

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 141 OF 2013**

Shri Jose Minguel Costa,
Son of Shri Joao Costa,
age 50 years,
resident of C/o Caetano Costa,
H.No.384, Rua de Natal,
Fontainhas, Panaji Goa.

... Appellant

Versus

M/S. D'Costa Construction,
having its Office at Kupator,
Macazana, Salcete Goa,
Represented by its Proprietor,
Mr. Thomas D'Costa,
son of Sevastiao D'Costa,
age 27 years, business,
resident of H. No.65/1,
Kupator, Macazana,
Salcete Goa.

... Respondent

Mr. Ashok Mashelker, Advocate for the appellant.

Mr. Vivek Angelo Rodrigues, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 23rd February, 2017

ORAL JUDGMENT

Heard Mr. A. Mashelkar, learned counsel appearing
for the appellant and Mr. V. Rodrigues, learned counsel

appearing for the respondent.

2. Admit on the following substantial question of law.

Whether the learned Lower Appellate Court committed an error in awarding interest at the rate of 18% per annum without examining whether the notice under the Interest Act was issued to the appellant before filing of the suit ?

3. Mr. V. Rodrigues, learned counsel waives service on behalf of the respondent.

4. Mr. Mashelkar, learned counsel appearing for the appellant has pointed out that though there was a quotation given by the respondent on 25.05.1998 disclosing that the estimate cost of the bungalow would be a sum of Rs.6,00,000/- by completing only 35% of the work, the respondent/plaintiff is claiming the amount of more than Rs.5,00,000/-. The learned counsel further pointed out that the disputed claim is based on the bill submitted by the respondent dated 21.10.1998 which clearly shows that such claim was withdrawn by the respondent. The learned

counsel further pointed out that in terms of the agreement, the estimate work is as per GSID rate and as such according to him the amount claimed by the respondent is exorbitant and not in terms of the agreement. The learned counsel further pointed out that the allegations of the respondent that the said quotation was given only for the purpose of loan is totally misplaced as according to him no such loan was availed by the appellant. The learned counsel has pointed out that the learned Trial Judge has rightly partly decreed the suit whereas the learned Lower Appellate Court on erroneous consideration has interfered with the judgment of the learned Trial Judge. The learned counsel further pointed out that there is no agreement to pay interest and as such the interest at the rate of 18% per annum awarded by the learned Lower Appellate Court is exorbitant and as such the impugned judgment to that extent deserves to be quashed and set aside. The learned counsel further pointed out that at the most the learned Judge ought to have been granted interest at the rate of 6% per annum.

5. On the other hand, Mr. V. Rodrigues, learned counsel appearing for the respondent has pointed out that the fact finding Court has conclusively found that the payment for the work carried out by the respondent was in terms of the annexure attached to the agreement executed between the parties. The learned counsel further pointed out that the claim of the appellant was in terms of such annexure and as such according to him there is no perversity in the findings of the learned Lower Appellate Court. The learned counsel further pointed out that the contention that no loan was taken by the appellant is a false statement as according to him the cross examination of DW1 would clearly reveal that there is a clear admission that the salary of the appellant was Rs.6000/- and he has availed loan of Rs.3,30,000/- from the concerned department. The learned counsel further submitted that as such there is no reason to interfere in the findings of fact arrived at by the Courts below. As far as the interest is concerned, the learned counsel pointed out that though no interest was provided in the agreement, nevertheless, the amount payable to the respondent is in the course of a

commercial transaction and as such there is no reason to interfere in the judgment of the learned Lower Appellate Court on that count.

6. I have considered the submissions of the learned counsel and I have also gone through the records. The contention of the appellant that the quotation submitted by the respondent was at the instance of the appellant to avail of a loan has been clearly accepted by the learned Lower Appellate Court. The quotation clearly shows that the rates mentioned therein are based on GSID rates. In fact, on going through the cross examination of DW1 there is a clear admission that the loan was availed by the appellant based on such quotation. It is the case of the respondent that only to facilitate the appellant to obtain a loan, such quotation was submitted which was never acted upon. In fact, the learned Lower Appellate Court has found that the earlier bills which were duly accepted and paid by the appellant were based on the rates mentioned in the annexure to the subject agreement. As such, the findings of fact arrived at by the Courts

below that the amounts were to be paid based on the annexure annexed to the agreement cannot be faulted. There is no challenge by the appellant to contend that in fact the work was carried out by the respondent based on the subject bill. In such circumstances, the findings of fact arrived at by the learned Lower Appellate Court based on the material on record that in fact the appellant is liable to pay Rs.2,30,368/- based on the subject bill cannot be faulted.

7. The only aspect which now remains to be examined is the rate of interest which would carry the payment of such amount by the appellant to the respondent. The learned Lower Appellate Court has awarded interest at the rate of 18% per annum whereas the learned Trial Judge while directing the payment of a part of the amount has awarded interest at the rate of 10% per annum. It is not disputed that before the filing of the suit there was no notice served on the appellant under the Interest Act claiming the rate of interest payable on default of the payment of such amount. It is also not disputed that the

agreement does not specify any rate of interest payable for any delay in payment of the amount. On perusal of the notice produced on record though there is a reference therein that interest would be claimed, there is no rate mentioned therein. In such circumstances, I find that when the respondent has not served a notice under the Interest Act, fixing the rate of interest by the learned Judge at the rate of 18% per annum is not justified. The learned Trial Court has exercised its discretion in fixing the rate of interest at rate of 10% per annum. In such circumstances, I find that there are no justifiable reasons noted by the learned Lower Appellate Court to fix the interest at the rate of 18% per annum. As such, the interest awarded by the learned Lower Appellate Court is modified and the amount payable by the appellant to the respondent would carry interest at the rate of 10% per annum. Mr. V. Rodrigues, learned counsel appearing for the respondent however pointed out that the amount payable to the respondent was from the year 1998 and that there should be a direction to make such payment within a specific period of time. Mr. Mashelkar, learned counsel appearing for the appellant

upon instructions submits that such amount would be paid within three months from today and in default thereof the appellant would be liable to pay further interest at the rate of 18% per annum for the default period on the amount so payable. Mr. Mashelkar, learned counsel appearing for the appellant has also pointed out that before the learned Lower Appellate Court the appellant has deposited the amount decreed by the learned Trial Judge along with interest accrued thereon. Any amount so deposited shall be adjusted to the amount payable by the appellant in terms of the directions herein. The substantial question of law is answered accordingly.

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

ORDER

- (i) The appeal is partly allowed.
- (ii) The impugned judgment dated 07.04.2012 passed by the learned Lower Appellate Court stands confirmed subject to the following modification.

(iii) The interest awarded by the learned Lower Appellate Court at the rate of 18% per annum stands substituted by 10% per annum.

(iv) The appellant is directed to deposit such amount in this Court after deducting the amount deposited before the learned Trial Court in terms of the above directions and accrued interest, if any, within three months from today.

(v) In case of default in payment of the amount payable to the respondent, in terms of (iv) herein above, the amount shall be paid with interest thereon at the rate of 18% per annum for the default period.

(vi) The Registry shall permit the respondent to withdraw the amount so deposited by the appellant.

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

F. M. REIS, J.

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