

GAHC010105632024



undefined

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/33/2024

M/S AADHAR

A PARTNERSHIP FIRM, HAVING ITS REGISTERED OFFICE SITUATED AT
PIYALI PHUKAN ROAD, NAWRAM KAKATI PATH, REHABARI, GUWAHATI,
PO REHABARI, PS PALTANBAZAR, DIST KAMRUP M ASSAM 781008
HEREIN REP. BY ITS PARTNER SMTI PURNASHREE DAS W/O SRI JYOTI
PRAKASH DAS, AGED ABOUT 40 YEARS, RESIDENT OR REHABARI,
GUWAHATI , PO REHABARI, PS PALTANBAZAR, DIST. KAMRUP M ASASM
781008

VERSUS

AJIT DEB AND 2 ORS.

S/O LATE KAMADA RANJAN DEB
RESIDENT OF C/O RUMA PYNA, S.C ROAD, KUMARPARA, GUWAHATI DIST
KAMRUP M ASSAM 781001

2:SMTI RITA PYNE

W/O SRI AJIT DEB

RESIDENT OF C/O RUMA PYNA

S.C ROAD

KUMARPARA

GUWAHATI DIST KAMRUP M ASSAM 781001

3:LIFE INSURANCE CORPORATION OF INDIA

A COMPANY INCORPORATED UNDER THE COMPANIES ACT

1956 AND GOVT. OF INDIA UNDERTAKING HAVING ITS CORPORATE
OFFICE

SITUATED AT YOGAKSHEMA BUILDING

JEEVAN BIMA MARG

PO BOX NO. 19956

MUMBAI 400021 AND ITS DIVISIONAL OFFICE AT JEEVAN PRAKASH S.S
ROAD

FANCY BAZAR
GUWAHATI
KAMRUP M ASSAM 78100

Advocate for the appellant	:-	Mr. B.K. Jain.
Advocate for the respondents	:-	Mr. B.D. Deka.
Date of Hearing	:-	24.09.2024.
Date of Judgment & Order	:-	04.11.2024.

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGEMENT & ORDER (CAV)

Heard Mr. B.K. Jain, learned counsel for the appellant and Mr. B.D. Deka, learned counsel for the respondents.

2. In this appeal, under Section 96 read with Order XLI Rule 1 of the C.P.C., the appellant has put to challenge the correctness or otherwise of the Judgment dated 01.02.2024, and the Decree dated 07.02.2024, passed by the learned Civil Judge (Senior Division) No. 3, Kamrup (M) at Guwahati, in Title Suit No. 413/2022.

3. It is to be noted here that vide impugned Judgment dated 01.02.2024, and Decree dated 07.02.2024, the learned Civil Judge (Senior Division) No. 3, Kamrup (M) at Guwahati has decreed the suit of the plaintiff on admission.

Background Facts:-

4. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“On 28.06.2021, the appellant herein and the respondents entered into an agreement for sale, vide Deed No. 8722/21, for purchase of a suit premises, described in Schedule ‘B’, at the sale consideration of Rs. 25,00,000/-. On the very day of execution the respondents have paid a sum of Rs. 13,00,000/- as

advance and an additional sum of Rs. 4,00,000/- was also paid through cheque towards miscellaneous and incidental costs. In terms of the said agreement, the appellant was supposed to hand over the physical possession of the suit premises by 29.09.2021, to the respondents. But, the appellant had failed to fulfill its obligation. And till October, 2021, the respondents have paid a sum of Rs. 4,50,000/- for carrying out the interior works of the suit premises.

Then, on 09.12.2021, the respondents had sent a legal notice to the appellant to come forward and execute the sale deed and in response to the said notice, the appellant stated that the respondents are liable to pay a further sum of Rs. 27,85,400/- towards the extra work carried out in the suit premises.

The respondents have further pleaded that they have already paid an amount of Rs. 33,00,000/- to the appellant and only a sum of Rs. 50,000/- remains to be paid.

Then being left with no option, the respondents, as plaintiffs, had instituted a Title Suit No. 413/2022, for a decree for specific performance of contract, declaration and permanent injunction along with an application, being Misc. (J) Case No. 545/2022, under Order 39 Rules 1 & 2 read with Section 151 of the C.P.C. for temporary injunction in respect of the Schedule B Unit/Flat, as described in the Schedule 'B' of the plaint as well as application. Then, the appellant had contested the suit as defendant by filing written statement along with documents on 13.12.2022.

