IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 8 OF 2016

1. The Government of Goa,
   Through its Chief Secretary,
   Secretariat Building,
   Alto, Porvorim, Bardez Goa.

2. The Director of Transport,
   Office of the Directorate of Transport,
   Government of Goa,
   Junta House,
   Panaji Goa. ….. Appellants

V e r s u s

M/s Enpee Earthmovers,
a registered partnership firm,
having its office at Ganga Nagar,
Curti, Ponda Goa,
represented by its partner,
Shri Hari Pandharinath Panandikar,
aged 56 years,
son of Pandharinath Panandikar,
occupation – Business,
Indian National,
resident of H. No.40,
Ganga Nagar, Curti, Ponda Goa. …... Respondent

Mr. Pravin N. Faldessai, Addl. Government Advocate for the appellants.

Mr. Shivan Desai, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 11th March, 2016

ORAL JUDGMENT

Heard Mr. P. Faldessai, learned counsel appearing for the appellants and Mr. Shivan Desai, learned counsel appearing for the respondent.

2. Admit.

3. Heard forthwith with the consent of the learned counsel.

4. The learned counsel appearing for the respondent waives service.

5. I have heard Mr. Faldessai, learned Addl. Government Advocate appearing for the appellants and Mr. Shivan Desai, learned counsel appearing for the respondent at length. The learned Addl. Government Advocate has pointed out that the learned Judge while passing the impugned judgment has come to the conclusion that the Civil Court has no jurisdiction to direct the refund of the tax in respect

of subject wheel loaders, but however, directed the payment of Rs.1,08,281/- to the respondent along with interest thereon at the rate of 9% per annum from 12.11.2008 up to the actual payment. The learned Addl. Government Advocate further submits that in terms of Rule 26 of the Goa, Daman and Diu Motor Vehicles Tax Rules, the respondent had an alternate remedy to prefer an appeal before the Appellate Authority challenging the assessment which was carried out by the appellants. The learned Addl. Government Advocate further submits that originally the calculation/assessment was carried out by the appellants which the respondent disputed the manner of such assessment and preferred an appeal before the Collector. The Appellate Authority thereafter found justification in the contention of the respondent and directed the appellants to carry out the reassessment of the payment of tax considering that the wheel loaders were purchased on different dates. The learned Addl. Government Advocate further points out that the amount claimed by the appellants was amounting to Rs.7,35,792/- somewhere in the year 2008 and under protest the respondent paid the amount and preferred an appeal before the Appellate Authority. The learned counsel further pointed out that accordingly the appellants had carried out the reassessment of the payment of tax and arrived at a figure of Rs.33,085/- being refunded to the respondent herein. The learned Addl. Government Advocate further submits that the respondent was dissatisfied with the said amount and served a notice under Section 80 of the Civil Procedure Code on 05.02.2010 claiming that an amount of Rs.3,60,287/- was due to be refunded to the respondent herein. The learned Addl. Government Advocate further submits that on receipt of the said notice, the appellants called upon the respondent for a meeting and accordingly a fresh assessment was worked out and the appellants accepted that a sum of Rs.57,794/- was due to be refunded by an order dated 05.05.2010. The learned Addl. Government Advocate further submits that after another meeting, the appellants confirmed by a letter dated 14.09.2010 that a sum of Rs.1,08,281/- was payable as refund to the respondent. The learned Addl. Government Advocate further submits that though the appellants had offered to pay the said amount, the respondent refused to accept such amount and proceeded to file the suit for the recovery of the alleged claim of Rs.3,60,287/-. The learned counsel further points out that the appellants had filed a written statement disputing the said claim and inter-alia taking a defence that the Civil Court has no jurisdiction to decide such suit filed by the respondent. The learned Addl. Government Advocate further pointed out that though the learned Judge in the impugned judgment has come to the conclusion that the Civil Court has no jurisdiction to adjudicate the quantum of the amount, nevertheless, the learned Judge has directed the payment of a sum of Rs.1,08,281/- together with interest thereon at the rate of 9% per annum. The learned Addl. Government Advocate further submits that there is no justification by the learned Judge to direct the payment of interest as according to him the appellants had offered to pay the amount way back on 14.09.2010 which the respondent had refused to receive such amount. The learned Addl. Government Advocate as such points out that in such circumstances the learned Judge is not justified at all to direct the payment of interest to the respondent. The learned Addl. Government Advocate as such points out that the impugned judgment passed by the learned Judge deserves to be quashed and set aside.

6. On the other hand, Mr. Shivan Desai, learned counsel appearing for the respondent has pointed that once it is not disputed that the amount payable is refused to be paid to the respondent, it is not open to the appellants to contend that the learned Judge was not justified to direct the payment of such amount. The learned counsel further pointed out that in the notice under Section 80 of the C.P.C. issued on

05.02.2010 there was a specific demand by the respondent to claim interest at the rate of 9% per annum and as such according to him, the appellants are liable to pay interest on any amount payable to the respondent at least as on that date. The learned counsel further pointed out that there is no express or implied bar for the Civil Court to examine such claim in terms of Section 9 of the C.P.C. The learned counsel further submits that the effect of remand by the Appellate Authority in the year 2008 was only to make the calculation of the amount to be refunded to the respondent and as such the question of again filing a fresh appeal before the Appellate Authority is totally erroneous. The learned counsel further pointed out that the learned Judge has rightly awarded interest to the respondent as the amount was admittedly due to the respondent in terms of the calculation by the appellants themselves from the year 2010. The learned counsel thereafter has taken me through the impugned judgment and pointed out that there is no case made out for any interference in the impugned judgment.

