

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 139 OF 2010
WITH
CROSS OBJECTION NO. 2 OF 2011

FIRST APPEAL NO. 139 OF 2010

1. State of Goa, Through its Chief Secretary,
Secretariat at Porvorim.
2. The Executive Engineer, W.D. VII (NH),
PWD, Near Patto Bridge, Panaji, Goa.
3. The Chief Engineer, PWD, Altinho, Panaji-
Goa. Appellants

Versus

M/s Peter B. Colaco & Sons, A registered
partnership firm, with office at Montezinha Bldg.,
Old Market, Margao, Goa 403 601. Represented
by its Power of Attorney Holder, Shri Guruprasad
S. Ghate, R/o H. No. 309, Comba, Margao, Goa. Respondent

Ms. Sapna Mordekar, Additional Government Advocate for the
Appellants in First Appeal No. 139/2010 and for the Respondents in
Cross Objection No. 2/2011.

Mr. S.D. Padiyar with Mr. P. Shiroadkar and Mr. S. Bhangui, Advocates
for the Respondent in First Appeal No. 139/2010 and for the
Appellant in Cross Objection No. 2/2011.

Coram:- M.S. SONAK &
SMT. M.S. JAWALKAR, JJ.

Date:- 14th February, 2020

ORAL JUDGMENT: (Per M. S. Sonak, J.)

Heard Ms. Sapna Mordekar, the learned Additional Government Advocate for the appellants and Mr. Padiyar, the learned Counsel for the respondents/cross objectors.

2. The learned Counsel for the parties, on the basis of instructions, submit that that the impugned judgment and decree dated 19.06.2010, which is to be read along with corrigendum dated 25.10.2010 in Civil Suit No. 15/2005, be set aside and the matter be remanded to the learned District Judge for passing fresh orders, after taking into consideration all the contentions of the parties.

3. The learned Counsel for the parties state that no liberty be granted for leading further evidence in the matter and directions may be issued to dispose off Civil Suit No. 15/2005, on the basis of oral and documentary evidence, which is already been produced by the parties.

4. On perusal of the impugned judgment and decree, we also find that most of the contentions of the parties, have either not been dealt with or in any case, the reasoning proceeds on the basis of

excessive assumptions. The oral and documentary evidence on the record has not been properly evaluated. For these reasons, we see no difficulty in accepting the suggestion of the learned Counsel for the parties.

5. Accordingly, we set aside the impugned judgment and decree and remand the matter to the concerned District Court in order to dispose off Civil Suit No. 15/2005 afresh. However, by '*afresh*', we should not be misunderstood as granting any liberty to the parties to lead fresh evidence in the matter. The concerned District Judge will have to dispose off the suit on the basis of the evidence already produced by the parties on record, but, after hearing the oral arguments. This time, the concerned District Judge to ensure that the contentions of both the parties are referred to and addressed while disposing off the suit.

6. As a condition for interim relief, the appellants were directed to deposit the decretal amount. This amount has been deposited and is invested in a nationalized Bank. The learned Counsel for the parties submit that such deposit/investment may continue until the concerned District Judge disposes off Civil Suit No. 15/2005 afresh. Once, the suit is disposed off, liberty to the parties to apply for suitable orders in relation to such deposit/investment. Registry to ensure that the investment with the nationalized Bank continues for an

initial period of at least, one year from today. The Registry is now directed to transmit all the records to the concerned District Judge, within a period of two weeks from today. The parties are directed to appear before the concerned Principal District Judge on 9th March, 2020 at 10:00 a.m., for the purpose of receiving directions as to further proceedings in the suit. But taking into consideration that the Civil Suit is of the year 2005, we direct that the same may be disposed off within a period of four months from the date of receipt of records from this Court.

7. The Appeal and the Cross Objection, are disposed off in the aforesaid terms.

8. The drawing of formal decree of this judgment and order is dispensed with.

SMT. M.S. JAWALKAR, J.

M. S. SONAK, J.