

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 48 OF 2013

1. State of Goa,
Through the Chief Secretary,
Secretariat, Porvorim,
Bardez Goa.
 2. The Executive Engineer,
Works Division XVII (PHE-N)
Public Works Divisions,
Govt. Qtrs. Porvorim,
Bardez Goa.
 3. The Principal Chief Engineer,
Public Works Department,
Government of Goa,
Altinho, Panaji Goa.
- ... Appellants

Versus

M/s. H. B. Singh & Co.,
A registered partnership firm,
having its office at H.No.383,
Pundalik Nagar, Porvorim,
Bardez Goa having its partners

1. Mr. H. B. Singh, aged 87 years,
Pundalik Nagar, Porvorim,
Bardez Goa

2. Mr. Rajindar Singh,
Partner H. B. Singh & Co.
D-2, Greater Khailash Enclave 1,
New Delhi – 411 048

3. Mrs. Amrita Singh,
Partner of H. B. Singh & Co.
Greater Khailash Enclave 1,
New Delhi – 411048
represented in this case
by its partner Mr. H. B. Singh
Pundalik Nagar, Porvorim,
Bardez Goa.

... Respondents

Ms. Susan Linhares, Addl. Government Advocate for the appellants.

Mr. N. Sardesai, Senior Advocate with Ms. S. Borkar, Advocate for the respondents.

Coram:- F. M. REIS, J.

Date:- 8th March, 2017

ORAL JUDGMENT

Heard Ms. S. Linhares, learned counsel appearing for the appellants and Mr. N. Sardesai, learned Senior Counsel appearing for the respondents.

2. The above appeal challenges the judgment and decree passed by the learned Additional District Judge, North Goa, Panaji, in Civil Suit No.51/2010 whereby the suit filed by the

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respondents was partly decreed and the minimum wages applicable to the respondents was fixed at Rs.87/- per day per male mazdoor and further the appellants have been directed to pay to the respondents the final bill amount of Rs.18,553/- and loss of profit in a sum of Rs.1,10,617/- and damages for a sum of Rs.2,00,000/- and to refund the security deposit lying with the appellant no.2 with interest thereon at the rate of 18% per annum from 01.10.2005 till the actual payment.

3. The learned Addl. Government Advocate appearing for the appellants has pointed out that the appellants were liable to pay to the respondents minimum wages in terms of clause 19B of the Agreement executed between the parties. The learned counsel further pointed out that in terms of the Circular issued by the Principal Chief Engineer dated 24.01.2006 the minimum wages as notified by the Chief Labour Commissioner, Ministry of Labour, Government of India, during the relevant period was fixed at Rs.56.92 per day. The learned counsel further pointed out that the learned Judge has erroneously fixed the minimum

wages payable to such mazdoor at the rate of Rs.87/- per day which is contrary to the said Circular issued by the Chief Engineer in terms of the minimum wages fixed by the Ministry of Labour. The learned counsel has thereafter taken me through clause 19B to point out that the appellants are liable to pay minimum wages to the respondents in terms of the said Circular and as such the amount paid is in excess and as such is liable to be refunded to the appellants. The learned counsel has taken me through the standing order which governed such agreement executed by the respondents to point out that when there is a difference between the minimum wages fixed by the Central Government and the State Government, though higher amount has to be paid, the Chief Engineer is entitled to take a decision to fix such rates. The learned counsel has thereafter taken me through the impugned judgment to point out that the learned Judge has erroneously discarded the said Circular to fix the minimum wages at the rate of Rs.87/- per day.