During the trial, the respondents herein had filed a petition, being Petition No. 3311/2023, under Order XII Rule 1 read with Section 151 of the C.P.C. for passing a judgment on admission.

Thereafter, hearing learned counsel for both the parties, the learned trial

court, vide Judgment and Order dated 01.02.2024, has decreed the suit on admission. It was provided that the respondents are entitled to specific performance of the agreement for sale, bearing No. 8722/2021, dated 28.06.2021. It was further provided that the appellant is directed to execute a registered Sale Deed in favour of the respondents in respect of the suit flat as described in Schedule 'B' of the plaint by accepting the balance sale consideration of Rs. 50,000/- within a period of 3 months from the date of the decree. However, the learned trial court has accepted the counter-claim filed by the appellant and taken on record."

Grounds:-

5. Being highly aggrieved and dissatisfied, the present appellant has preferred the present appeal, under Section 96, read with Order XLI Rule 1 of the C.P.C. for quashing and setting aside the impugned Judgment and Order dated 01.02.2024, along with Decree dated 07.02.2024, passed by the learned Civil Judge (Senior Division) No. 3, Kamrup (M) at Guwahati, in Title Suit No. 413/2022, on the following grounds :-

- (I) The Ld. Civil Judge erred in invoking Order 12 Rule 6 CPC to pass a judgment on admission as there was substantial disputes regarding the terms of the agreement, particularly the additional costs for extra work, which required a full trial and adjudication on merits.
- (II) The Ld. Civil Judge committed grave error of law and facts while holding inter alia that the extra work done and the additional charges claimed by the counter-claimant do not flow from the sale agreement dated 28/06/2021, but from an independent transaction, whereas the additional charges claimed due to the extra works undertaken by the counter-claimant in the suit premises and such charges form the integral part of the total sale consideration as per the mutual discussion and

understanding between the parties after execution of the sale agreement, as evident by the documentary evidence relied on by the appellant along with its written statement as well as counter-claim.

- (III) The Ld. Civil Judge failed to consider the entire transaction between the parties, including the appellant/defendant's claim for additional costs amounting to ₹ 27,85,400/-. These additional costs were agreed upon as per mutual discussions and were integral to the completion of the contract.
- (IV) The Ld. Civil Judge came to a perverse findings while holding that the contention of the appellant/defendant that the extra cost is a part of the total sale consideration suffers from obvious fallacy as because the subsequent oral agreement between the parties regarding the extra cost does not have the effect of modification, alteration or substitution of the terms of the original registered written agreement, whereas sale agreement reveals that government taxes, fees and stamp duties shall be excluded from the total consideration price and there was subsequent mutual understanding for payment of additional consideration towards cost/charges for extra works of the suit premises, as evident by various text messages, whatsapp chats etc. in between the parties hereto. Additionally, the Ld. Civil Judge failed to appreciate the vital facts regarding tendering of the A/c Payee Cheques by the respondents in favour of the appellant towards lump sum advance consideration price of ₹20,00,000/- on account of additional cost/charges for undertaking extra interior and exterior finishing works of the suit-premises including other incidental expenses. Besides, the Ld. Civil Judge came to a perverse findings while concluding that the extra work done and the additional charges claimed by the counter-claimant do not flow from the sale

agreement, but from an independent transaction whereas the material documentary evidences adduced by the appellant/defendant clearly reveal that these costs/charges are co-related or the integral part of the actual sale consideration of the suit-premises. Further, the Ld. Civil Judge failed to consider the authentic video footage containing in an electronic record, as relied on by the appellant/defendant which has been stored, recorded or copied as an electronic output substantiating the conversation of the parties hereto regarding the agreed consolidated sale price.

