

IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NOS.174/2008, 18/2009,
175/2008 AND 17/2009**

FIRST APPEAL NOS.174 & 175 OF 2008,

M/s. P. R. Nayak Associates,
Engineers & Contractors,
A registered Partnership Firm
having its Head Office at 'Parag'
Building, Jayanagar,
Vidyanagar, Hubli – 580 021
(Karnataka), represented by its
Partners Shri Prakash R. Nayak,
resident of No.11,
Bailappanagar, Hubli-580 029.

..... Appellant.

Versus

1. The Executive Engineer,
Works Division IX, Irrigation Department,
Gogol, Fatorda, Goa – 403 602.

2. The State of Goa,
through the Chief Secretary,
Secretariat, Panaji, Goa 403001.

..... Respondents.

Shri S. D. Padiyar, Advocate for the appellant.

Shri M. Salkar, Government Advocate for the respondents.

FIRST APPEAL NOS. 18 & 17 OF 2009

1) The State of Goa,
through the Chief Secretary,
Secretariat Building,
Panaji, Goa 403001.

2) The Executive Engineer,
Works Division IX, Irrigation Department,
Gogol, Fatorda, Goa – 403 602. Appellants.

Versus

M/s. P. R. Nayak Associates,
Engineers & Contractors,
A registered Partnership Firm
having its Head Office at 'Parag'
Building, Jayanagar,
Vidyanagar, Hubli – 580 021
(Karnataka), represented by its
Partners Shri Prakash R. Nayak,
resident of No.11,
Bailappanagar, Hubli-580 029. Respondent.

Shri M. Salkar, Government Advocate for the appellants.

Shri S. D. Padiyar, Advocate for the Respondent.

**CORAM :- F.M. REIS &
K.L. WADANE, JJ.**

Date : - 22nd January, 2015.

ORAL JUDGMENT : (PER F.M. REIS, J.)

All these four appeals were taken up for hearing together as it was pointed out by the learned Counsel appearing for the respondents that the legal issues involved in the appeals are similar though they pertain to two different contracts in favour of the original

plaintiff. The parties shall be referred to in the manner they so appear in the cause title of the impugned judgment.

2. We have heard Shri S.D. Padiyar, learned Counsel appearing for the plaintiff and Shri M. Salkar, learned Government Advocate appearing for the defendants, at length. There were rival contentions with regard to the claims put forward by the plaintiff. It is not in dispute that the suit filed by the plaintiff was essentially for recovery of compensation due on account of the works carried out by the plaintiff, pursuant to the work orders issued by the defendants.

3. The relief granted by the learned Trial Judge is essentially to direct the defendants to prepare the final bill and pay the amount due to the plaintiff, besides returning the security deposit. On perusal of the plaint, as well as the materials on record, it appears that the claim of the plaintiff was for compensation payable under different heads. The learned Counsel fairly accept that the learned Trial Judge has not at all scrutinized the materials on record, nor properly appreciated the evidence adduced by the plaintiff and the defendants to draw any conclusion on the claim of the plaintiff. Shri Padiyar, learned Counsel appearing for the plaintiff has also brought to our notice some

pertinent material which would disclose that the findings arrived at by the learned Trial Judge are not in accordance with the records of the suit. Similarly, Shri Salkar, learned Government Advocate has also brought to our notice different portions of the evidence to suggest that the directions issued by the learned Trial Judge are not at all tenable. In such circumstances, the learned Counsel point out that the matter will have to be examined after considering each and every piece of material brought on record by the parties in the face of the oral evidence adduced by the plaintiff and the defendants.

4. In view of the above, we find it appropriate, in the interest of justice and taking note of the contentions of both the learned Counsel, to quash and set aside the impugned judgment and order, passed by the learned Adhoc District Judge-1, Fast Track Court-I, South Goa, Margao in Civil Suit No.80/2004(New), and restore the suit filed by the plaintiff to the files of the said Court to decide the suit afresh, after hearing the parties in accordance with law. The learned Trial Judge would scrutinize the relevant piece of evidence produced by the parties and after hearing the parties, examine whether the issues have to be reframed on the basis of the pleadings of the parties.

5. In view of the above, we pass the following order :

(I) The impugned judgment and order dated 29th April, 2008, passed by the learned Adhoc District Judge-1, Fast Track Court-I, South Goa, Margao in Civil Suit No.80/2004(New) is quashed and set aside.

(II) Civil Suit No.80/2004(New) is restored to the file of the learned Adhoc District Judge-1, Fast Track Court-I, South Goa, Margao. The learned Trial Judge shall proceed to decide the said suit afresh, after hearing the parties, in the light of the observations made hereinabove, in accordance with law.

In the peculiar facts of the case, the appeals stand dispose of accordingly, with no order as to costs.

Parties are directed to appear before the learned Principal District Judge, Margao on 30th April, 2015, at 10.00 a.m.

K.L. WADANE, J.

F.M. REIS, J.

ssm.