

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO.40 OF 2016**

MR. PARESH RATILAL SHAH APPELLANT.

V E R S U S

MR. CELFINO FERNANDES AND ANR. RESPONDENTS.

Mr. Ryan Menezes, Advocate for the appellant.

CORAM :- F.M. REIS, J.

Date : - 22 July 2016

ORAL ORDER :-

Heard Mr. Ryan Menezes, learned Counsel appearing for the appellant.

2. The above appeal challenges the Judgments passed by the Courts below, whereby the suit filed by the appellant for recovery of an amount of Rs.2,65,000/- towards the works carried out by the appellant to the respondents came to be dismissed.

3. Mr. Ryan Menezes, learned Counsel appearing for the appellant has assailed the impugned Judgments on the ground that the Courts below have misread the evidence on record, and erroneously considered that there were admissions on the part of PW.1 which are otherwise non-existing, to come to the conclusion that the appellate has failed to establish his claim in the suit. The learned Counsel has taken me through the impugned Judgments to point out that the findings therein are perverse and cannot be sustained. The learned Counsel has, thereafter, taken me through the plaint to point out that the claim of the appellant is that by an oral agreement, the respondents had entrusted the appellant to put up a structure of the bungalow in the property belonging to the respondents and that the remaining work was to be completed by the respondents. It is further pointed out that the inferences drawn by the learned Judge, in respect of incomplete stage of the structure, has nothing to do with the stand of the appellant that he was engaged to only put up a structure. The learned Counsel has, thereafter, taken me through the evidence of PW.2 and PW.3 to point out that they clearly corroborate the aspect that the appellant had brought material at the site to carry out the work. The learned Counsel

has, thereafter, taken me through the evidence of DW.3 to point out that the said witness has also accepted that the appellant had carried out the structural work of the subject bungalow. The learned Counsel has also taken me through the Judgment passed by the learned Lower Appellate Court to point out that the learned Judge has erroneously examined the evidence on record and arrived at a perverse finding that the appellant has failed to establish his claim in the suit. The learned Counsel, as such, prays for the proposed substantial questions of law (i), (ii), and (iii) in the appeal memo.

4. I have considered the submissions of the learned Counsel and I have also gone through the records. On a plain reading of the substantial questions of law as proposed by Mr. Menezes, learned Counsel appearing for the appellant, it clearly reveals that considering such questions would entail reappreciation of the oral and documentary evidence on record. It is well settled that in an appeal under Section 100 of the Code of Civil Procedure, this Court cannot reappreciate the evidence even in cases in which the Court may come to a contrary finding based on the evidence on record. Interference of this Court on findings of fact is only when there is perversity in the

findings of fact arrived at by the Courts below.

5. In the present case, taking note of the contentions of the learned Counsel appearing for the appellant, I find that there is no misreading of evidence or that any piece of evidence has been excluded by the Courts below whilst coming to the conclusion that the appellant has failed to establish his claim in the suit. On perusal of the findings of the learned Lower Appellate Court, it appears that the learned Judge has clearly taken note of the appellant's statement in the cross examination that he had maintained Accounts of all the work carried out by him in the subject bungalow. The learned Judge has further noted that the appellant has failed to produce such statement of accounts on record and, consequently, has drawn an adverse inference against the appellant on this aspect. These findings of the learned Lower Appellate Court cannot be faulted. The appellant has relied upon an oral agreement to claim the subject amount. To establish such agreement, the burden is heavily on the appellant to prove the terms and conditions of such oral contract. Both the Courts below, upon appreciation of evidence on record, have come to the conclusion that the appellant has failed to establish that the sum of Rs.2,65,000/- as

claimed by the appellant is payable by the respondents. In fact, the stand of the respondent that the appellant had abandoned the work midway and that such work was, thereafter, entrusted to DW.3, has been accepted by the Courts below. Even on perusal of the evidence of DW.3, I find that the said witness has clearly stated that he had continued the incomplete work carried out by the appellant. The records also reveal that DW.3 was, at one stage, also carrying out work as a labour contractor for the appellant herein. The learned Trial Judge has also minutely gone through the records to come to the conclusion that the appellant has failed to establish his claim in the suit. The learned Lower Appellate Court has reappreciated the evidence to hold that the appellant has failed to prove that a sum of Rs.2,65,000/- was payable by the respondents to the appellant. The respondent has preferred a counter-claim against the appellant which has also been rejected by both the Courts below. In such circumstances, I find that there is no substantial question of law which arises for consideration. The substantial questions of law proposed by the learned Counsel appearing for the appellant, as pointed out above, would entail reappreciation of evidence, which exercise cannot be undertaken in a Second Appeal under Section 100 C.P.C.

6. In such circumstances, I find no perversity in the findings arrived at by the Courts below. As such, I find that no case is made out for interference in the impugned Judgments in terms of Section 100 C.P.C.. Consequently, there is no merit in the above appeal, which stands accordingly rejected.

F.M. REIS, J.

ssm.