- (V) The Ld. Civil Judge misinterpreted the admissions made by the appellant/defendant. While the appellant/defendant admitted to the execution of the agreement and receipt of certain payments, it also clearly stated that the total sale consideration included additional costs for extra work, which the respondents/plaintiffs had agreed to pay.
- (VI) The Ld. Civil Judge committed grave error of law and facts while holding inter alia that the terms of the agreement can be modified only by a subsequent registered document and not otherwise, however, if an agreement or a transaction is reduced to writing which is not mandatorily required by law to be in writing as in this matter, it is optional to get the sale agreement to be registered but the agreement is made for the convenience of parties then an oral agreement made subsequently to modify it is admissible.
- (VII) The Ld. Civil Judge committed manifest error of law and facts while determining that even if the suit is proceeded with for disposal on merit and the appellant/defendant is given the opportunity to lead evidence in support of their plea, such evidence would be barred under sections 91 and 92 of the Indian Evidence Act, whereas if a document is required to

be proved before the Court, its object is to endeavour and ascertain its real meaning and the extrinsic evidence are necessary for this purpose. The object of admissibility of the evidence of the surrounding circumstances is to ascertain the real evidence of the parties, but from the language of the document, the intentions of parties must be gathered as explained by extrinsic evidence as laid down under section 93 to 98 of the Indian Evidence Act which also states that to remove any latent ambiguities in the document, oral evidence is allowed.

- (VIII) The Ld. Civil Judge's reliance on Sections 91 and 92 of the Indian Evidence Act to bar evidence related to the additional costs was incorrect as the extra work and its costs were a part of the subsequent mutual agreement, which does not violate the principle of altering the original written agreement.
- (IX) The Ld. Civil Judge analyzed the materials evidence on record not on principle, but on its surmises and put forward a perverse observation while holding that the appellant/defendant has admittedly not fulfilled her part of the bargain and the plaintiffs on their part have pleaded their readiness and willingness to perform their part of the contract by paying the balance sale consideration amounting to ₹ 50,000/-, whereas, on perusal of the material evidence on records, it becomes crystal clear that the respondents/plaintiffs neither paid the outstanding dues of the suit premises nor came forward for complying with the official formalities for getting execution and registration of its Sale Deed and thus, they had neglected and willfully avoided to pay the actual outstanding dues of the suit premises so as to take its delivery within the stipulated timeframe, being the essence of the sale agreement although the appellant/defendant has admittedly performed its part of obligations under the sale agreement and also expressed its willingness and

readiness to perform its part, but the respondents/plaintiffs had refused or intentionally avoided to perform their part of obligations on one pretext to another discarding the spirit of the sale agreement in its true intents.

- (X) The Ld. Civil Judge erred in law and facts while holding that the questions raised in the suit can be determined without evidence and setting up of the counter-claim by the appellant/defendant for realization of the outstanding dues does not come in the way of passing a judgment on the basis of the admitted claims, whereas dispute involves regarding the balance sale consideration payable by the respondents/plaintiffs and therefore, the Ld. Civil Judge ought to have considered the entire transaction, including the extra costs, as a whole for proper judicial adjudication of the matter in controversy and further, it should take into account the overall circumstances, including the outstanding balance and the counter-claim.
- (XI) The Ld. Civil Judge ignored the counterclaim filed by the defendant for the realization of outstanding dues related to the extra work. The counterclaim is directly connected to the main suit and should have been adjudicated together.
- (XII) In any view of the matter, decreeing the suit on admission in terms of Order 12, Rule 6 CPC without any trial and affording opportunity to adduce evidence to the parties hereto is bad in law and facts, not maintainable, devoid of any merits or reasons thereof, being not justifiable.
- (XIII) The decree for specific performance was passed prematurely without a full trial. The Ld. Civil Judge should have considered the need for a detailed examination of evidence regarding the additional work and costs

before granting the decree for specific performance.

- (XIV) Granting specific performance based on the current findings may cause irreparable harm to the appellant/defendant, as it is being compelled to execute the sale deed without receiving the agreed additional payment. The balance of convenience lies in adjudicating the entire matter comprehensively.

Submissions:-

6. Mr. Jain, learned counsel for the appellant submits that the learned Tribunal has committed manifest illegality in decreeing the suit on admission. Mr. Jain further submits that the agreement for sale was only of Rs. 25,00,000/-, but the learned trial court had failed to consider the documents, written statement and counter claim filed by the appellant and in order to decide the controversy between the parties, full trial is necessary. Mr. Jain further submits that after entering into the agreement with the respondents, the appellant has undertaken extra work in the suit premises, for which, an additional sum of Rs. 27,85,000/- were involved and for which, the counter claim was filed before the learned trial court and in spite of accepting the counter claim, the learned trial court has decreed the suit on admission. Mr. Jain also submits that after entering into the agreement for sale of the suit premises at Rs. 25,00,000/-, there was subsequent communication between the appellant and the respondents for doing extra work and that the appellant is ready to execute the registered sale deed, subject to the condition of paying the remaining balance sale consideration.

