

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 44 OF 2008

State of Goa,
Represented by Chief Secretary,
Secretariat, Panaji, Goa.

... Appellant

V e r s u s

Palvinder Singh,
5 Monica Apartments,
Airport road, Chicalim,I
Vasco da Gama, 403 711.

... Respondent

Mr. Manish Salkar, Government Advocate for the Appellant.

Mr. D. Pangam, Advocate for the Respondent.

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

Date : **18th February, 2015**

ORAL JUDGMENT (Per F. M. Reis, J.)

Heard Mr. Salkar, learned Government Advocate appearing for the Appellant and Shri Pangam, learned Counsel appearing for the Respondent.

2. The above Appeal challenges the Judgment and Decree dated 16.08.2007 passed in Civil Suit no. 185/2004 whereby the suit filed by the Respondents was partly decreed and Appellants were directed to pay a sum of Rs.44,14,741/- to the Respondent along with interest thereon on yearly rest on the amount awarded from the date of filing of the suit till the date of actual payment.

3. Briefly, the facts of the case are that the Respondent filed the suit for

recovery of money, inter alia, on the ground that they had taken up the work of construction of Master Balancing Reservoir of 10,000 metres cubic capacity at Gogol Margao on 29.11.1996. The Respondent had agreed to do such work for a sum of Rs.1,59,72,297/-. Accordingly, an Agreement was executed between the Respondent and the Executive Engineer of the Public Works Department and the work was supposed to commence on 20.04.1997 and be completed on or before 19.04.1998. It is the contention of the Respondent that he had started the work in time after the requisition of adequate man power and machinery and such work could not be completed within the agreed time on account of various hindrances, delay and breaches committed and attributed to the Appellant. It is further alleged by the Respondent that there was failure on the part of the Appellant to provide access to the site of the contracted work construction which prevented the materials to be transported to the site and, consequently, delaying the completion of the work. It was also contended that there was considerable delay on the part of the Appellants to get the approval and payments of various extra items of the work ordered by the Appellant and executed by the Respondent. There were different allegations made in the plaint to contend that the smooth execution of the work could not be proceeded on account of financial hardships suffered by the Respondent and attributed to the Appellant. The Respondent also alleged that clarifications were sought from the Appellant in the matter of providing and fixing MS pipes and inspite of persistent follow-up by the Respondent the requisite clarifications were not given by the Appellant. It was also alleged by the Respondent that the Appellant also delayed in honouring the bills of the dues of the Respondent on account of lack of funds. The Respondent accordingly claimed that a sum of Rs.74,42,880.63 was payable as compensation by the Appellants together

with interest at the rate of 21% from 31.05.1999. The Respondent also claimed compensation to the tune of Rs.50,64,873.63 which included extra payments demanded by the Respondent for the use of Corrosive Resistance Steel and excavation of earth. Another sum of Rs.18,10,187/- has also been claimed as compensation on account of delay in the completion of the contract for more than 13 months which included the expenditure incurred for meeting the offer rates etc. as enumerated in the plaint. The Respondent also claimed anticipated profits at the rate of 10% of the contracted value and prayed that all the said amounts be decreed with interest at the rate of 21%.

4. The Appellants filed their written statements disputing the claims put forward by the Respondent. The Appellant disputed that the construction work had delayed on account of any hindrance on the part of the Appellant and claimed that the Respondent was paid as per the agreed terms and conditions and was duly compensated for the extra work which was performed by the Respondent. All the allegations attributed by the Respondent in the plaint against the Appellant were duly denied by the Appellant and it was, inter alia, contended that the Appellant was not liable to pay any amounts to the Respondents and further claimed that the delay has to be attributed to the Respondent. It was accordingly submitted that the suit be dismissed.

