-respondents

submitted that at this stage there is no scope to re-appreciate/re-assess the evidence on record. Since both the courts below gave concurrent findings and the appellant-plaintiff could not produce and prove any document to substantiate that he was duly authorized to file the suit on behalf of the supplier. As such there is no merit in the appeal and submitted that the appellant is not entitled to get any decree or relief.

13. I have heard detailed argument of both the sides and gone through the records of the court below including the documents relied upon by the parties. Admittedly in the case Learned Trial court to determine the suit in total framed five numbers of issues. But surprisingly without discussing anything in respect of any of the issues came to an observation that the appellant-plaintiff being a stranger and he had no right to sue the defendants dismissed the suit. The Learned First Appellate court also in the same manner dismissed the appeal rather came to the observation that the State of Tripura was not made a party in the suit as required under Order XXVII Rule 5A of the CPC. Before the High court by way of amendment the appellant made State of Tripura as a party. In the case at hand from the records of the Learned court below it appears that Learned Trial court as already stated framed five issues but finally dismissed the suit without deciding the issues only on the ground that the appellant-plaintiff was a

stranger to the suit. In this regard I would like to refer the relevant provision of Order XIV Rule 2 of CPC which provides that:

“(1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to- (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in-force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

From the aforesaid provisions it appears that if the suit is not disposed of on a preliminary issue then court is to pronounce judgment on all issues. The Learned court below at the time of delivery of judgment only written that all the issues are taken up for decision. But on bare perusal of the judgment it appears that there was not a single whisper by the Learned Trial court below regarding discussions and decisions in respect of determination of any issues which in my considered opinion Learned Trial court below committed serious illegality in dismissing the suit and the Learned First Appellate court also without giving any observation on this matter simply on the ground that the appellant-plaintiff was a stranger dismissed the appeal and uphold the judgment of the Learned Trial court.

14. Before the Learned Trial court both the parties have adduced oral/documentary evidence. For the sake of

convenience, I think it would be prudent if some references of the exhibited documents are reflected in the judgments.

Exbt.B series is the GNIT. In column No.2 GNIT dated 14.10.2009 it was mentioned that:

"2. Tender form (Non refundable, cost given above) may be purchased only from the office of the undersigned on production of Manufacturing, BIS, SSI unit registration certificate, STCC (whichever is/are applicable to the relevant bidder) up to 11.11.09 (office hour and date only). Tender form will not be sold by post. The copy of the DNIT may be inspected from the office of undersigned and the Resident Commissioner Tripura Bhavan Kautilya Marg, Chanakyapuri, New Delhi- 110021, Joint Resident Commissioner, Tripura Bhavan, 1, Pretoria Street, Kolkata-71, Deputy High Commissioner office of Bangladesh at Agartala up to 11.11.09 (office date and hour only), Relevant DNIT can also be inspected at the official homepage www.tenders.gov.in and/or www.tripurainfo.com. Tender form, downloaded from the website or photocopy of original tender form would not be accepted."

The said exhibit comprises of few pages. In special terms and conditions of the cement tender for the Foreign bidder in column No.2, 7, 8 and 9, the following conditions were mentioned:

"2. The foreign manufacturer must have agreement with local (Indian) Importer having registration with the concerned authority for importing the cement. Rate should be quoted in Rupees (Indian currency only) inclusive of import duty, VAT, transportation and other applicable taxes. Rate once approved by the authority will be fixed and no impact will be considered due to variation in dollar rate. For any change in rate of import duty and VAT percentage that should be on purchaser's account.

7. The copy of registration certificate of authorization for import of this item by the importer as well as copy of agreement between the foreign manufacturer and the Indian importer must be submitted along with the tender failing which his tender will be liable to be rejected.

8. Manufacturer will make correspondences directly with the undersigned. However if he intends to make any correspondences through his authorized Indian importer, the importer must be authorized by the manufacturer through power of attorney as per provision of Indian Law. Any correspondences/letter received by the authorized importer from the undersigned will be treated as received by the original bidder.

9. Bill must be submitted by the bidder in Indian currency (Rupees) & the submitted bill must be supported by the documents in respect of clearance of import duty against the supply made to different district store. Without this document no bills will be entertained. Foreign based

bidder has the right to receive payment directly or through their importer. But payment will be made on any Indian nationalized bank's branch in their country only."