6.1. Mr. Jain has referred following case laws in support of his submission :-

- (i) **Karan Kapoor vs. Madhuri Kumar**, reported in (2022) 10 SCC 496 and
- (ii) **Hari Steel and General Industries Limited vs. Daljit Singh and Others**, reported in (2019) 20 SCC 425.

7. On the other hand, Mr. Deka, learned counsel for the respondents submits that

in the agreement dated 28.06.2021, the consideration for sale of the suit premises was only of Rs. 25,00,000/- and there was no mention about the extra works, which are required to be executed in the said agreement. Mr. Deka further submits that the respondents have already paid the consideration and there remains to pay only Rs. 50,000/- and that they are ready to pay the said amount and execute the registered sale deed. Mr. Deka further submits that the counter claim relates to an auxiliary contract between the parties and incidental cost involved therein has to be dealt with in the counter claim, which is yet to be disposed of and that the appellant is bound to execute the registered sale deed, in view of the agreement dated 28.06.2021. Mr. Deka, further submits that the learned trial court has rightly decreed the suit on admission as no purpose will be served in going to the full trial of the case, inasmuch as the appellant has to adduce evidence in respect of the claim dated 28.06.2021, and he cannot adduce oral evidence in respect of auxiliary contract and that there is no infirmity in the judgment and decree, so passed by the learned trial court and therefore, it is contended to dismiss the appeal.

7.1. Mr. Deka has referred following case laws in support of his submission :-

- (i) **Uttam Singh Duggal and Company Limited vs. United Bank of India and Others**, reported in (2000) 7 SCC 120;
- (ii) **B. Santoshamma and Another vs. D. Sarala and Another**, reported in (2020) 19 SCC 80;
- (iii) **Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun vs. Bipin Kumar and Another**, reported in (2004) 2 SCC 283;
- (iv) **Raveesh Chand Jain vs. Raj Rani Jain**, reported in (2015) 8 SCC 428; and
- (v) **Jeevan Diesels and Electricals vs. Jasbir Singh Chadha (HUF) and Another**, reported in (2010) 6 SCC 601.

The Issue Before This Court:-

8. In view of the rival contentions of the parties as well as submissions of learned

Advocates of both sides, the issue, that has arisen for consideration of this court is :-

Whether the learned trial court had erred in law in decreeing the suit on admission in terms of Order 12, Rule 6 CPC, without a full trial ?

9. I have carefully gone through the memo of appeal as well as the grounds mentioned therein and the pleadings of the parties before the learned trial court and also gone through the impugned Judgment and Order dated 01.02.2024, along with Decree dated 07.02.2024, passed by the learned Civil Judge (Senior Division) No. 3, Kamrup (M) at Guwahati, in Title Suit No. 413/2022, and also gone through the case laws referred by learned counsel for both the parties.

10. Before a discussion is directed into the points raised by the learned counsel for the parties, it would be in the interest of justice to understand the relevant provision of law concerning the issue. The relevant provision herein is Order XII Rule 6 deals with **Judgment on admissions**. Rule 1 read as under:-

- (1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question-between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.
- (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

11. In the case of **Karam Kapahiv. Lal Chand Public Charitable Trust** reported in (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262 , this Court has interpreted the expression “otherwise” as used in Order 12

Rule 6 CPC and has held that:-

“The scope of the said provision of Order 12 Rule 6 is wider in comparison to provision of Order 12 Rule 1 CPC. It is true that after amendment, scope of the rule under Order 12 Rule 6 is expanded but at the same time the expression “otherwise” inserted in Order 12 Rule 6 is also to be considered within the framework of the Rule but not beyond. In any event, even in a given case, the admissions are categorical and unconditional, whether any inference can be drawn on admissions having regard to documents placed on record, is a matter to be considered having regard to facts of each case. There cannot be any straitjacket formula to extend the benefit of Order 12 Rule 6 CPC.”

12. In the case of *S.M. Asif v. Virender Kumar Bajaj* reported in (2015) 9 SCC 287 : (2015) 4 SCC (Civ) 589 it has been held that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a right. It is further held in the aforesaid case that where the defendants have raised objections, which go to the root of the case, it would not be appropriate to exercise discretion under Order 12 Rule 6 CPC.

“8. The words in Order 12 Rule 6 CPC “may” and “make such order ...” show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 CPC. The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.”

