

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NOS. 221, 222 & 223 OF 2007

Architect Bruno Dias Souza, Residing near
P.W.D. Head Office, Altinho, Panaji, Goa. Appellant

Versus

1. Mr. Gustavo Renato Pinto (deceased)
through his legal representatives:
 - a) Maria Zurana Pereira e Pinto, c/o
Olivio Pinto, Behind Santa Cruz
Church, Santa Cruz, Ilhas Goa.
 - b) Olivio Pinto, c/o Hotel Swimsea,
Caranzalem, Goa.
 - c) Felinto Pinto, Near old Blood Bank,
Panaji, Goa.
 - d) Bernado Savio Pinto, Near
Rendevous, Vaiguinim Valley, Dona
Paula, Goa.
 - e) Beliza Pinto, R/o opposite Canara
Bank, Santa Cruz, Ilhas, Goa.
 - f) Silvina Pinto
 - g) Gracias Pinto
Both residents of c/o Xavier Gracias,
Near Velsao Church, Velsao,
Cansaulim, Goa.
 - h) Barnabe Pinto, Near old Blood Bank,
Campal, Panaji, Goa.
 - i) Jaime Pinto, C/o Rendevous,
Vaiguinim Valley, Dona Paula, Goa.

- j) Francisco Pinto, Agnelo Residency,
Caranzalem, Goa.
- k) Lucia D'Souza, Villa D'Souza Betim,
Bardez, Goa.
- 2. Mr. Lucio Miranda (expired), Nizari
Bhavan, Second Floor, Panaji-Goa. Respondents

Shri Valmiki Menezes with Shri Akshay Shirodkar, Advocates for the Appellant.

Shri Shivan Desai with Shri Jatin Ramaiya, Advocates for the Respondent Nos. 1(a) to 1(d) and 1(f) to 1(k).

CORAM:- C. V. BHADANG, J.

RESERVED ON: 12th JULY, 2017

PRONOUNCED ON: 19th JULY, 2017

COMMON JUDGMENT:

All these appeals are between the same parties and involve common and connected questions of law and fact and as such, they are being disposed of by this common judgment.

2. The brief facts necessary for the disposal of the petition may be stated thus:

The appellant in these Appeals is the original plaintiff, while now deceased-Gustavo Pinto was the original defendant no. 1, who is now represented by his legal representatives. The respondent no. 2, was the original defendant no. 2, who has

since expired. His legal representatives are not brought on record. For the sake of convenience, the parties are referred to in their original capacity.

3. The plaintiff is an Architect. The original defendant no. 1-Gustavo Pinto had engaged architectural services of the plaintiff, sometime in the month of September, 1992 for the purpose of designing a Hotel cum Shopping Complex, named 'Pinto Arcade', at Campal, Panaji. The same was to be constructed on a plot of land belonging to the defendant no. 1-Gustavo Pinto. The terms and conditions on which the plaintiff, was to give his architectural services were settled, including a schedule of payment of fees of the plaintiff. The fee was payable in a staggered manner, depending upon the stage of the project.

4. According to the plaintiff, he completed Stage I and Stage II i.e. the conceptual stage and the preliminary design stage and an amount of Rs.25,000/- was paid to him as professional fees. The plaintiff also completed Part 1 and Part 2 of the third stage, on which he was paid Rs.50,000/- as agreed upon. Part 3 of Stage III i.e. the process of the approval of the statutory Authority was in progress, wherein the layout alongwith the plan, area statement and the project report was

presented for approval to the North Goa Planning and Development Authority (NGPDA) sometime on 26.11.1993. It is the material case of the plaintiff that as per the endorsement made on the drawings, it was stipulated that the said drawings are the property of the Architect and are not to be used without his permission. It appears that certain objections were raised by the NGPDA, which were accordingly removed, including that of the statutory set backs to be kept. According to the plaintiff, he has a copyright in the drawings.

5. On account of some disputes, the original defendant no. 1-Gustavo Pinto terminated the services of the plaintiff and the architectural work was entrusted to the defendant no. 2. According to the plaintiff, the defendant nos. 1 and 2 used and reproduced the same designs and submitted them to the NGPDA on 25.08.1994. This according to the plaintiff was in breach of the copyright of the plaintiff in the said design.

