

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.375 OF 2014
WITH
CIVIL APPLICATION NO.166 OF 2015
IN
SECOND APPEAL NO.375 OF 2014**

The Chief General Manager (Suburban)
Mahanagar Telephone Nigam Ltd.

And anr

... Appellants.

V/s.

Ashok Bapu Patil

... Respondent

Smt. Suvedita I. Shaw, for the appellants.

Mr. Sanskar Marthe, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th JULY, 2018.

P.C. :

1] Heard learned counsels for the appellants and respondent.

2] Admit.

3] With the consent of learned counsel for both parties,
Appeal is taken up for final hearing at the stage of admission itself.

4] This Second Appeal is preferred against the Common
judgment and decree dated 4.9.2013, passed by the District Judge-8,
Thane, thereby dismissing the counter appeals, which were preferred
by the appellant and respondent against each other, bearing Civil
Appeal No.222 of 2012 and 158 of 2013, respectively.

5] Both these Civil Appeals were arising out of the judgment

and decree dated 13.7.2010, passed by the 5th Joint Civil Judge Senior Division, Thane, in Summary Suit NO.99 of 2005.

6] The said suit was filed by the respondent herein for recovery of an amount of Rs.7,34,778/- with interest at the rate of 24% per annum towards the bills submitted by him for the work carried out in pursuance of the work order issued by the appellant.

7] The suit was resisted by the appellants herein on two grounds, first that the work was not satisfactorily completed and second that the suit for recovery of the amount was barred by limitation.

8] Both the trial Court and the Appellate Court have recorded concurrent finding of fact that the appellant had failed to prove that the work was not satisfactorily completed.

9] Both the Courts also held that the suit is within the limitation as the bills submitted by the respondents were kept pending and finally they were rejected in the year 2005 just before filing of the suit.

10] The trial Court accordingly decreed the suit with interest at the rate of 18% per annum on the decretal amount. Hence the appellant preferred first Appeal in the District Court, challenging the decree of the suit; whereas respondent preferred appeal, being aggrieved by the rate of interest at the rate of 18%, though it was

claimed at the rate of 24% per annum.

11] As stated above, the Appellate Court has dismissed both the appeals and thereby confirmed the judgment and decree of the trial Court.

12] In the Second Appeal, again those two questions of law are raised, first is, whether the suit is within the limitation and the second, whether the respondent has completed the work satisfactorily?

13] As regards the point of limitation, it is undisputed that the work was completed in the year 1999 itself; and since then respondent has submitted various bills and they were kept pending, by raising one objection or another and ultimately bills were rejected on 12.4.2005. The only question raised for consideration is whether as per Article 18 of the Limitation Act, the suit should have been filed within 3 years from the date of completion of the work in the year 1999 or whether the suit filed in the year 2005 after final rejection of the bills, can be called as within the limitation.

14] In this respect, learned counsel for respondent has placed reliance on the judgment of the Apex Court in the case of **M/s Aries and Aries -vs- Tamil Nadu Electricity Board [AIR 2017 SC 1897]**, wherein in the identical facts, money was claimed by the plaintiff under the contract towards the work completed by him and the suit

was filed after rejection of the bills which was more than 3 years from completion of the work. In this context, it was held by the Hon'ble Apex Court that, normally the date of final bill that is the date on which work was completed would be relevant under Article 18 of the Limitation Act and therefore, within 3 years from the date when the work was done, the suit should have been filed. However, after considering the fact that there was lot of correspondence exchanged between the parties and finally rejection of the bill was only on 6th November, 1981 and from that cause of action, the suit was filed within 3 years, it was held that the same is required to be considered to be within the limitation, in view of Article 113 of the Limitation Act.

15] Herein in the case, considering the undisputed factual position on record that the bills were submitted in time, but they were kept pending till year 2005 and the final rejection of the bills was only just few months or days before filing of the suit, the suit is required to be held as filed within time.

16] As regards the grievance raised by learned counsel for the appellant that both the courts below have committed an error in holding that once the work was satisfactorily completed as appellant has failed to prove contrary. It is submitted that, the burden was upon respondent to show that he has completed the work satisfactorily.

However, in my considered opinion, the trial Court and the Appellate Court, have on the basis of evidence and appreciation thereof come to the conclusion that if as per case of appellant much of the work was left incomplete and the appellant was compelled to get it completed through same other contractor, it was necessary for the appellant to prove the same. As a matter of fact the witness for appellant was called upon to specify the bills submitted by respondent, the work of which was incomplete. However, he was not able to do so. Both the Courts below have also considered how appellant had failed to show that the work of levelling of pits and surplus soil was left incomplete by the respondent. Even joint inspection was carried out. In such circumstances, this Court cannot enter into the re-appreciation of evidence, by converting itself into “third Court of fact finding”. Factual aspects cannot be reconsidered again.

17] There is no substantial question of law as such involved in the Second Appeal.

18] The Second Appeal, therefore, stands dismissed.

19] In view of dismissal of Second Appeal Civil Application No.166 of 2015 becomes infructuous and the same is disposed of accordingly.