

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 117 OF 2016

M/s. Navhind Papers and
Publication Ltd., a
Division of M/s. Dempo
Industries Pvt., having
its Registered Office at
'Navhind Times' Rua
Ismael Gracias, Panaji,
Goa, represented by its
Deputy General Manager
(Advertisement, Shri
Vijay Kalangutkar).

..... Appellant

V e r s u s

1. Akshar Enterprises,
Feira Alto, near
Mapusa Clinic,
Mapusa-Goa.
2. Mr. Ramesh Mishal,
Proprietor of Akshar
Enterprises, Feira,
Alto, near Mapusa
Clinic, Mapusa-Goa.

..... Respondents

Mr. D. Pangam, Advocate for the Appellant.

Mr. J. P. Mulgaonkar, Advocate for the Respondents.

Coram :- **F. M. REIS, J**

Date : **24th February, 2017**

ORAL JUDGMENT

Heard Mr. D. Pangam, learned Counsel appearing for the Appellant
and Mr. J. P. Mulgaonkar, learned Counsel appearing for the Respondents.

2. Admit, on the following substantial question of law :

(1) Whether the Judgment dated 30.06.2016 passed by the Lower Appellate Court dismissing the Appeal preferred by the Appellants stands vitiated for failure to examine all the submissions advanced by the Appellants in their written arguments and failure to give an opportunity to the parties to advance oral submissions ?

3. Mr. Pangam, learned Counsel appearing for the Appellants pointed out that the Appellants are publishers of a Newspaper and that Respondents are the advertising agents. It is further submitted that during the course of their business relationship, the Respondent used to release advertisements to be published in the newspaper of the Appellants. It is further pointed out that these services were going on for a long period of time and as the amounts due from the Respondents were amounting to Rs.4,89,273/- in the running account maintained by the Appellants, the Appellants called upon the Respondents to pay such amount. It is further pointed out that the Respondents sought time to pay such amount by instalments which were permitted by the Appellants and ultimately as there was default in the payment of such amount, the Appellants initiated the present proceedings. Learned Counsel further pointed out that the learned Trial Judge dismissed the Suit filed by the Appellants on the ground that the advertisements which were published were not placed on record and, as such, the Appellants failed to establish their claim. Learned Counsel further submits that these findings of the learned Judge are erroneous and, according to him, in the written statements

filed by the Respondents there is no challenge that such advertisements were duly released and published in the newspaper. Learned Counsel further pointed out that an Appeal was filed by the Appellants before the Lower Appellate Court which came to be dismissed by Judgment and Order dated 30.06.2016. Learned Counsel further pointed out that without hearing the final arguments, the learned Judge proceeded to direct the parties to file written submissions and disposed of the Appeal by the impugned Judgment. Learned Counsel further pointed out that all the contentions raised by the Appellants have not been noted or considered by the learned Judge whilst passing the impugned Judgment. Learned Counsel further submits that there are no reasons in the impugned Judgment as to why the contentions raised by the Appellants are not accepted.

4. On the other hand, Mr. J. P. Mulgaonkar, learned Counsel appearing for the Respondents, submits that the Courts below have rightly dismissed the Suit filed by the Appellants. Learned Counsel further pointed out that as the Appellants failed to establish that in fact the advertisements were published in their newspaper and, as such, the Courts below were justified to dismiss the Suit filed by the Appellants. Learned Counsel has thereafter taken me through the impugned Judgments to point out that the learned Judge has rightly examined the material on record to come to the conclusion that the Appellants have failed to establish their claim. Learned Counsel, however pointed out that both the parties had filed written arguments and on examination of the Judgment passed by the Lower Appellate Court, there are no reasons as to why the contentions have been rejected but, however, learned Counsel further pointed out that the basic concepts of law have

been duly considered by the learned Judge whilst passing the impugned Judgment. Learned Counsel as such pointed out that the Appeal be rejected.