6. It is in these circumstances that the plaintiff filed Civil Suit No.1/1995 for damages under the Copyright Act, 1957 against the defendants. The plaintiff sought damages of Rs.37 lakhs jointly and severally against the defendant nos. 1 and 2 as set out below:

1.	General Damages	:	Rs. 20,00,000/-
2.	Special Damages	:	Rs. 12,00,000/-
3.	Punitive Damages	:	<u>Rs. 5,00,000/-</u>
	Total	:	Rs. 37,00,000/-

The plaintiff also claimed separate damages of Rs.6 lakhs against the defendant no. 2 alongwith injunction, restraining the defendants from using the said copies and infringing the copyrights of the plaintiff in the said designs.

7. According to the plaintiff, the cause of action for filing the suit arose sometime in the month of July, 1994, when the defendant no. 1 gave the original drawings of the plaintiff to the defendant no. 2 and defendant no. 2 reproduced them.

8. In plaint paragraph no. 17, the plaintiff has stated that he will be filing a separate suit for compensation arising out of termination/breach of the contract, by the defendant no. 1.

9. It appears that the defendant no. 1 filed his written statement on 22.05.1995, resisting the suit claim in which, it was brought on record that there were some changes made in the design and fresh designs (Exhibit-M) were prepared. This

according to the plaintiff was yet another instance of breach of copyright, which prompted the plaintiff to file Civil Suit No.2/1995, seeking damages of Rs.37 lakhs under similar Heads, jointly and severally against the defendant nos. 1 and 2 and separate damages of Rs.6 lakhs against the defendant no. 2.

10. The defendant no. 1 filed his written statement in the said suit on 27.06.1995, bringing on record that another fresh drawings were prepared, which according to the plaintiff was the third occasion of the infringement of his copyrights, which led the petitioner to file Civil Suit No.3/1995, claiming compensation of Rs.42 lakhs, jointly and severally against the defendant nos. 1 and 2 alongwith separate damages of Rs.6 lakhs against the defendant no. 2. In all these three suits, the plaintiff had made it clear that he will be taking separate action seeking damages for termination/breach of the contract by the defendant no. 1. It is undisputed that no such suit came to be filed and all the three aforesaid suits, relate to the claim of compensation on account of the alleged infringement of the copyright.

11. The defendant no. 1 resisted the suit on various grounds. It was contended that the suit as per the provisions of Section 62 of the Copy Right Act, would lie before the learned

District Court and therefore, the Court of Additional District Judge lacked jurisdiction. It was contended that the suit was premature as the Planning Authority had not approved the plan nor any construction was effected. It was submitted that the cause of action, no longer subsists as the defendants had submitted fresh plans on 19.05.1995. All other adverse allegations were denied. It was the material contention that as per the term between the plaintiff and the defendant no. 1, the drawings could not be used in "any other project", except with the permission of the Architect. It was thus contended that there was no prohibition from using the said drawings in the same project. It was contended that as per the terms contained in the Hand Book of Professional Practice issued by the Indian Institute of Architects, if the services of the Architect are terminated, all that the Architect is entitled to, is his fees, which have already been paid. It was denied that the defendant no. 2 had reproduced the work of the plaintiff. It was contended that the plaintiff had prepared the drawings in terms of the concept/idea given by the defendant no. 1 and thus, there was no copyright as such of the plaintiff in the said drawings. It was contended that the defendant no. 2 had prepared the drawings having substantial changes/alterations as set out in para 7 of the written statement. It was contended that the plaintiff was not entitled to

any damages on account of the alleged breach of the copyrights. It was contended that the defendants no. 1 had paid the plaintiff Rs.75,000/- as part of his professional fees and that the defendant no. 1 has no objection for returning the drawings if, the plaintiff returns the said amount back to the defendant no. 1.

12. The defendant no. 2 resisted the suit more or less on similar grounds. It was contended that the plaintiff is not entitled to any damages as claimed. The defendant no. 2 stated that the plaintiff had lodged a complaint against the defendant no. 2 before the Council of Architecture, in which the defendant no. 2 had filed a reply. It was contended that the complaint is frivolous and is liable to be dismissed.

13. The defendants resisted the two subsequent suits on similar grounds.

14. The learned Trial Court tried all the three suits jointly, in which the following material issues were framed:-

1. Whether the plaintiff proves that there is violation of the copyright ?
2. Whether the plaintiff proves that he is entitled for damages ?

15. The plaintiff examined himself (PW-2) alongwith Mr. E.R. Godinho, the Member Secretary of the North Goa, Planning and Development Authority (PW-1) and three Architects being Lucio Miranda (PW-3), Bruno Dias Souza (PW-4) and Shishikant Torney (PW-5). The defendant no. 2 examined himself as DW-1. The learned Trial Court answered the issue nos. 1 and 2 in the negative, holding that there was no violation of the copyright and dismissed all the three suits by separate judgments dated 03.04.2007. Feeling aggrieved, the appellant has filed these appeals.

