

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 26 OF 2008

State of Goa,
represented by the Chief Secretary,
Government of Goa,
Panaji Goa. ... Appellant

Versus

Shri Palvinder Singh,
Major of age, residing at
5 Monica Apartments,
Airport Road, Chicalim
Vasco-da-Gama. ... Respondent

Mr. P. Faldessai, Addl. Government Advocate for the appellant.

Mr. D. Pangam, Advocate for the respondent.

WITH

FIRST APPEAL NO. 243 OF 2007

Palvinder Singh,
Major of age, residing at
5 Monica Apartments,
Airport Road, Chicalim
Vasco-da-Gama, Goa. Appellant

V e r s u s

State of Goa,
rep. by Chief Secretary,
Government of Goa,
Secretariat, Panaji Goa. Respondent

Mr. D. Pangam, Advocate for the appellant.

Mr. P. Faldessai, Addl. Government Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 2nd March, 2017

ORAL JUDGMENT

Heard Mr. P. Faldessai, learned Addl. Government Advocate appearing for the appellant and Mr. D. Pangam, learned counsel appearing for the respondent in First Appeal No. 26 of 2008 and Mr. D. Pangam, learned counsel appearing for the appellant and Mr. P. Faldessai, learned Addl. Government Advocate appearing for the respondent in First Appeal no. 243 of 2007.

2. Both the above appeals are disposed of by a common judgment as both challenge the same judgment and decree dated 30.04.2007 passed by the learned District Judge, South Goa, Margao. The parties shall be referred to in the manner they so appear in the cause title of the impugned judgment.

3. The plaintiff filed the suit on the ground that he is entitled for compensation on account of extra work and for the delay in the payment of the bills totally amounting to a sum of Rs.20,92,000/- with interest accrued thereon at the rate of 21% per annum. The defendant disputed such claim and pointed out that the amount has been paid to the plaintiff in terms of the agreement between the parties and that the amount towards extra work was duly paid in view of the subsequent acceptance of the proposal submitted by the defendant for further excavation from 18 to 20 metres onwards. The learned Trial Judge after recording the evidence and hearing the parties, by the impugned judgment and decree dated 30.04.2007 partly decreed the suit and inter alia directed the defendant to pay to the plaintiff a sum of Rs.10,51,301/- inclusive of interest at the rate of 10% per annum. Being aggrieved by the said judgment, the plaintiff as well as the defendant have filed the present appeals.

4. Mr. Faldessai, learned Addl. Government Advocate appearing for the defendant has pointed out that the learned Trial

Judge has erroneously granted an amount of 100% escalation for the work carried out beyond the agreement. It is further pointed out that the learned Judge has also erroneously granted compensation for the delayed payment of the bills submitted by the plaintiff. The learned counsel further pointed out that such bills have been duly paid by the defendant after complying with all the formalities and as such the learned Judge was not justified to direct the payment of such amount. The learned counsel as such points out that the sum of Rs.5,53,077.10 awarded by the learned Judge on account of compensation for escalation in price is unsustainable which deserves to be quashed and set aside. The learned counsel as such points out that the impugned judgment passed by the learned Judge deserves to be quashed and set aside.

5. On the other hand, Mr. D. Pangam, learned counsel appearing for the plaintiff has submitted that besides the said amount awarded by the learned Judge, the plaintiff is also entitled for additional compensation for the four wells excavated from 18 to 20 metres. The learned counsel further submitted that

admittedly in terms of the agreement, the wells were to be constructed for the bridge leading to Cortalim to Vasco on NH-17A for the depth of only 12 metres when in fact the plaintiff had to proceed to the depth of 20 metres. The learned counsel further pointed out that the plaintiff accepted the proposal of the defendant to be paid for such excavation from the depth of 15 to 16 metres at the rate of 80,000/- per metre; from 16 to 17 metres at the rate of 90,000/- per metre; and from 17 to 18 metres at the rate of 1,00,000/- per metre. The learned counsel further pointed out that there was no agreement between the parties for further excavation to the depth of 20 metres and as such according to him considering the rates proposed by the defendant, the plaintiff would be entitled for a sum of Rs.1,10,000/- for the depth from 18 to 19 metres and a sum of Rs.1,20,000/- for the depth from 19 to 20 metres. The learned counsel further submits that the plaintiff has not accepted the uniform rate of Rs.1,00,000/- per metre from 18 to 20 metres and as such according to him the plaintiff is entitled to claim from the defendant the difference of such amount payable to the plaintiff. The learned counsel has

taken me through the documents on record specially the inspection report and the rates proposed by the defendant to point out that in terms thereof and considering the depth of the wells, the defendant is liable to pay to the plaintiff a further consolidated sum of Rs.60,000/- along with interest accrued thereon. The learned counsel has also pointed out that the learned Judge has erroneously rejected such claim of the plaintiff on an erroneous ground that there is no material on record to establish that such work was carried out and the value of such differential amount. The learned counsel as such submits that the impugned judgment be accordingly modified.