7. I have considered the submissions of the learned counsel and on the basis thereof, the following point for determination arises in the present appeal :

POINT FOR DETERMINATION

(1) Whether the learned Judge was justified to direct the payment of a sum of Rs.1,08,281/- with interest thereon at the rate of 9% per annum from the date of payment of the amount up to the actual payment despite of coming to the conclusion that the Civil Court has no jurisdiction to decide the quantum of tax payable by the respondent ?

8. In order to examine whether the Civil Court has jurisdiction or not to decide the suit filed by the respondent, it would be appropriate to examine the provisions of Section 9 of the Civil Procedure Code. Section 9 of the Civil Procedure Code reads thus :

> “ **9. Courts to try all civil suits unless barred**.- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

9. On plain reading of the said provisions, it clearly contemplate that the jurisdiction of the Civil Court is barred only in case in which there is an express or implied bar to decide such dispute of a civil nature. Merely because there is an alternate remedy to get an

adjudication of the claim by itself cannot be a ground to contend that there is implied bar of jurisdiction under Section 9 of the Civil Procedure Code.

10. In the present case, on perusal of the provisions of the Motor Vehicle Act as well as the Goa Motor Vehicles Tax Rules, 1974, I find that there is no express bar of jurisdiction of the Civil Court to examine such claim. In the present case, no doubt, when an alternate remedy was available, the Court can refuse to grant a discretionary relief. In the present case, as admittedly the respondent had availed of an appeal before the Appellate Authority and the Appellate Authority had in fact directed the appellants to reassess the amount of tax payable for the wheel loaders, the dispute which remains to be examined is only of the quantum of the tax payable. That the appellants themselves on the basis of their own conclusion had arrived at a figure of Rs.1,08,281/- being the amount to be refunded to the respondent and as such, I find that the contention of Mr. Faldessai, learned Addl. Government Advocate appearing for the appellants that the jurisdiction of the Civil Court is barred cannot be accepted. Once the amount is assessed to be refunded and as the amount has not paid, the aggrieved party can approach the

Civil Court to receive such amount. On perusal of the impugned judgment passed by the learned Judge, I find that the learned Judge has directed the payment of only a sum of Rs.1,08,281/- which was in fact assessed by the appellants themselves as payable to the respondent. Considering that the appellants themselves had arrived at such figure, I find that there can be no doubt that such amount of Rs.1,08,281/- was payable by the appellants to the respondent.

11. The only aspect which remains to be examined is whether the learned Judge was justified to direct the payment of interest at the rate of 9% per annum from 12.11.2008 up to the actual payment. On perusal of the provisions of the relevant Act and Rules, it is not disputed that there is no provision therein for refusal of the excess amount together with interest. In the present case, it is also not disputed that by notice dated 05.02.2010 under Section 80 of the Civil Procedure Code, there was an express demand by the respondent claiming interest at the rate of 9% per annum. Hence, the interest, if any, payable by the appellants would be from the date of such notice i.e. 05.02.2010. As such, the learned Judge was not justified to direct the payment of interest from November, 2008. To that extent, the impugned judgment deserves to be modified.

12. Apart from that, in terms of Section 34 of the C.P.C., payment of interest as from the date of the filing of the suit is within the discretion of the Court. Admittedly, in the present case, there was no contractual rate of interest stipulated or specified in the said Act or Rules. As such the contention of Mr. Faldesai, learned counsel appearing for the appellants that the appellants are not liable to pay any interest as according to him the appellants had offered payment of such amount way back in the year 2010 cannot be accepted, as admittedly, the amounts were not tendered to the respondent nor deposited in the Court. It is well settled that the rights of the parties stand crystallized as on the date of the filing of the suit. Hence, as on the date of filing of the suit the amount was admittedly due to be refunded by the appellants to the respondent with interest at the rate of 9% per annum from 05.02.2010 up to the date of filing of the suit. In such circumstances, as the interest payable from the date of the filing of the suit is within the discretion of the Court, in the peculiar facts and circumstances of the case, I find that interest at the rate of 6% per annum from the date of filing of the suit up to the actual payment would be just and reasonable. To that extent the impugned judgment passed by the learned Trial Judge deserves to be modified. The point for determination is answered

accordingly.

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

O R D E R

(i) The appeal is partly allowed.

(ii) The impugned judgment passed by the learned Judge dated 26.09.2014 stands modified and the amount of Rs.1,08,281/- is directed to be paid to the respondent by the appellant with interest thereon at the rate of 9% per annum from 05.02.2010 up to 27.01.2011 and interest at the rate of 6% per annum on such amount due from the said date of filing of the suit up to the actual payment.

(iii) The judgment and decree stands modified accordingly.

(iv) The appeal stands disposed of with no order as to costs.

F. M. REIS, J.

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