

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

SECOND APPEAL NO.81 OF 2019

(Maharashtra State Power Generation Company and another ..vs.. M/s. Shrikisan Insulation Work)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri G.E. Moharir, Counsel for the appellants,
Shri M.R. Joharapurkar, Counsel for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 26-04-2019

The respondent, who is petty contractor brought Regular Civil Suit 109 of 2012 for recovery of charges for work executed, which came to be dismissed by the Civil Judge (Junior Division), Saoner.

2. The respondent-plaintiff preferred Regular Civil Appeal 401 of 2013 which is allowed by the District Judge-8, Nagpur by judgment and decree dated 7th February, 2017.

3. Dissatisfied, the defendants are in appeal under Section 100 of the Code of Civil Procedure, 1908.

4. In the light of the submission which is vehemently urged by Shri G.E. Moharir, learned Counsel, that the absence of cogent evidence on record raises a substantial question of law, I have perused the reasons recorded by the Courts below, and having done so, I am satisfied that

the findings of fact recorded in the reversing judgment are consistent with the evidence on record.

5. The plaintiff-contractor contends that the work of installation of G.I. Sheets and ancillary work was executed from time to time on the verbal directions of the Engineer/s concerned. The defendants have not taken a specific stand that the work is not executed at all. In support of the plaintiffs, the Junior Engineer, who was working at the relevant time one Shri Anupkumar Sathe, has stepped into the witness box. The first appellate Court has held that the evidence of PW 1-plaintiff and PW 2-Anupkumar Sathe is convincing and is not shattered in cross-examination.

6. The finding of fact recorded by the first appellate Court would ordinarily bind this Court. The finding is not perverse nor is the finding vitiated by any patent illegality or fundamental infirmity as would give rise to a substantial question of law.

7. The appeal is without substance and is dismissed with no order as to costs.

Civil Application (CAO) No.1929/2018.

In view of the dismissal of the appeal, this application shall have to be allowed.

2. The respondent-plaintiff is permitted to withdraw the amount deposited by the defendants in this Court.
3. The civil application is disposed of accordingly.

JUDGE

adgokar