As per terms and conditions of tender in column No.9 about local inspection following condition was written:

"9. Local office/agent: Successful bidder from outside of Agartala should have local agent/office at Agartala. All the correspondences related with tender or supply order will only be handed over to the local office/agent by the tendering authority i.e. purchaser and once, anything received by the local office/agent, it will be treated as received by the bidder/supplier. The details of the local office/agent may be furnished in the tender or should be furnished to the tendering authority before finalization of the tender. The bidder/supplier shall have to replace the official of local office or local agent on receipt of any adverse report from the tendering authority against their local office/agent. The local agent should be engaged through power of attorney only. Local office or agent should attend the office of the tendering authority on call. Local office/agent should always be aware of latest development, related with tender/supply order and apprise the tendering authority always. Any letter receipt by the local agent of the bidder/supplier will be treated, as acknowledgement by the bidder/supplier and action will be taken accordingly."

In the column No.28 regarding disputes and litigations following condition was mentioned:

"28. Disputes & Litigations:- Any dispute arising out of the contracts/purchases orders issued by R.D. Deptt. only the courts at Agartala in Tripura will have jurisdiction to deal with the same and decide any legal matter or disputes whatsoever arising out of the contract/purchase order or tender."

In column No.38 following condition was also mentioned:

"38. Departmental authorities to make correspondence with the bidder/supplier:- The tendering authority or any Engineering officers of the establishment of tendering authority or Department's Chief Engineer, Superintending Engineer or department's district Executive Engineers."

15. Exbt.2 is the show-cause notice dated 11.05.2020 issued to the Premier Cement Mills Limited and Exbt.3 series two sheets are the reply of the show-cause notice. Exbt.4 is the memorandum dated 03.06.2010 wherein as per clause 27(8) of the DNIT agreement cost of

Rs.28,74,512/- was imposed upon the original cement company limited/supplier with copy to the appellant-plaintiff. Similar documents have submitted by both the parties in the main suit. From the exhibited documents relied upon by the parties it is crystal clear that the appellant-plaintiff as an authorized agent of the original cement company/bidder participated in all the processes relating to tender and not only that he on behalf of the company has signed all the papers and all the communications from the side of the respondents department were also issued in the name of firm of the appellant-plaintiff. After participating in the tender by the original company all the relevant documents on behalf of the company were submitted by the appellant-plaintiff as an authorized agent of the original company. Even from the side of the contesting respondents department all the communications were made to the appellant-plaintiff being the authorized agent and from the agreement it appears that the appellant-plaintiff had got valid authority to file any suit against the contesting respondents. Learned First Appellate court at the time of delivery of judgment referred the provision of Sections 228, 229 and 230 of the Indian Contract Act and opined that the case of the appellant-plaintiff would not covered by the aforesaid provisions of law. For the sake of convenience, I would like to refer

herein below the relevant provisions of Section-230 of the Contract Act, 1972:

"230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.—

In the absence of any contact to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.—Such a contract shall be presumed to exist in the following cases:—

(1)where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;

(2)where the agent does not disclose the name of his principal;

(3)where the principal, though disclosed, cannot be sued."

16. Herein in the given case the original company/supplier who participated in the tender process and got selected from the very beginning entrusted the total authority to the appellant-plaintiff to do all the acts on its behalf. Thus it is clear that he had all the authority to do all the needful. On perusal of portion of Exbt.A series (Agreement for Appointment as Agent) in under the heading of *Scope of Work of the Agent* in column No.(m) following condition was mentioned:

"(m) The Agent will also perform such other acts and deeds incidental and relating to the tender on behalf of the company when required as its agent."

But the Learned courts below without proper appreciation of the oral/documentary evidence on record came to an erroneous finding that the appellant-plaintiff was a stranger to the suit. But how the appellant-plaintiff become stranger there is no whisper in the judgment delivered by the Trial court, even the judgment of the Learned First Appellate court is also totally silent in this regard. It is the admitted position that in second appeal

there is very least scope to re-appreciate/reassess the evidence on record. Learned Senior counsel referred the relevant provisions of Section 8(2) of the Arbitration and Conciliation Act, 1996 which provides as under:

"8.(2)The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court."

Referring the same, it was submitted that the state-respondents did not comply with the said provision and as such at this stage there is no such scope to agitate the issue before the High court.

