IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 274 OF 2008

1. M/s. Kashi Dairy & Sweets,
Shop No.5, Mendes Mansion,
Vasco-da-Gama, Goa
represented by its Proprietor
Ramchandra Gangaprasad Halwai.

2. M/s. Rajdhani Dairy & Sweets,
Lakshjyot Complex,
Opposite Kadamba Bus Stand,
Vasco-da-Gama, Goa
represented by its Proprietor
Bijay Prakash R. Halwai. …...... Appellants.

V/s.

The Belgaum District Co-op.
Milk Producers Societies Union Limtied,
Kanburgi Road, Belgaum,
Karnataka, represented by its
Managing Director having Office
at Kanburgi Road,
Belgaum, Karnataka. …...... Respondent.

Mr. V. A. Lawande, and Ms. P. Kaur, Advocates for the appellant.

Mr. J. Godinho, Advocate for the respondent.

CORAM :- F.M. REIS, J.

Date : - 11 MARCH 2016

ORAL JUDGMENT :

Heard Mr. V.A. Lawande, along with Ms. P. Kaur, learned Counsel appearing for the appellants and Mr. J. Godinho, learned Counsel appearing for the respondent.

2. The above appeal challenges the Judgment and Decree dated 31st July, 2008 passed in Special Civil Suit No. 14/03/A by the Civil Judge, Sr. Division, Vasco da Gama, Goa, whereby the suit filed by the appellants (plaintiffs in the suit) came to be dismissed.

3. Briefly, the facts of the case are that the appellants entered into an agreement with the respondent for purchase of milk to be supplied to different depots, including Army and Navy. The initial agreement was signed on 30th January, 1999, which was in operation for a period of one year. There were two more such agreements which were signed by the parties and ultimately, last such agreement was dated 2nd January, 2001 which was also for a period of one year. The said agreement was not renewed and the relationship with the appellants came to be terminated. The suit came to be filed for recovery of damages against the respondents, *inter alia,* on the ground

that as there was no renewal of the contract further, the investment made by the appellants remained idle and consequently, the respondents were liable to pay damages to the appellants to the tune of Rs.40,57,416/- along with interest thereon at the rate of 15% per annum towards the initial period of the agreement for supply of milk and in the alternative, a sum of Rs.1,50,000/- as part compensation thereof and thereafter at the rate of Rs.5,000/- per day, till the date of decree. The respondent disputed the said claim of the appellants, inter alia, claiming that the agreement has been duly terminated as, according to the respondent, the appellants had defaulted in supplying the milk to different depots, including Navy and Army and as, such, as the work rendered by the appellants was not to the satisfaction of the respondent, the agreement came to be terminated. The agreement was not automatically renewable in terms of the last agreement and there was no renewal clause. The learned Trial Judge, after framing issues and recording evidence, by the impugned Judgment and Decree dated 31/07/2008, dismissed the suit filed by the appellants. Being aggrieved by the said Judgment, the appellants have preferred the present appeal.

4. Mr. V. A. Lawande, learned Counsel appearing for the appellants has assailed the impugned Judgment on the ground that as per the original agreement, the appellants had given a Bank Guarantee for a period of five years, which implies that the agreement was renewable for five years. The learned Counsel further points out that in breach of the said understanding, the respondent has terminated the relationship within a period of three years. The learned Counsel further points out that with the expectation that the relationship would continue for a period of five years, the appellants have made investments in purchasing vehicles, fridges and refrigerators for storage of milk, for supplying milk to different customers. The learned Counsel further submitted that in view of the arbitrary stand taken by the respondent in terminating the agreement, all such investments of the appellants have been rendered useless. The learned Counsel further submits that as the respondent has committed the breach of the contract between the parties, the appellants are entitled to claim damages as claimed in the suit.

5. On the other hand, Mr. J. Godinho, learned Counsel appearing for the respondent has pointed out that the terms of the

agreement itself specify that the agreement was for a period of one year and the very fact that the three agreements were for year to year, would itself suggest that the contract was for a period of one year and the last such agreement would prevail over the previous agreement. The learned Counsel further submits that there is an admission on the part of PW.1 in his cross examination that the agreement was only for a period of one year and that the terms and conditions were changed from time to time. The learned Counsel further submits that the appellants did not get the tender for the supply of milk to the Navy as well as Army and, a such, he did not have the requisite order for supply of milk received from the respondent. The learned Counsel has also taken me through the cross examination of PW.1 wherein he has admitted that his tender was not accepted by the Army as well as the Navy. The learned Counsel further points out that the agreement itself stipulates that the Bank Guarantee was to be for a period of one year and merely because the appellants had given the Bank Guarantee for five years that, by itself, would not suggest that the relationship between them had to continue for a period of five years. The learned Counsel has taken me through the impugned Judgment and pointed out that there is no infirmity therein and as such, the appeal deserves to be dismissed.

6. Upon hearing the learned Counsel for the parties and upon perusal of the record, the following points falls for determination in the present case :

> (1) Whether the learned Trial Judge was justified to come to the conclusion that the respondents were entitled to terminate the agreement ?
>
> (2) Whether the agreement between the parties was for a period of five years ?
>
> (3) Whether the appellants are entitled for any damages from the respondent ?

