

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 760 OF 2019

THE MORMUGAO PORT TRUST, THR.,
SANTOSH ANAND NAIK., ... Petitioner

Versus

CONCAN CONSTRUCTION PVT. LTD.,
THR. ITS MANAGING DIRECTOR,
PREETAM MASURKAR., ... Respondent

Mr. Bhargav M. Khandeparkar, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 29th August, 2019

P.C.

Heard Mr. Khandeparkar, the learned Counsel for the petitioner for sometime.

2. The respondent had filed Special Civil Suit No.11/2011 against the petitioner seeking compensation of Rs.23,02,923.20 for alleged breach of the contract. There is a counter suit filed by the petitioner against the respondent being Regular Civil Suit No.106/2013 seeking compensation of Rs.4,04,379.54, attributing breach of contract to the respondent. Both the suits were tried by the Trial Court and by a common Judgment and Decree dated 21.12.2018, the suit filed by the petitioner has been decreed and the suit filed by the respondent has been

dismissed. It appears that the respondents have filed Regular Civil Appeal No.15/2019 challenging only part of the impugned judgment and decree by which the suit filed by the petitioner has been decreed. At this stage, there is no challenge by the respondents to the dismissal of their suit being Special Civil Suit No.11 of 2011.

3. The petitioner filed an application, exhibit D-10, raising a preliminary objection to the maintainability of the appeal on the ground of preliminary jurisdiction of the appellate Court. It was contended that having regard to the valuation of Special Civil Suit No.11/2011, the appeal would not lie before the learned District Judge which objection has been negatived by the Appellate Court by the impugned order dated 06.07.2019.

4. The only contention raised by Mr. Khandeparkar is that the appeal involves the examination of the common issue, as to whether it is the petitioner or the respondent who are responsible for the breach of contract. This, according to the learned Counsel for the petitioner, is the reason why the appeal would not lie before the learned District Judge.

5. The contention, in my considered view, cannot be accepted for the reason that, at present, the challenge by the respondent is only to the part of judgment and decree by which Regular Civil

Suit No.106/2016 filed by the petitioner has been decreed. In other words, as at present, the respondents have not challenged the dismissal of Special Civil Suit No.11/2011.

6. Mr. Khandeparkar, the learned Counsel for the petitioner, at this stage, pointed out that the respondents have filed an application for review of the part of the impugned judgment and decree by which Special Civil Suit no.11/2011 has been dismissed. Even assuming it to be so, at present, there is no challenge to the dismissal of Special Civil Suit No.11/2011 before the learned District Judge. If, eventually the respondents also challenge the part of the impugned judgment and decree by which Special Civil Suit No.11/2011 is dismissed, the Appellate Court will have to pass appropriate orders on the basis of the contention as raised.

7. At present, no case for interference is made out in the impugned order. The petition is accordingly dismissed.

C. V. BHADANG, J.

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