

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 80 OF 2015**

JOSE FERNANDES
R/O RAIA, SALCETE, GOA. APPELLANT.

VERSUS

ISALISTO FRANCIS RODRIGUES
R/O BORDA, MARGAO, GOA. RESPONDENT.

Mr. Asha Desai, Advocate for the appellant.

CORAM :- F.M. REIS, J.

Date : - 14 OCTOBER 2016.

ORAL ORDER :-

Heard Ms. Desai, learned Counsel appearing for the appellant. The above appeal challenges the Judgments passed by the Courts below, whereby the suit filed for recovery of money in the sum of Rs.1,50,000/- came to be dismissed.

2. Ms. Asha Desai, learned Counsel appearing for the appellant points out that the appellant was precluded from filing the Written Statement, and as such, a grave injustice is caused to the

appellant as he has not been allowed to raise his defence. The learned Counsel further points out that the learned Courts below have relied upon an agreement at Exhibit PW.1/18 to come to the conclusion that the appellant is liable to pay the said sum of Rs.1,50,000/- when, according to her, the said agreement is not referable to the claim of the respondent that such an amount was paid to arrange a job for the respondents to work abroad. The learned Counsel has, thereafter, taken me through the cross examination of PW.1 to point out that PW.1 has admitted that he had not produced any documentary evidence or any material to substantiate his case that one Sharma was an agent of the appellant herein. The learned Counsel further point out that the respondent has failed to establish that he was sent to Peru on the concerned date. The learned Counsel further points out that admittedly, the appellant was acquitted in the proceedings initiated by the respondent for an offence punishable under Section 138 of the Negotiable Instruments Act and the learned Lower Appellate Court has failed to examine the Judgment of the learned Judicial Magistrate whilst deciding the appeal preferred by the appellant. The learned Counsel further points out that the respondent had filed an application under Order 41, Rule 27 of C.P.C., to produce additional documents,

namely, the Judgment passed in Criminal Proceeding, which the learned Lower Appellant Court has not even examined whilst deciding the appeal filed by the appellant. The learned Counsel further points out that as the respondent has failed to establish that any amount was due by the appellant to the respondent, both the Courts below have arrived at a perverse finding of fact that the appellant is liable to pay any amount to the respondent.

3. I have considered the submissions of the learned Counsel. With the assistance of the learned Counsel, I have also gone through the records. Both the Courts below, upon appreciation of evidence on record, have come to the conclusion that the appellant is liable to pay the sum of Rs.1,50,000/- to the respondent herein. Whilst coming to such a conclusion, the Courts below have appreciated the oral, as well as the documentary evidence produced by the appellant. The learned Trial Judge while coming to such a conclusion has clearly noted that there was an agreement executed between the appellant and the respondent which is at Exhibit PW.1/18 which clearly discloses that the appellant has admitted the liability of Rs.1,50,000/-, the amount to be paid to the respondent. It is also not disputed that the records also

reveal that in fact a cheque for Rs.1,50,000/- was handed over to the respondent herein. The findings arrived at by the Courts below are based on material produced on record by the respondent herein. In such circumstances, the contention of Ms. Desai, learned Counsel appearing for the appellant that the findings arrived at by the Court below are perverse, cannot be accepted. Apart from that, the Judgment passed in the criminal proceedings is not relevant for deciding a suit for recovery of money, but only for specific purposes. The standard of proof in criminal proceedings is substantially different from the standard of proof in civil proceedings. The civil suits are decided on preponderance of probabilities.

4. In such circumstances, the Courts below have rightly drawn an inference based on the evidence of PW.1, as well as the documentary evidence to come to the conclusion that the appellant is liable to pay the said amount to the respondent. It is also to be noted that the appellant has filed the written statement, though in the application filed for condonation of delay in filing the written statement the learned Trial Judge has noted that despite of a number of opportunities the defendant failed to file such Written Statement. The

learned Trial Judge has also found that there are no reasons given by the appellant to condone the delay in filing the written statement. The learned Lower Appellate Court found favour with the learned Trial Judge on that count. In such circumstances, I find that there are no substantial questions of law which arise in the present appeal for consideration. The concurrent findings of fact arrived at by the Court below cannot be reappreciated by this Court in a second appeal under Section 100 C.P.C. The interest awarded by the learned Trial Judge is just and proper and does not call for interference of this Court in the present appeal.

5. In such circumstances, I find that there is no perversity in the findings arrived at by the Courts below. Consequently, there is no merit in the above appeal, which stands accordingly rejected.

F.M. REIS, J.

ssm.