13. This decision in *S.M. Asif* (supra) is followed subsequently in the case of *Hari*

Steel & General Industries Ltd. v. Daljit Singh, reported in (2019) 20 SCC 425.

14. In the case of [Uttam Singh Duggal & Co. Ltd. v. United Bank of India](#), and Ors., reported in (2000) 7 SCC 120, this Court, while construing the provision of Order 12 Rule 6 CPC held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment.

15. That a perusal of the record of the learned trial court, in Title Suit No.413/2022, specially the agreement, bearing No. 8722, dated 28.06.2021, (document No.1 of the defendant/respondent) reveals that the suit flat described in the Schedule 'B' of the said agreement is same i.e. a Unit/Flat No.A-1, measuring around 1375 sq. ft approx. on the first floor of the building known as Lila Enclave situated at Notun Path, Bhagaduttapur, Guwahati and bounded by, North-Stair Case, South:- Road, East:- Dag No. 996, West:- Dag No. 998. It also appears that as per the said agreement the cost of the said flat, as shown in Schedule-A(3) with undivided proportionate share of land is Rs. 25,00,000/, out of which booking amount paid was Rs.2,00,000/ and first installment paid was Rs. 13,00,000/ and balance amount to be paid before possession was Rs.10,00,000/.

16. It also appears from the plaint, (Annexure-A) of the Memo of Appeal indicates that the Title Suit No.413/2022 was filed for specific performance of the contract, as set out in the agreement, bearing No. 8722, dated 28.06.2021, executed by the plaintiff/respondent and defendant/appellant as described in Schedule-'B', a Unit/Flat. The Unit/Flat No.A-1, measuring around 1375 sq. ft approx. on the first floor of the building known as Lila Enclave situated at Notun Path, Bhagaduttapur, Guwahati and bounded by, North-Stair Case, South:- Road, East:- Dag No. 996, West:- Dag No. 998. The plaint also indicates that consideration for sale of the suit flat was Rs. 25,00,000/-, which includes the cost of one number of car parking space along with undivided proportionate share of land, electricity, excluding all Government taxes,

fees and stamp duties. The payment shall be paid on installment basis as mentioned in the Schedule – A (3) of the said agreement. This fact stands corroborated from agreement, bearing No. 8722, dated 28.06.2021, which is enclosed as Annexure-X of the memo of appeal. In the said plaint, prayer was made for specific performance of the contract of the said agreement bearing No. 8722, dated 28.06.2021. Nothing more was sought for therein. The respondent/plaintiff has described the aforementioned facts in paragraph No.4 of the plaint. It also appears from the paragraph No. 13 of the plaint that the respondent/plaintiffs had paid a sum of Rs. 24,50,000/ being the cost of the Flat and a sum of Rs.4,00,000/ towards miscellaneous and incidental cost for transformer and electricity load connection, govt. taxes, fees and stamp duty and Rs. 4,50,000/ towards cost of interior works, all total Rs.33,00,000/. (Rupees Thirty-Three Lacs only)

17. It also appears from the written statement of the appellant/defendant, specially from the paragraph No.7 that the statement made in paragraph No.4 by the plaintiff is basically correct. It is also stated that the agreed sale consideration of the suit premises, (Schedule A-2), which the plaintiffs agreed to purchase was Rs. 25,00,000/, which includes the cost of one number of car parking space along with undivided proportionate share of land, electricity, excluding all Government taxes, fees and stamp duties. It is also admitted that five numbers of cheques for a sum of Rs. 20,00,000/ was received by it. In paragraph No.9, the appellant/defendant admitted receipt of Rs.24,50,000/. Further, it appears from the paragraph No.14 that the appellant had received a sum of Rs. 33,00,000/ from the respondent/plaintiffs and it is entitled to another sum of Rs. 19,85,400/ as the total cost of the Flat, including extra cost/charges amounts to Rs. 27,85,400/, becomes Rs. 52,85,400/.

18. Further, it appears from plaint that the respondent/plaintiffs had prayed for specific performance of the contract as set out in the Agreement bearing No. 8722, dated 28.06.2021. And the appellant/defendant had admitted the same in the written statement. And the admission so made appears to be clear/unequivocal and also

unqualified. And it is not in dispute that the judgment and decree was passed by the learned trial court in respect of this performance of the contract mentioned in the said agreement, bearing No. 8722, dated 28.06.2021.