5. I have duly considered the submissions advanced by the learned Counsel appearing for the respective parties and I have also gone through the record. Order 41 Rule 30 reads thus :

“30. Judgment when and where pronounced.- (1)

The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or In the court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the court to read Out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.”

6. This Court in a Judgment dated 04.07.2014 in **Second Appeal no. 149 of 2013** in the case of **Mr. Antonio Jose da Silva vs. M/s. Horizon Realtors** has observed at Para 7 thus :

7. I have considered the submissions made by the learned Counsel appearing on behalf of the respective parties and I have also gone through the record. The record reveals that when on 19.03.2013, the appeal was fixed for clarification, the case was adjourned and posted to 30.04.2013. Even subsequently, when the matter was fixed on 20.06.2013, the record does not suggest that an opportunity was given to the Appellants to advance oral arguments. Considering that the learned Counsel for the parties had advanced oral arguments before the then Presiding Judge, I find in the interest of justice that the learned Presiding Judge ought to have given an opportunity to the parties to advance oral arguments or at least for clarification if any, with regard to the contentions raised by the parties in the written arguments. It is now well settled that the first appeal is a

valuable right of the parties as it is the last Court of fact findings and law involved in the Appeal to be decided. In this connection, this Court in the judgment reported in **2013(4) Mah. L. J. 53** in the case of ***Celina Almeida V/s Minister of Urban Development, Goa and others***, relying upon the judgments of the Apex Court has observed at para 8 thus :

"8. I have carefully considered the submissions of the learned counsel and I have also gone through the records. It is now well settled by the judgments of the Apex Court reported in 2011(2) SCC 258 in the case of Automotive Tyre Manufacturers Association Vs. Designated Authority and others and 2009(14) SCC 690 in the case of Prakash Ratan Sinha vs. State of Bihar and others, that in cases in which the consequences of the disposal of the dispute by the authority constituted in the Act would result in the civil

consequences, a party is entitled for an adequate hearing. The Apex Court has even given observation that the written submission is not a substitute to oral submissions as in the course of the oral submissions a party has an opportunity to seek for clarification or clear any doubt in the disposal of the dispute.....
....."

Taking note of the observations referred to herein above, that written submissions cannot be a substitute to oral arguments, I find that the learned Lower Appellate Court was not justified to pass the impugned judgment as the parties were not given an adequate hearing to advance their respective contentions.

7. Hence the importance of advancing oral arguments specially in matter where substantive rights of the parties are under consideration cannot be forgotten. When a Judgment would create civil effect and defeat the rights of the parties, it is always necessary that the Court has to give an opportunity to the parties to advance oral arguments and written submissions cannot be its substitute. No

doubt, the Court can also seek for written submissions to supplement the oral arguments by the parties. Even on plain reading of the Civil Procedure Code, it clearly provides that written arguments are optional. It is the contention of the Mr. Pangam, learned Counsel appearing for the Appellants, that no oral arguments were allowed to be advanced before the Lower Appellate Court. On this ground alone, I find that the impugned Judgment passed by the Lower Appellate Court, deserves to be quashed and set aside specially considering that the arguments referred in the written submissions are not reflected in the impugned Judgment passed by the learned Judge. On going through the Judgment passed by the Lower Appellate Court, I find that the learned Judge has not given any reasons to reject the contentions raised by the Appellants.

8. Apart from that, Mr. Pangam, learned Counsel appearing for the Appellants, has pointed out that the Respondents have failed to enter into the witness box and the evidence has also not been examined by the Lower Appellate Court whilst passing the impugned Judgment.

9. Without going into the merits of the rival contentions, I find that, in the interest of justice, the impugned Judgment passed by the Lower Appellate Court deserves to be quashed and set aside to be decided afresh in the light of the observations made herein above in accordance with law.

10. All the contentions of the parties on merits are left open.

11. The parties are directed to appear before the Lower Appellate Court on 12.06.2017 at 10.00 a.m.

12. Appeal stands disposed of.

F .M. REIS, J.

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