16. I have heard Shri Menezes, the learned Counsel for the appellant and Shri Desai, the learned Counsel for the respondent nos. 1(a) to 1(d) and 1(f) to 1(k). With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned judgment.

17. It is submitted by Shri Menezes, the learned Counsel for the appellant that under Section 17 of the Copyright Act, an Architect continues to be the owner of the copyright in the drawings, irrespective whether the professional fees for engaging his services are paid or not. The learned Counsel pointed out that there was a contract "for service" between the

plaintiff and the defendant no. 1 and not a contract “of service”. The learned Counsel pointed out that under Section 19 of the Copyright Act, which prescribes the mode of assignment, the assignment of any such copyright has to be in writing. It is submitted that there was no assignment of the copyright in favour of the defendant no. 1. It is submitted that Section 51 of the Copyright Act provides for the circumstances in which the copyright is said to have been infringed and once, the drawings prepared by the plaintiff were used by the defendants without license from the plaintiff, it is a clear case of infringement of the copyright of the plaintiff. The learned Counsel points out that the suit is not only for damages, but also for injunction as set out in Section 55(1) of the Copyright Act. The learned Counsel was at pains to point out that the reliance placed by the Trial Court on Regulation 9.17 of the Architect's (Professional Conduct) Regulations, 1989 (Regulations, for short) and Rule 12 of the Comprehensive Architectural Services (CAS, for short), is misplaced. He therefore submits that the Trial Court ought to have decreed the suits granting damages.

18. The learned Counsel for the respondent nos. 1(a) to 1(d) and 1(f) to 1(k) has raised a preliminary objection. It is submitted that the plaintiff has made a claim for damages, jointly

and severally against the defendants. It is submitted that the Trial Court has dismissed the suits and in Appeal, the appellant has not brought the legal representatives of the original defendant no. 2 on record. It is submitted that thus, the decree has attained finality insofar as the defendant no. 2, is concerned. It is submitted that the claim in the suit and the decree being inseverable, the Appeal would abate, not only against the respondent no. 2 (defendant no. 2), but would abate as a whole. It is submitted that any contrary view would lead to contradictory decrees, as in the given case if, the Appeal is allowed there will be two contradictory decrees, one against the respondent no.1 and one against the legal representatives of the respondent no. 2, which is impermissible. For this proposition, the learned Counsel has placed reliance on the decision of this Court in the case of **Yeshwant Jaganath Kolhapurkar Vs. Chandrakant Kolhapurkar** in Second Appeal No. 68/2010 decided on 15.09.2010.

19. It is submitted by Shri Desai, the learned Counsel for the respondent nos. 1(a) to 1(d) and 1(f) to 1(k) that there is no breach of the copyright as such, established by the plaintiff. It is submitted that as per Regulation 9.17 of the Regulations and Rule 12 of the CAS, the client is entitled to keep copy of the

Architect's model, drawings, specifications and other documents, for his information and use it in connection with the project. It is submitted that Regulation No. 9.17 of the Regulations and Rule 12 of the CAS, only prohibit the use of such drawings, specifications etc. for the use of the client or the Architect or any other person. It is submitted that the plans have not been used for any other project. In fact, the learned Counsel pointed out that the project, for which the plans were prepared, also did not take off and the fees of the plaintiff has already been paid. He submits that the Trial Court, relying upon the Regulations and the CAS has rightly rejected the suit. He therefore submits that the Appeals are liable to be dismissed.

20. In reply, it is submitted by Shri Menezes, the learned Counsel for the appellant that the Appeal, cannot abate as a whole. It is submitted that the plaintiff is claiming damages jointly and severally against the defendants and thus, the death of original defendant no. 2 will not result into abatement of the Appeals as a whole. The learned Counsel has placed reliance on the Constitution Bench judgment of the Supreme Court in the case of **S. Amarjit Singh Kalra (dead) by LRs & Others Vs. Smt. Pramod Gupta (dead) by LRs & Others, AIR 2003 SC 2588.**

21. I have carefully considered the rival circumstances and the submissions made. The following points arise for my determination in these Appeals:-

1. Whether, on account of failure to bring the legal representatives of respondent no. 2 on record, the Appeals abate as a whole ?
2. Whether the plaintiff has established that the defendants have committed infringement of the copyrights of the plaintiff in the subject design ?
3. If yes, whether the plaintiff is entitled to damages ?
4. If yes, at what rate ?