19. There is no dispute regarding the schedule of the suit premises and regarding sale consideration and payment of Rs.24,50,000/ by the respondents/plaintiffs. The dispute between the parties relates to extra cost/charges amounting Rs. 19,85,400/ for doing miscellaneous works. But, there was no mention about any miscellaneous works and expenses in the said agreement.

20. Admittedly, a counter-claim has been filed by the appellant/defendant for realization of a sum of Rs. 19,85,400/- for doing extra works as per verbal agreement between the parties. And admittedly the doing of extra-works for a sum of Rs, 27,85,400/ is not part of the agreement bearing No. 8722, dated 28.06.2021. And admittedly, the same has been admitted by the learned trial court and the same is alive and pending for adjudication.

21. That, the miscellaneous works, according to the appellant, undertaken by him on the basis of oral agreement, which was not part of the agreement and for which the decree was granted in favour of the respondents/appellants. Since the counter-claim being filed by the appellant/defendant is still alive and pending before the learned trial court and as such, there is no question of being aggrieved or prejudiced by the judgment and order dated 01.02.2024, by which the decree was granted for specific performance of the contract as set out in the agreement, bearing No. 8722, dated 28.06.2021.

22. It is to be noted here that Order 12 Rule 6 of the C.P.C. enable the party to obtain a speedy judgment to the extent of the admissions of the defendant so that either party may get rid of rival claims which are not in controversy. Here in this case, the appellant/defendant categorically admitted execution of the agreement for sale deed dated 28.06.2021, in favour of the respondents for sale of the suit premises/flat

at a consideration of Rs. 25,00,000/- and the appellant had admitted of receiving an amount of Rs. 33,00,000/- which includes a sum of Rs. 24,50,000/- paid by the respondents towards the part of the consideration amount. The respondents/plaintiffs are ready and willing to pay the balance amount of Rs.50,000/-, as per agreement bearing No. 8722, dated 28.06.2021 and to execute the sale deed and take possession of the suit premises/Flat. This fact has been categorically stated in the petition dated 06.07.2023, No. 3311/2023.

23. The unqualified admission, so made by the appellant in the written statement, makes it abundantly clear that nothing is left to be determined by the court in the Title Suit. The miscellaneous works done and the additional charges claimed by the appellant by filing counter claim, which was not part of the sale agreement dated 28.06.2021, appears to be an independent transaction and the learned trial court in the judgment and decree has clearly mentioned the same.

24. Though Mr. Jain, the learned counsel for the appellant/defendant submits that full trial is necessary in view of the nature of disputes between the parties, yet this court is left unimpressed by the said submission, in as much as he may adduce evidence in support of the oral contract for extra works done by the appellant but Section 92 of the Evidence Act prohibits a party from leading evidence which is contrary to written agreement. The learned trial court had considered this aspect and it appears that it had rightly arrived at the finding. I have carefully gone through the decisions referred by learned counsel for the appellant/defendant and the same has already been discussed herein above. And I find that the same would not advance the case of the appellant/defendant.

25. I have also carefully gone through the decisions referred by learned counsel for both the parties. There is no quarrel about the proposition of law laid down in the aforementioned decisions. However, to determine the issue, involved in this appeal, discussion of all these decisions are found to be not necessary herein this case. And

accordingly, this court is not inclined to burden this judgment with discussion of all those decisions.

26. Thus, having examined the impugned judgment and order, dated 01.02.2024, and decree dated 07.02.2024, passed by the learned Civil Judge (Senior Division) No. 3, Kamrup (M) at Guwahati, in Title Suit No. 413/2022, as well as the submissions of learned Advocates of both sides in the light of the given facts and circumstances on the record and in the light of legal proposition discussed in the decisions as discussed here in above, and also in the light of legislative intendment behind enacting the provision, I find no infirmity or illegality in the same. And as such, the same requires no interference of this court.

27. In the result, I find this appeal bereft of merit. And accordingly, the same stands dismissed. Consequently, the impugned Judgment dated 01.02.2024, and the Decree dated 07.02.2024, passed by the learned Civil Judge (Senior Division) No. 3, Kamrup (M) at Guwahati, in Title Suit No. 413/2022, stands affirmed.

28. Send down the record of the learned trial court with a copy of this judgment and order. The parties have to bear their own cost.

JUDGE

Comparing Assistant