17. During the course of argument Mr. B. N. Majumder, Learned Senior counsel appearing for the appellant has relied upon one citation of the Hon'ble Supreme Court of India. In **Bachhaj Nahar vs. Nilima Mandal & Ors.** reported in **2009 AIR SCW 287** Hon'ble the Apex court in para-16 observed as under:

"16. The observation of the High Court that when a plaintiff sets forth the facts and makes a prayer for a particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. It may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed. But the said observation is misconceived if it is meant to hold that a civil court may grant any relief it deems fit, ignoring the prayer. It is fundamental that in a civil suit, relief to be granted

can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like *res judicata*, estoppel, acquiescence, non-joinder of causes of action or parties etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of Rs. one lakh, the court cannot grant a decree for Rs. Ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

Referring the same Learned Senior counsel submitted that the Learned courts below beyond the pleadings of the appellant-plaintiff dismissed the suit which was not sustainable in the eye of law.

18. Per contra, Learned G.A. appearing on behalf of the state-respondents relied upon one judgment of Hon'ble the Supreme Court of India dated 12.03.1996 in **Ramanuja Naidu vs. Kanniah Naidu & Anr.** In that judgment Hon'ble the Supreme Court of India observed as under:

"6. In second appeal on re-appreciating the entire evidence in the case, the learned single judge of the High Court faulted the judgments of the courts below to the following effect. The sale deed Ex.B-2, is dated 5.5.1967 but was registered later, only on 8.6.1967. In view of the above delay, it is "probable" that the document was not executed on 5.5.1967. Re-appreciating the circumstance leading to the purchase of stamp papers and other evidence, it was held that it is not "probable" that on 10.5.1967, Ex.B-1, usufructuary mortgage would have been discharged and the first defendant would not have got possession of the property, the reason being that there was standing groundnut crop in the property on that date and DW-3 may not have parted with possession. Holding that the judgments of the courts below are perverse, the learned single judge, on appreciation of the facts, held that the plaintiff's document Ex.A-1 was earlier, that he obtained title to the suit property and so entitled to a decree of declaration of title and possession of the property."

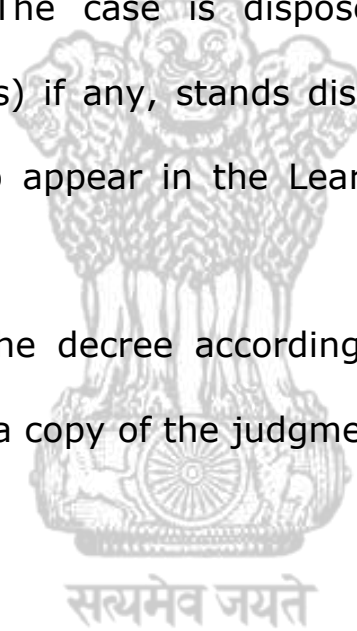
Referring the aforesaid citation Learned G.A. submitted that since there were concurrent findings so at this stage no relief can be granted in favour of the appellant.

19. After going through the documents on record of the courts below and also the submission made by Learned counsels it appears that both the courts below committed serious error in dismissing the suit and appeal on the ground that the appellant-plaintiff was a stranger in the suit which in my considered view the Learned Trial court committed serious error in dismissing the suit without determining of the issues framed. From the exhibited documents it is crystal clear that the appellant-plaintiff was not a stranger to the suit rather he had all authority to file the suit as an authorized agent of original tenderee/supplier i.e. the Premier Cement Company Limited. So it would be prudent if the suit is remanded back to the Trial court with a direction to decide and determine all the issues framed by the Trial court earlier with the observation that the appellant-plaintiff has/had the authority to file the suit. The substantial question of law is accordingly answered in affirmative in favour of the appellant-plaintiff of this case.

20. In the result, the appeal filed by the appellant is hereby allowed on contest with costs against the defendants. The judgment dated 25.03.2021 and decree dated 07.04.2021 delivered by Learned District Judge, West

Tripura District, Agartala in Title Appeal No.39 of 2016 affirming the judgment dated 21.03.2016 passed by Learned Civil Judge (Senior Division), Court No.1, Agartala, West Tripura in Title Suit No.05 of 2011 is hereby set aside being devoid of merit. The suit is remanded back to the Learned Trial court with a direction to decide and determine all the issues framed earlier on the basis of material evidence on record and to pass a judgment afresh within a period of 3(three) months from the date of receipt of a copy of this judgment. The case is disposed of on contest. Pending application(s) if any, stands disposed of. Both the parties are asked to appear in the Learned Trial court on 17.04.2024.

Prepare the decree accordingly and send down the LCRs along with a copy of the judgment.



JUDGE

**SABYASACHI
BHATTACHARJEE**

Digitally signed by
SABYASACHI
BHATTACHARJEE
Date: 2024.04.06 03:54:29
-07'00'