4. The learned Addl. Government Advocate has also

taken strong objection to the direction to pay damages to the tune of Rs.2,00,000/- besides a sum of Rs.1,10,617/- towards loss of profit. The learned counsel further points out that initially the work was to be completed within 210 days which has been thereafter mutually extended by the appellants and in fact the work was completed within the time stipulated. The learned counsel as such submits that as there was no delay to complete the work nor any default committed by the appellants, the question of paying any amount towards loss of profit would not arise at all. It is further submitted that there is no evidence on record to substantiate the claim of compensation awarded by the learned Judge while passing the impugned judgment and as such the amount as directed to be paid in the impugned judgment on both such counts deserves to be quashed and set aside. The learned counsel has also contended that the appellants had a lien over the security deposit kept by the respondents and as such according to the learned counsel as the respondents were over paid on account of minimum wages, the appellants were justified to exercise their lien and hold on to the security deposit until the

amounts were duly refunded by the respondents. The learned Addl. Government Advocate as such submits that as the appellants were justified to exercise their lien over the security deposit, the question of awarding any interest on such amount would not at all arise. The learned counsel as such submits that the impugned judgment passed by the learned Judge be quashed and set aside.

5. On the other hand, Mr. N. Sardesai, learned Senior Counsel appearing for the respondents has pointed out that in terms of clause 19B of the agreement executed between the parties, it clearly specifies that the appellants are liable to pay minimum wages for the unskilled labourer as fixed in the Minimum Wages Act. It is further pointed out that the Government Notification placed on record issued under the Minimum Wages Act by the State Government has clearly fixed the minimum wages at the relevant time at the rate of Rs.87/- per day. The learned Senior Counsel further submits that the reliance on the Circular produced by the appellants themselves is

misplaced as according to him the Circular itself is issued in the year 2006 when admittedly the work was completed in the year 2005 and apart from that, such Circular is in the context of the clause for escalation as provided in the agreement. The learned Senior Counsel further pointed out that even on going through the standing order and the explanation as found in the Notification issued by the State Government, it clearly provides that when there is a difference between the minimum wages fixed by the Central Government and one fixed by the State Government, the higher amount would prevail. The learned Senior Counsel as such submits that there is no case made out for any interference in the impugned judgment on that count.

6. With regard to the contention of the learned Addl. Government Advocate with regard to the amount awarded on account of loss of profit and damages, Mr. Sardessai, learned Senior Counsel appearing for the respondents submits that as the appellants has deliberately withheld the security deposit as well as refused to cooperate for expeditiously completing the work

within the period of 210 days as originally specified which led to a further extension on account of default committed by the appellants, the respondents are entitled for the amounts as awarded by the learned Judge towards the loss of profit as well as for damages. The learned Senior Counsel further pointed out that the amount awarded by the learned Judge is in consonance with the well settled principle of law to the effect that the respondents are entitled for amounts for loss suffered by them as well as on account of default and delay on the part of the appellants. The learned Senior Counsel has thereafter taken me through the impugned judgment and pointed out that the learned Judge has rightly awarded such amount to the respondents herein.

7. I have considered the submissions of the learned counsel and with the assistance of the learned counsel, I have also gone through the records as well as the relevant Circular and the Official Gazette placed on record. On the basis of such contentions, the following two points for determination arise in the present appeal.

POINTS FOR DETERMINATION

(i) Whether the learned Judge was justified to fix the minimum wages at the rate of Rs.87/- per day ?

(ii) Whether the learned Judge was justified to direct the payment of a sum of Rs.1,10,617/- towards loss of profit and a further sum of Rs.2,00,000/- on account of damages ?

8. With regard to the first point for determination, on perusal of the Official Gazette Notification placed on record dated 27.06.2003, the State Government has issued such Notification in exercise of powers conferred by clause (b) of sub-section (1) of Section 3 read with clause (iii) of sub section (1) of Section 4 and sub section (2) of Section 5 of the Minimum Wages Act, 1948 and inter alia fixed the minimum wages for unskilled workers (Mazdoor) at the rate of Rs.87/- per day. The learned Addl. Government Advocate has relied upon a Circular dated 24.01.2006 wherein the Principal Chief Engineer, PWD has specified the rates notified by the Chief Labour

Commissioner, Ministry of Labour for Goa region. It is not in dispute that the relevant period when the minimum wages were payable to the respondents was much before the said Circular issued by the Principal Chief Engineer. Besides, the Notification issued by the State Government clearly specifies at Explanation (1) which reads thus :

“(1) Where in any area/establishment in the scheduled employment, wages revised by this Notification are lower than the wages fixed/revised by the Central Government or by agreement/settlement or contractor's regulations attached to the conditions of contractor, the higher rates would be payable as minimum wages under this Notification.”