6. Mr. Faldessai, learned Addl. Government Advocate appearing for the defendant however disputed that further amount is payable to the plaintiff. It is pointed out that once the plaintiff has accepted the rates proposed by the defendant at a sum of Rs.1,00,000/- per metre for the depth from 17 to 18 metres, there is no justification for any further extra amount being paid to the plaintiff for the depth from 19 to 20 metres.

The learned counsel thereafter has taken me through the material on record and the correspondence exchanged between the parties to point out that in fact the plaintiff has accepted the rates proposed by the defendant and as such according to him the plaintiff has been duly paid for the extra work. The learned counsel further pointed out that as such the question of paying any further amount to the plaintiff would not arise at all.

7. I have considered the submissions of the learned counsel and I have also gone through the records and on the basis thereof, the following points for determination arise in the present appeals.

POINTS FOR DETERMINATION

- (i) Whether the learned Trial Judge was justified to award compensation for a sum of Rs.5,53,077.10 towards 100% escalation ?
- (ii) Whether the plaintiff is entitled for further sum of Rs.60,000/- being the difference of the amount paid for excavation for the depth from 18 to 20

metres of the wells put up by the plaintiff ?

8. With regard to the first point for determination, this Court in the judgment reported in **2004 GLR 13** in the case of ***State of Goa V/s Vaikunth J. Naik*** has taken a view that in cases where such escalation is claimed beyond the agreement, the contractor would be entitled for 100% escalation cost. In the present case, it is not in dispute that the plaintiff has claimed escalation beyond the terms of the agreement executed between the parties. In such circumstances, on the basis of the admitted facts of the case and taking note of the observations of this Court in the said judgment in the case of ***Vaikunth J. Naik*** (supra), I find that no fault can be found in the impugned judgment of the learned Judge in awarding such compensation to the plaintiff towards escalation cost. The first point for determination is answered accordingly.

9. With regard to the second point for determination, I find that it is not in dispute that the records clearly reveal that for

every extra one metre depth of the well constructed by the plaintiff the amount was increased by Rs.10,000/- per metre. As pointed out herein above, for the depth from 16 to 17 metres, the amount was fixed at the rate of Rs.90,000/- per metre whereas for the distance from 17 to 18 metres the amount was fixed at the rate of Rs.1,00,000/- per metre. In such circumstances, for every additional one metre of depth, the price was increased by a sum of Rs.10,000/- per metre and as such, I find that the claim of the plaintiff to seek a sum of Rs.10,000/- towards difference in the depth from 18 to 19 metres and a further sum for the depth from 19 to 20 metres is justified in the facts and circumstances of the case. On the basis of the material which is placed on record, I find that the learned Judge was not justified to refuse such claim of the plaintiff on the ground that there was no material on record to support the claim of the plaintiff that he is entitled for such differential amount for the extra work carried out by the plaintiff for the increased depth from 18 to 20 metres. As such, the learned Judge fell in error in refusing the claim of the plaintiff for the differential amount from 18 to 20 metres which the plaintiff

claimed to be a consolidated sum of Rs.60,000/-. As such, I find that besides the amount awarded by the learned Judge in the impugned judgment, the plaintiff is entitled for a further sum of Rs.60,000/- with interest accrued thereon at the rate of 8% per annum from the date of the filing of the suit up to the actual payment. The second point for determination is answered accordingly.

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

ORDER

- (i) The First Appeal No.26 of 2008 filed by the defendant stands dismissed.
- (ii) The First Appeal No. 243 of 2007 filed by the plaintiff is partly allowed.
- (iii) Besides the amount awarded by the learned Judge in the impugned judgment dated 30.04.2007 the defendant is directed to pay to the plaintiff a sum of Rs.60,000/- together with interest at the rate of 8% per annum from the date of the filing of the suit up to the actual payment within six months from today.
- (iv) Both the appeals stand disposed of accordingly with no orders as to costs.

(v) The Registry is accordingly directed to allow the plaintiff to withdraw the amount deposited together with interest accrued thereon.

F. M. REIS, J.

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