22. POINT NO. 1: This issue goes to the root of the matter and has to be taken up at the threshold. The question whether, the failure to bring the legal representatives of one of the respondents, has the effect of abatement of the Appeal as a whole, fell for consideration of the Supreme Court in the case of **S. Amarjit Singh Kalra** (supra). The Supreme Court after taking survey of several decisions holding the field has culled out the relevant principles in paragraph 35 of the judgment, which can be reproduced thus:

“In the light of the above discussion, we hold:-

(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the Court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.

(2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings, as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the Courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.

(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient

in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.

(4) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decreed passed in the proceedings vis-a-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other.”

23. It can thus be seen that the question whether, the Appeal abates as a whole, would essentially depend upon the question as to whether, the decree challenged is joint and severable or whether, the decree, challenged, is joint and “inseverable”, the failure to bring the legal representatives of any of the respondent i.e. abatement of the Appeal against any of the respondent, shall result to the abatement of the Appeal as a

whole. The question whether, a particular decree is joint and inseverable, would depend upon facts and circumstances of each case. If, we are to consider the principles as set out in paragraph 35 of the judgment in the case of **S. Amarjit Singh Kalra** (supra), the present Appeal shall be governed by the principles as set out in paragraph 35(4) of the said judgment. The Supreme Court has held that the question whether, in a given case, the decree is joint and inseverable or joint and severable or separable, has to be decided only with reference to the fact whether, the judgment/decreed passed in the proceedings, vis-a-vis, the remaining parties would suffer the vice of contradictory/inconsistent decrees. It has been held that a decree can be said to be contradictory or inconsistent with another decree, only when two decrees are incapable of enforcement or would be mutually self destructive.

24. Reverting to the present case, the claim for damages (excluding the damages for Rs.6 lakhs, which are separately claimed against the defendant no. 2), is made jointly and severally against both the defendants. The claim is based on the ground that the defendant nos. 1 and 2, reproduced the drawings and submitted the drawings to the NGPDA, which is an infringement of the copyright of the plaintiff, in the said

drawings. It can thus be seen that the claim for damages, is joint and several against the defendant nos. 1 and 2. It is on the basis of a claim that the defendant nos. 1 and 2 by their joint act have infringed the copyright of the plaintiff. The Trial Court has dismissed the suit holding that there is no breach/infringement of any copyright. In Appeal the legal representatives of the respondent no. 2 (defendant no. 2), have not been brought of record and thus, the Appeal has abated as against the respondent no. 2. The question is whether, this would result in abatement of the Appeal as a whole and in my view, the answer has to be in the affirmative. This is because the decree which is challenged is "joint and inseverable". The defendant no. 1 or for that matter, defendant no. 2 were not capable of committing the alleged infringement on his own. The submission of the drawings/plans to the NGPDA required the services of an Architect to be engaged by the owner. The owner cannot submit such drawings on his own and thus, independently they were incapable of committing the infringement of the copyright as claimed by the plaintiff. The matter can be looked at, from another angle. For instance, if these Appeals were to be allowed, it would result into two decrees, which would be incongruent or contradictory in nature. While the decree against the defendant no. 2 holding that defendant no. 2 has not committed any

infringement of the copyright, would subsist (as the appeal as against respondent no. 2 has abated), there would be a decree holding that the defendants have committed infringement of the copyright. Therefore, in my considered view, the Appeals shall abate as a whole on account of the failure of the appellant to bring the legal representatives of the respondent no. 2 on record. The point is accordingly answered in the affirmative.

25. Notwithstanding the finding against the point no. 1, I propose to briefly consider the other issues, as the parties have addressed arguments on merits also. There cannot be any manner of dispute that under Section 17 of the Copyright Act, the Author of any literary, dramatic or artistic work, is the first owner of the copyright therein. This is subject to the proviso appended to Section 17 of the said Act. The learned Counsel for the appellant has tried to wriggle out of the effect of proviso (a) to Section 17 of the Copyright Act, saying that there was a contract “for services” between the plaintiff and the defendant no. 1 and not a contract “of service”. The learned Counsel for the appellant has placed reliance on Section 19 of the Copyright Act in order to submit that there cannot be an assignment of the copyright, unless it is in writing, which is not forthcoming in this case.

