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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.469 OF 2017

Pushpakumar s/o Rameshchandra Ladda,
Age: 63 years, Occu: Service,
R/o.: 10, Nirala Apartment, Bansilal Nagar,
Aurangabad

..APPELLANT
(Ori. Plaintiff)

VERSUS

Indrajeet s/o Panditrao Thorat,
Age: 42 years, Occu: Business,
R/o. Kailash Arcade, Cannought Place,
Town Center, Cidco,
Aurangabad

..RESPONDENT
(Ori. Defendant)

Mr M. V. Navandar, Advocate for appellant

CORAM : N.W. SAMBRE, J.

DATE : 31st July, 2017

ORAL ORDER

The appellant-plaintiff instituted Special Civil Suit No.512 of 2011 for recovery of amount of Rs.5,50,000/- towards wages for a period of twenty three months.

2. It is the case of the appellant-plaintiff that respondent-defendant got a contract for construction of platform for which he was appointed as a Supervisor on payment of Rs.20,000/- per month. According to him, he was paid salary for eight months out of thirty one months for which he had worked. It is claimed that salary for twenty three months was not paid. As

(2)

such, suit was brought in action.

3. The respondent-defendant admitted appointment, however, tried to explain that the appellant-plaintiff never worked. According to him, in view of the fact that the appellant never worked, question for payment of salary does not arise.

4. The issues were framed at Exh.14 and the suit came to be decreed vide judgment and order dated 30th November, 2013 passed by 2nd Joint Civil Judge Senior Division, Aurangabad.

5. Aggrieved by the aforesaid judgment and decree, the respondent-defendant preferred Regular Civil Appeal No.116 of 2014, which came to be allowed by judgment and decree passed by learned District Judge-3, Aurangabad on 13th February, 2017. Thus, the present Second Appeal.

6. The grounds sought to be canvassed for entertaining the present appeal are, (a) that appointment of the present appellant as a Supervisor was not in dispute; (b) the evidence of canteen contractor and railway employee supports the case of the appellant and (c) it could be borne out of record that the appellant was appointed and had discharged the duties as a Supervisor for execution of the work in question. So as to substantiate his contentions, the appellant also tried to demonstrate that the respondent has admitted certain factual matrix about his appointment.

(3)

7. With the assistance of learned Counsel appearing on behalf of the appellant I have perused evidence of P.W.1 Pushpakumar, P.W.2 Mohan and D.W.1 Indrajeet.

8. So far as evidence of P.W.1 Pushpakumar is concerned, he has stated that the appellant has worked on the spot for execution of the work, whereas P.W.2 Mohan has produced on record a document which was addressed to the railway authorities demonstrating the appointment of the appellant as a Supervisor.

9. Both the aforesaid documents *prima facie* create a doubt about the appointment and working of the appellant as the order of appointment does not bear a date of issuance thereof as also the date from which the appointment was effective. Apart from above, the document that was produced on record by railway employee whereby intimation was given to railways about appointment of the appellant, was not coming from a proper official custody as the document neither bears inward number nor the same is drawn as a certified copy from the original. As such both these documents have been rightly discarded by the lower appellate court.

10. Since the appellant has brought the suit in action, it was his duty to demonstrate before this Court that though he had worked for in all thirty one months, he had actually received salary for eight months.

(4)

11. The fact remains that the appellant has failed to demonstrate as to the mode and manner in which he has received salary for eight months at the rate of Rs.20,000/- per month. It is then to be noted that the appellant has failed to establish in an unequivocal terms about his working, particularly discharging duty as a Supervisor pursuant to his appointment.

12. Apart from above, labour contractor P.W.2 Mohan Badrinath was unable to state the relationship between the appellant and respondent as that of employer and employee. P.W.3 Harishkumar, an employee of the railway department was unable to disclose the source of custody of the document, particularly an intimation given to the railway department about appointment of appellant as a Supervisor. P.W.4 Trinath Rajput, canteen contractor, whose testimony was disbelieved, was unable to produce the licence to run the canteen. D.W.1 Indrajeet Thorat has not supported the case of the appellant.

13. The cumulative effect of the evidence brought on record by the appellant-plaintiff, particularly not establishing the fact about his actual working and receipt of salary for a period of eight months prompted the lower appellate court to draw an inference that though the appellant was appointed he had never worked. The appellant has failed to discharge his burden.

(5)

14. In the aforesaid background, in my opinion, no substantial question of law is involved in the present appeal. In view thereof, Second Appeal fails and stands dismissed.

(N.W. SAMBRE, J.)

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