5. Shri Salkar, learned Government Advocate appearing for the Appellant, has taken us through the Judgment passed by the learned Trial Judge and pointed out that the learned Judge has erroneously considered the material on record to come to the conclusion that the Appellant was liable to pay an amount to

the Respondent. It is further his contention that the Respondent did not start the work on time and with adequate manpower which delayed the process of completion of the work. The learned Government Advocate also submitted that the contention of the Respondent that the access to the site was not made available is patently erroneous as, according to him, this allegation of the Respondent is merely a pretext to justify the delay in completion of the work. The learned Government Advocate further submitted that there was no breach committed by the Appellant which justified any delay in completion of the work and, as such, the learned Judge was not justified to pass the impugned Judgment. The learned Government Advocate has thereafter taken us through the evidence on record to point out that the learned Judge has misconstrued the evidence and has erroneously come to the conclusion that the Appellant is liable to pay compensation to the Respondent. The learned Government Advocate has also taken us through the evidence on record to pointed out that the learned Judge had also erred in fixing and granting compensation for the excavation at the rate of 315.30 per cubic metre. Learned Government Advocate further submits that the finding of the learned Judge that the Respondent is entitled to be paid at the rate of 29.50 per kilo gram for Corrosive Resistance Steel is totally erroneous. Learned Counsel has thereafter taken us through the findings of the learned Judge and pointed out that the excavation charges awarded by the learned Judge are grossly on the higher side and without any material on record. Learned Government Advocate further pointed out that there is no scrutiny of the evidence by the learned Trial Judge whilst coming to the conclusion that the Appellant is liable to pay the compensation as decreed in the impugned Judgment. The learned Government Advocate as such submits that the Appellants are not liable to pay any amounts to the

Respondent and, consequently, the suit filed by the Respondents deserves to be dismissed and the Appeal be allowed.

6. On the other hand, Shri Pangam, learned Counsel appearing for the Respondent, has supported the impugned Judgment. The learned Counsel further pointed out that the rates as ordered by the learned Trial Judge are in accordance with law and there is no infirmity in the said Judgment. The learned Counsel further submits that the Appellant themselves had called upon the Respondent to do extra excavation which the Appellant is liable to pay to the Respondent. Learned Counsel further pointed out that the rates for putting up Corrosive Resistance Steel has been rightly assessed by the learned Judge whilst passing the impugned Judgment. Learned Counsel further submits that as excavation was done at the instance of the Appellant, it is not open to the Respondent to now contend that the Appellant is not liable to pay such charges of excavation. Learned Counsel has taken us through the Agreement executed by the parties to point out gross breaches committed by the Appellant in complying with their part of the contract and, as such, the learned Trial Judge has rightly awarded the compensation. Learned Counsel further submits that the Appellants have delayed in complying with their part of contract and, as such, the learned Judge was justified to pass the impugned Judgment. Learned Counsel as such submits that the Appeal be accordingly dismissed.

7. Upon hearing the learned Counsel and on perusal of records, the following point for determination arises in the present Appeal :

(1) Whether the learned Judge was justified to direct the

payment of Rs.4,49,126.37 towards excavation charges ?

(2) Whether the learned Judge was justified to award a sum of Rs.34,45,615.36 towards costs of Corrosive Resistance Steel ?

8. With regard to the first point for determination, it is essentially the contention of Mr. Salkar, learned Government Advocate appearing for the Appellant, that the question of paying any amount towards excavation charges at the rate different from the one mentioned in the Agreement is not at all justified. It is also his contention that such rates have been rightly fixed in the Agreement and, as such, the learned Judge was not justified to fix a different rate whilst working such compensation. On perusal of the Judgment of the learned Trial Judge, we find that such amount was fixed on the basis of the report of the Engineer, examined by the Appellants, who had clearly stated that the excavation charges at the relevant time was a sum of Rs.315.30 per cubic metre. On perusal of the evidence of such Engineer, we find that he had categorically admitted that at the relevant time, the excavation charges were a sum of Rs.315.30 per cubic metre. As rightly pointed out by Shri D. Pangam, learned Counsel appearing for the Respondent, in case any extra work has been carried out, the rates have to be determined by the Executive Engineer who has been examined as Dw.1. On perusal of the evidence of Dw.1, he has clearly admitted that the prevailing rate for excavation in the year 1997 which was the year when the subject contract was in operation, was Rs.315.30 per cubic metre. In such circumstances, as far as the amount awarded towards excavation charges, we find that the learned Judge was justified to rely upon a report at exhibit 83 prepared by the Executive Engineer

whilst recommending that the excavation charges are to be fixed at the rate of Rs.315.30 per cubic metre. There is no other evidence adduced by the Appellant which would justify any reduction/deduction in such rates submitted by the Executive Engineer of the Appellants themselves. In such circumstances, on perusal of the findings of the learned Judge with regard to the payment towards excavation charges, we find no infirmity thereon as such amount has been fixed on the basis of the material produced on record by the Appellant themselves. Consequently, the learned Judge was justified to award compensation for the excavation work of Rs.4,49,126.37. The first point for determination is answered accordingly.

