

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

SECOND APPEAL NO. 244 OF 1993

1. Laxman Nageshwarrao Parlikar,  
Died L.Rs.
  - 1/1. Smt. Prabhavatibai W/o. Laxmanrao  
Parlikar, Age. 45 yrs, Occ. Household,  
R/o. Parli.
  - 1/2. Rajiv S/o. Laxmanrao Parlikar,  
Age. 25 yrs, Occ. Agri., R/o. As above.
  - 1/3. Sow. Ranjana W/o. Govindrao Devgaonkar,  
Age. 22 yrs, Occ. Household, R/o. Ambajogai.
  - 1/4. Rakha D/o. Laxman Parlikar,  
Age. 16 yrs, Occ. Student, minor by her  
next friend, mother Smt. Prabhavatibai.
  - 1/5. Gajanan S/o. Laxmanrao Parlikar,  
Age. 14 yrs, Occ. Nil, minor by his next  
friend mother Smt. Prabhavatibai.
- ...Appellants.

Versus

Maharashtra State Power Generation  
Co. Ltd., Thermal Power Station,  
Parali Vaijnath, Dist. Beed,  
Through Chief Engineer. ...Respondent.

Advocate for Appellants : Shri M.M. Patil-Beedkar.  
Advocate for Respondent : Shri S.M. Godsay  
with Shri V.C. Patil.

CORAM : RAVINDRA V. GHUGE, J.  
Dated : 15<sup>th</sup> February, 2018

ORAL JUDGMENT :

1. On 18/01/2018, this Court had passed an order as follows :

“1. Despite service of court notice on the respondent/original plaintiff under the orders of this Court, no appearance has been entered.

2. This Court had admitted this appeal by observing that ground Nos. 1 to 5 and 13 would be substantial questions of Law, vide order dated 30/06/1993.

3. By an order dated 30/06/1993, on CA No.2258/1993, the appellant was directed to deposit the recoverable amount of Rs. 11,700/ with 12% interest from the date of the suit. On the condition of deposit, the impugned judgment, by which the amount was enhanced, was stayed.

4. Learned Advocate for the appellant makes a statement that an amount of Rs.35,400/ was deposited in the Trial Court on 01/09/1993. Considering the same, it is stated that the interim relief was continued.

5. Learned Advocate for the appellant has taken instructions after seeking an adjournment on 04/01/2018 and submits that the appellant may not pursue the pending second

appeal in the light of the entire amount having been deposited and if the respondent consents.

6. I find that this Court, while passing the order on 30/06/1993, has taken into account the amount recoverable and the interest of 12% from the date of the suit till the passing of the order of this Court. The amount has therefore been deposited and naturally after the amount is deposited in the Trial Court, further interest from the date of deposit till today would not be chargeable.

7. Learned Advocate Mr.Godsay, on the request of the Court has appeared in this matter and candidly submits that after trifurcation of the respondent/Board, it would be the Maharashtra State Power Generation Co. Ltd., through its Chief Engineer, who would be the appropriate respondent.

8. On the oral request of Mr.Patil, leave to amend is granted. Amendment be carried out forthwith. Mr.Godsay waives service of notice on behalf of the added respondent and seeks time to take instructions.

9. Considering the said request, stand over to 25/01/2018 at 2.30 p.m.”

2. Learned counsel Shri Godsay, appearing on behalf

of the respondent in the Second Appeal submits that there can be no dispute that the plaintiff has deposited the decretal amount, as per the Trial Court's order. Shri Patil, learned counsel for the appellants submits that the amount of Rs. 35,400/- was deposited before the Executing Court by the appellants pursuant to the directions of this Court to deposit such decretal amount as a condition for ad-interim relief. A copy of the document indicating the receipt towards the deposit is placed on record and is marked as 'X' for identification.

3. Learned counsel for the respondent submits, on instructions from the Chief Legal Advisor, that the respondent be allowed to withdraw the amount deposited, with accrued interest and the Chief Engineer be permitted to withdraw the said amount. Learned counsel for the appellants submits, on instructions that the appellants are agreeable. Considering the above, there is no dispute that after depositing the amount, the judgment and decree of the Trial Court dated 15/09/1983 in R.C.S. No. 232/1978, has been fully satisfied.

4. The issue that remains to be considered is as to whether the Appellate Court could have dismissed the appeal filed by these appellants and instead of confirming the decree of the Trial Court which was assailed, could have modified the same and enhanced the recovery amount to Rs. 18186.17 paise. The grievance of these appellants is that when the appeal seeking quashing of the decree of the Trial Court was dismissed and no appeal was preferred by the decree holder, the Appellate Court could not have dismissed the appeal filed by the appellants and yet, modified the decree in favour of the decree holder, who was never aggrieved by the quantum of amount directed to be recovered by the Trial Court.

5. It is obvious that when these appellants were aggrieved by the judgment of the Trial Court permitting the respondent herein to recover an amount of Rs. 11,698.17 paise, the Appellate Court could have either modified the decree in the light of the challenge of the appellants or could have fully accepted the challenge and set aside the decree or could have rejected the challenge and sustained the decree.

6. In my view, the Appellate Court, while dismissing the appeal of these appellants, could have only sustained the decree of the Trial Court, which was subject matter of challenge and could not have modified it to the prejudice of the appellants, when the decree holder had no grievance about the decree of the Trial Court. Hence, the substantial questions as were framed at serial Nos. 01 and 02 by this Court, are answered accordingly. The rest of the questions at Serial Nos. 03 to 05 and 13, are not being gone into considering the statements made by both the sides.

7. As such, the Second Appeal is partly allowed. The Chief Engineer of the respondent/establishment is permitted to withdraw the amount deposited by the appellants before the Executing Court along with accrued interest by tendering an application for withdrawal, upon being duly identified by an advocate and by furnishing a copy of his identity card.

8. Needless to state, since the judgment and the decree of the Trial Court has been sustained and is fully satisfied, the respondent shall forthwith seek

disposal of the execution proceedings before the  
Executing Court after withdrawal of the amount.

( RAVINDRA V. GHUGE, J. )

S.P.C.