On going through the Standing Order dated 09.03.1987 relied upon by the learned Addl. Government Advocate, clause 7(a) reads thus :

“(a) The minimum wage of an unskilled male mazdoor mentioned in Sub para &

above shall be the higher of the following two figures; namely those notified by Government of India, Ministry of Labour and those notified by the local administration, both relevant to the place of work and the period of reckoning.”

The learned Addl. Government Advocate further points out that in terms of clause 8(ii), the Engineer Incharge is entitled to lay down the amount of minimum wages. There is nothing on record to show that based on such standing order any such amount was fixed by the Engineer at the time when the respondents completed the work for the appellants in the year 2005. In fact, it is not in dispute that when the bills were raised by the respondents towards the minimum wages at the rate of Rs.87/- per day for the unskilled labourer, such amount was duly paid without reservation by the appellants. Even on going through the said explanation as well as the said clause in the standing order, it clearly specifies that in cases in which there is a difference between the minimum wages fixed by the Central Government and the State Government, the higher of such

amount would be paid as minimum wages. In such circumstances, I find that the learned Judge was justified to fix the minimum wages at the rate of Rs.87/- per day based on the material on record. As such, the contention of the learned Addl. Government Advocate that the minimum wages are to be fixed at the rate of Rs.56/- per day and that the respondents are as such liable to refund the amount paid in excess cannot be accepted. The first point for determination is answered accordingly.

9. With regard to the second point for determination the claim for damages suffered by the respondents suggest that though initially the work was to be completed within a period of 210 days, thereafter, mutually both the parties agreed to extend the time period. It is also not in dispute that with such extended period of time, the respondents duly completed the work assigned by the appellants. In such circumstances, the contention of Mr. Sardesai, learned Senior Counsel appearing for the respondents that on account of such delay, the respondents are entitled for loss of profit as well as damages cannot be accepted.

Apart from that, on minutely perusing the evidence on record as well as the findings of the learned Judge on such count there is no material produced by the respondents to substantiate their claim that there was any actual loss of profit to the respondents or that the respondents have suffered any damages on account of any infraction or breach committed by the appellants in the course of work carried out by the respondents based on the subject contract. It is well settled that to claim damages as well as amount towards loss of profit, the party has to produce cogent and reliable evidence on record to establish the actual damages or loss of profit suffered by the respondents on account of any default committed by the appellants. In the present case, even on perusal of the pleadings in the plaint, no such default has been attributed to the appellants which has resulted in any loss of profit or damages to the respondents. In such circumstances, I find that the learned Judge was not justified to award the amount of Rs.1,10,617/- towards the loss of profit and further a sum of Rs.2,00,000/- on account of damages. To that extent, the impugned judgment passed by the learned Judge deserves to be

quashed and set aside. The second point for determination is answered accordingly.

10. With regard to the contention of the learned counsel appearing for the appellants that no interest is liable to be paid on the security deposit, I find that considering that there is no justifiable reason to retain the security deposit which was payable to the respondents after the final bill was submitted by the respondents, the learned Judge was justified to award interest at the rate of 18% per annum.

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

ORDER

(i) The appeal is partly allowed.

(ii) The impugned judgment and decree dated 31.10.2012 passed by the learned Judge to the extent it awards a sum of Rs.1,10,617/- towards the loss of profit and further a sum of Rs.2,00,000/- on account of damages is quashed and set aside.

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(iii) The remaining part of the decree passed by the learned Judge stands confirmed.

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

F. M. REIS, J.

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