7. I have perused the agreement between the parties dated 25/3/1999, which is at Exhibit 30. It is categorically stated therein that the agreement was for a period of one year. As such, on going through the agreement itself, the contention of Mr. Lawande, learned Counsel appearing for the appellants that the agreement was to be for a period of five years cannot be accepted. Apart from that, on perusal of the cross examination of PW.1, I find that the witness has deposed thus :

> "I again say that the agreement was prepared at Belgaum. I have gone through the contents of the said agreement. After understanding the terms and

conditions, I have signed the document. It is true that the agreement was to prevail only for 12 months from the date of agreement and it was also agreed to renew the agreement for every next year. It is true that subsequently there was another agreement dated 25.5.99. The contents of this document dated 25.5.99 are true and correct. The terms and conditions which were forgotten and so also in respect of the rates of the milk were incorporated in the agreement dated 25.5.99. Subsequently, one more agreement was executed on 18.3.2000 and this agreement was for a particular year 2000-2001. Thereafter, on 2.1.01, there was another agreement for the year 2000-2001. These agreements were pertaining to the rate of milk and so also in respect of the change in the rate of milk. It is true that whenever the rate of milk was increased the defendant used to inform the plaintiffs. As per the change in the rate of milk, daily I used to pay the cost of the milk taken by me. It is true that whenever the milk rate was changed I did not question by issuing a legal notice or by filing a suit. The witness voluntarily says the rate was being fixed only after the discussion. It is true that during the year 2002, the defendant was supplying the milk regularly but I did not pay the cost of the bill and there was a balance to be paid to the defendant. It is true that the balance amount was to the tune of Rs.6,00,000/- and odd figures. It is not true to suggest that I have received a letter from the defendant to clear off the balance amount of Rs.6 lakhs and odd figure. But it is true that I have paid 6 lacs and odd figure thereafter. It is true that in the month of July, 2003, there was balance of Rs.25,554.15 was due to be paid by me to the defendant. Only after receipt of letter dated 20.7.03, I paid the said amount. It is also true that I was to pay an amount of Rs.67,906.95 to the defendant in the month of June, 2003 and in this regard, I had received a letter dated 30.6.03. The witness volunteers that I had paid the said amount subsequently. It is true that every year there used to be a new agreement on the terms and conditions agreed between the plaintiffs and the defendants. During the year 1995, there are and there were other dealers and agents to the defendant milk union. The other dealers or agents were supplying milk to various hotels in the city. It is false to suggest that the defendant milk union was supplying the milk to different companies and institutions. One fantacy ice-cream company is in existence for the last 17 to 18 years. The defendant milk union was supplying the milk to the said fantacy ice-cream company for all those years."

8. Taking note of the said admissions on the part of PW.1, it clearly emerges that the contention of Mr. Lawande, learned Counsel

appearing for the appellants that the agreement was for a period of five years, cannot be accepted.

9. Mr. Lawande, learned Counsel appearing for the appellants has, thereafter, pointed out that in the original agreement there was a renewal clause. But, however, on perusal of the last agreement executed between the parties, it reveals that no such renewal clause exists therein. Section 62 of the Indian Contract Act, *inter alia,* provides that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. In such circumstances, the question of invoking the clause in the original agreement which, thereafter, admittedly came to be substituted by a fresh agreement, would not arise at all. Hence, I find that the learned Trial Judge was justified to come to the conclusion that the appellants failed to prove that the agreement was for a period of 5 years. In the cross examination of PW.1, he has clearly admitted that the agreement was to prevail only for 12 months from the date of the agreement. He has also admitted that subsequently, one more agreement was executed on 18/03/2000 and that agreement was for a particular year 2000-01. Thereafter, on

02/01/2001, there was another agreement for the year 2000-01. He has further admitted that every year there was a new agreement on the terms and conditions agreed between the plaintiffs and the defendant. These agreements clearly show that there was no subsisting agreement based on which the suit was filed by the plaintiffs-appellants to claim the amounts.

10. On perusal of the impugned Judgment dated 31st July, 2008, it is seen that the learned Judge noted the admissions on the part of PW.1. Besides, the evidence of PW.3 has also been appreciated by the learned Judge and noted that he had admitted that every year the Defence Sector is calling for tenders for supply of milk and milk products and whoever quotes lesser rates, he would be given the contract. He also does not known how many times the tenders of the plaintiffs were accepted by the Defence Sector. The learned Judge further noted that the witness of the plaintiffs had shown ignorance about the fact of supply of milk and milk products by the defendant to Fantasy Ice Company and they do not support the case of the plaintiffs/appellants. The learned Judge has also taken note of the evidence of DW.1 and examined the agreement at Exhibit 96. The

learned Judge also noted that the Stamp Papers on which Agreement at Exhibit 96 was drawn, were purchased at Vasco da Gama and were used in Belgaum and the same had to be stamped as per the Stamp Clause of Karnataka State. The learned Judge, after appreciating the evidence on record and taking note of the admissions of the plaintiffs/appellants and their witnesses in their deposition, found that the appellants had failed to bring any cogent evidence in support of the claim for compensation and specific performance of the contract. The evidence on record, clearly supports the view taken by the learned Trial Judge and I find no infirmity in the findings arrived at. The admissions by PW.1 which have been noted by the learned Trial Judge, clearly disclose that the appellants have failed to establish their claim in the suit. The learned Judge was, as such, justified to pass the impugned Judgment and I find no infirmity in the findings therein. The point for determination with that respect is answered accordingly.

11. Once it is found that the agreement was not for a period of 5 years as claimed by the appellants, I find that the claim for compensation on assumption that the agreement was for a period of five years raised by the appellants has no substance. The learned Trial

Judge, as pointed out herein above, has scrutinised the evidence on record and has come to the conclusion that the claim of the appellants, on that count, cannot be accepted. I find no infirmity in the said findings of the learned Trial Judge. The point for determination with that regard is answered accordingly.

12. For the aforesaid reasons, I find no merit in the above appeal which stands accordingly dismissed, with no order as to costs.

F. M. REIS, J.

ssm.