9. With regard to the second point for determination, it is contented by Mr. Salkar, learned Government Advocate appearing for the Appellant, that even assuming that Government standard rates for Corrosive Resistance Steel as applicable in the year 1997 are taken into consideration, the amount works out to a sum of Rs.24.25 per kg. Learned Government Advocate further pointed out that the Respondent whilst submitting the rates to the Appellant, had quoted a sum of 10.40 per kilogram for high yielding steel when the prevailing rate was Rs.21/- per kilogram. As such, it is the contention of the Appellant that at the most the difference amount can work out to only a sum of Rs.3.32 per kilogram and not a sum of Rs.19.10 per kilogram awarded by the learned Trial Judge. On perusal of the evidence of Dw.1, we find that he has admitted that the price of Corrosive Resistance Steel in the year 1997 was a sum of Rs.24.25 per kilo gram. Learned Trial Judge has further given an escalation of 10% to fix the price of such steel in the present case. Considering the relevant year when such steel was used, we find

that the learned judge was not at all justified to give escalation of 10% on the said amount whilst fixing the compensation towards the difference in the rates of the Corrosive Resistance Steel and the high yielding steel. In fact, there is no material on record to substantiate the grant of such escalation by the learned Judge while fixing the amount payable to the Respondent on that count. Admittedly, such steel was used in the same year.

10. As pointed out herein above, it is the contention of learned Government Advocate that difference should be about Rs.3.32 per Kg based on the rates which the Respondent had quoted in its original Agreement. But, however, it is not disputed that the GSR in the year 1997 clearly stipulated that the price prevailing for the Corrosive Resisting Steel is a sum of Rs.24.25 per kilogram. The amount offered by the Respondent towards high yielding steel was a sum of Rs.10.40 per kilogram and, consequently, the difference works out to Rs.13.85 per kilo gram. The contention of Mr. Salkar, learned Government Advocate appearing for the Appellant, that the amount reflected in the GSR would have to be reduced on pro-rata basis considering the amount offered by the Respondent when the amount on GSR was much higher for contractual steel, cannot be accepted. There is no basis or material to show why such amount was offered for high yielding contractual steel at a particular rate at the relevant time. As the Appellant has failed to produce evidence on that count nor the agreement contemplates any such reduction, it is not open to the Appellants to now contend that the price has to be reduced on pro-rata basis. As such, the amount payable by the Appellants to the Respondent is a sum of Rs.13.85 per kilogram on such contract.

11. For the reasons stated herein above to that extent, the impugned Judgment passed by the learned Judge directing payment of Rs.19.140 per kilogram would have to be modified accordingly to read a sum of Rs.13.85 per kilogram. The said rates as pointed out herein above have been fixed based on the admitted GSR rates by the Appellant themselves. Based on the said amount, both the learned Counsel have admitted that the compensation for such difference works out to a sum of Rs.24,98,522/-. The second point for determination is answered accordingly. Both the said amounts would carry interest at the rate of 10% per annum from the date of the filing of the suit upto payment.

12. In view of the above, I pass the following :

ORDER

- (I) The Appeal is partly allowed.
- (II) The impugned Judgment and Decree dated 16.08.2007 is modified and the amount payable by the Appellant to the Respondent is a sum of Rs.4,49,126.37 and a sum of Rs.24,98,522/-.
- (III) Needless to say, the Appellant is also liable to pay interest at the rate of 10% per annum from the date of filing of the suit upto the actual payment.
- (IV) Appeal stands disposed of accordingly with no Order as to costs.

K. L. WADANE, J.

F. M. REIS, J.

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