26. A perusal of the impugned judgment would show that the learned District Judge has held and to my mind rightly so, that Regulation No. 9.17 of the Regulations and Rule 12 of the CAS are a piece of special law, which would prevail over the Copyright Act being general law based on the principle of “Generalia Specialibus non derogant”. The learned District Judge has then relied upon Rule 12 of the CAS and Regulation 9.17 of the Regulations, in order to find that the drawings, the specifications and documents, as “instruments of service”, although are the property of the Architect, they can be used for the project for which they were prepared. In other words in the opinion of the learned Trial Court, such drawings cannot be used for any other project, except with the written consent of the Architect. In the present case, admittedly, the drawings have not been used for the purpose of any other project. In fact, even the said project has not materialised. This is the reason why the learned District Judge has come to the conclusion that there is no infringement of the Copyright Act.

Rule 9.17 of the Regulations reads as follows:

“The drawings, specifications and documents as instruments of service, are the property of the Architect, whether the project for which they are made to are executed or not. They are not to be used for any other project except with the written consent of the Architect.”

Rule 12 of the CAS reads as under:-

“Architectural design is an intellectual property of the Architect. The drawings, specifications, documents and models as instruments of service are the property of the Architect whether the project, for which they are made, is executed or not. The client shall retain copies of the Architect's models, drawings, specifications and other documents for his information and use in connection with the project. These shall not be used for any other project by the client or the Architect or any other person, except for the repetition as stipulated in the scale of charges.”

(Emphasis supplied)

27. It can thus be seen that drawings, specifications, documents and models as “instruments of service”, although are property of the Architect, the only prohibition in Regulation 9.17 of the Regulations is that they cannot be used for any other project, except with the written consent of the Architect. Rule 12 of the CAS would show that they can be used in connection with the project. Thus, I do not find that any exception can be taken to the finding recorded by the learned District Judge that the case of infringement of copyright is not established.

28. In the present case, it is undisputed that the contract between the plaintiff and defendant no. 1 was terminated by the defendant no. 1 on 15.06.1994. As noticed earlier, the claim in the present Appeal does not arise out of the termination of the contract. Thus, the consideration has to be confined only to the claim of damages arising out of the alleged infringement of the copyright. It is undisputed that the dispute between the plaintiff and the defendant no. 1 arose after the completion of Stage I and Stage II and Part 1 and 2 of Stage III. An amount of Rs.75,000/- till completion of Part 1 and Part 2 of Stage III has already been paid and has been received by the plaintiff. It is further a matter of record that the complaint lodged by the plaintiff before the Council of Architecture's Disciplinary Committee has been closed on 22.10.1977 holding that the defendant no. 2 has not committed any professional misconduct.

29. Even on facts, I do not find that a case for grant of damages is made out. The learned District Judge has adverted to the evidence in details in paragraphs 42 and 43 of the impugned judgment. The evidence of PW-4 would make it clear that the drawings by the defendant no. 2 were different on several aspect, than the drawings prepared by the plaintiff, namely on the aspect of set back on the southern boundary, the provision

for a basement, a swimming pool and the staircase. Thus, in my considered view even on facts, it is not established that the plans were copied as such, thereby resulting into infringement of the copyright.

30. In a claim of the present nature, the Court has to take into consideration several aspects in order to determine whether, any claim for damages is made out and if yes, what damages are payable. For instance, in the dispute of the present nature, the quantum of damages may depend upon the profit earned by the party, who is shown to have committed the infringement of the copyright. In the present case, it is admitted position that the project never took off and thus, it cannot be said that the defendant no. 1 has made any gains out of the alleged infringement of the copyright, assuming that there is one. For these reasons, I do not find that any case for interference is made out.

31. The learned Counsel for the appellant has submitted that the suit is not simpliciter for damages, but also for injunction, restraining the respondents from misusing the drawings in future. In reply, the learned Counsel for the respondents has submitted that the drawings are there on the

record of the Trial Court and the respondents have no objection, if the said drawings are returned to the appellant, so that the apprehension about future misuse is taken care of. The learned Counsel for the respondents, on instructions, also states that the respondents have no intention and shall not make use of the drawings as prepared by the appellant in future for any other project. The statement is accepted. This will take care of the apprehension expressed on behalf of the appellant/plaintiff.

32. In my considered view, the drawings which are there on the record of the Trial Court can be directed to be returned so as to alleviate the apprehension of any future misuse. The drawings at Exhibit Nos. PW-3/A collectively (in Civil Suit No.1/95); PW-4/J collectively (in Civil Suit No.2/95) and PW-1/A collectively (in Civil Suit No.3/95), shall be returned to the appellant, subject to replacement by xerox copies.

33. In the result, the Appeals are dismissed, with no order as to costs. Decree be drawn accordingly.

C.V. BHADANG, J.

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