

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.120 OF 2019

1. Government of Goa, represented by
The Chief Secretary, Government of Goa,
With Office at the Secretariat, Porvorim,
Bardez-Goa.-401002.

2. Secretary(PWD) Government of Goa
with Office at Porvorim, Bardez-Goa.

3. The Principal Chief Engineer,
P.W.D. having office at Altinho, Panaji-
Goa.

4. The Executive Engineer, Works Division
VI, Public Works Department, Having
office at Fatorda, Salcete-Goa.

... Appellants

Versus

1. M/s. Furtado Associates, Pwd Civil
Contractor, a registered Partnership Firm
having its head office at H.No. 488, aguada
Waddo, Ftorda, Margao, Goa. Through its
Partner

1(a) Shri Datta S. Hegde, Managing Partner

of the Appellant No. 1, Son of Late Subhash R. Hegde, 39 years old, Indian National, Residing at H. No. 1507, Dwarka Niwas, Murida Fatorda, Margao-Goa.

1(b)Shri Saeesh S. Hegde, Partner of the Appellant No. 1 Son of late Subhash R. Hegde, Major of age, Indian National, Residing at H. No. 1507, Dwarka Niwas, Murida Fatorda, Margao-Goa.

1(c)Mrs. Augusta Silva Furtado, Partner of the Appellant No. 1, Wife of Diogo Joao Furtado, Major of age, Indian National, Residing at H.No. 488, Aguad Waddo, Fatorda, Margao-Goa.

...Respondent

Ms.Amira Razaq, Government Advocate *for the Appellants.*

Mr.S. Karpe, Advocate *for the Respondent.*

CORAM: MANISH PITALE, J.

DATED: 8th December, 2021

ORAL JUDGMENT:

1. By this appeal the appellants i.e. the State and its Authorities have challenged judgment and order dated 02/05/2018, passed by the District and Sessions Court, South Goa, whereby a suit for recovery filed by the respondent was decreed and the appellants were directed to pay Rs.21,94,010/- alongwith interest @14% per annum from March, 2013, till final payment.
2. The respondent is a Class 1B contractor of the Public Works Department and it was awarded a contract of road work at some places in the State of Goa. According to the respondent, while payment for the main work awarded to the respondent was made, payment for additional work was not released, due to which the respondent was constrained to file the aforesaid suit for recovery.
3. A perusal of the plaint in the present case shows that the respondent sought a decree for payment of an amount of Rs.21,94,010/- for the additional work with interest @18% per annum and further sought a decree for payment of compensation/ damages of a specific amount for the loss of profit suffered due to

inaction on the part of the appellants in releasing the aforesaid amount.

4. The appellants filed their written statement and the principal ground raised on their behalf to justify their action of not releasing the amount was that the respondent had failed to raise the bill and that therefore, there was no cause of action for filing the aforesaid suit. The Court below framed issues and the parties led oral and documentary evidence in support of their respective stands.

5. On appreciation of the evidence on record, the Court below found that the respondents were entitled for recovery of amount as claimed with interest @14%per annum, but the prayer for grant of compensation / damages was rejected.

6. Ms. Amira Razaq, learned Government Advocate appearing for the appellants submitted that it was an admitted position that the respondent never raised any bill for the additional work. It was submitted that in the absence of raising a bill for the additional work carried out by the respondent, there was no cause of action for filing the suit. It was submitted that unless the respondent placed on record material to show that the final bill was raised, there was no

reason for granting decree in favour of the respondent. It was submitted that the oral and documentary evidence placed on record was not appreciated in the correct perspective by the Court below, in the backdrop of the pleadings of the parties and that therefore, the impugned judgment and order deserved to be interfered with. It was submitted that, in any case, award of 14% interest per annum was not based on any cogent material on record and that awarding interest at the aforesaid rate amounted to penal interest, which was not justified in the facts and circumstances of the present case.

7. On the other hand, Mr. S. Karpe, learned Counsel appearing on behalf of the respondent submitted that the impugned judgment and order was passed on the basis of proper appreciation of the pleadings, evidence and material on record. It was submitted that there was admission given by one of the witnesses of the appellant that payments were made to contractors, including the respondent herein, in the absence of bills being raised, only on the basis of the measurements carried out by the officials of the appellants themselves. It was submitted that therefore, no interference was warranted in the impugned judgment and order. It was further submitted that, insofar as the component of the interest was

concerned, the respondent had specifically examined a witness who placed on record the fact that the respondent had taken loans and he was required to pay interest for return of such loan amounts, justifying the award of interest as granted by the Court below.

8. In view of the aforesaid, the following point arises for consideration in the present appeal:

“Whether the Court below was justified in granting decree of recovery of specific amount with interest @14% per annum in favour of the respondent?”

9. This Court has perused the pleadings, evidence and material on record. The respondent has specifically stated in the plaint as regards the basis for claiming specific amount alongwith interest from the appellants. A perusal of the written statement shows that the principal ground on which the appellants have refuted the claim of the respondent is failure on the part of respondent in raising bill for the additional work. According to the appellants, in the absence of raising bill for the additional work, there was no cause of action for the present suit.

10. A perusal of the evidence and material on record shows that while the witnesses who deposed for the rival parties made statements in consonance with the stands taken in the pleadings, but it was conceded on the part of one of the witnesses for the appellants that as many as 11 contractors who were awarded similar work were paid amounts only on the basis of measurement books and running account bills, even when independent bills were not raised. In fact, it was admitted that various payments were made to the respondent itself under running bills and on the basis of the measurement books. The evidence on record also shows that joint measurement was carried out and that the witness deposing on behalf of the respondent admitted the contents of such measurements jointly carried out and that he was not disputing the same.

11. In the face of such material on record, it becomes clear that the stand taken by the appellants while disputing the claim of recovery raised on behalf of the respondent, was unsustainable. The Court below correctly appreciated the evidence and material on record to render findings in favour of the respondent.

12. Insofar as the question of grant of interest @14% per annum is concerned, it is relevant that the respondent had prayed for grant of interest @18% per annum. In order to support its claim, the respondent had examined a witness to demonstrate that since it had taken a loan, which had to be repaid along with interest, the prayer made in the suit for grant of interest @18% per annum was justified.

13. The Court below took into consideration the evidence of the aforesaid witness and found that interest at least @14% per annum ought to be granted. This Court is of the opinion that this is not a case of no evidence for grant of interest and the rate at which the interest is granted by the Court below appears to be reasonable, in the face of the evidence placed on record. Therefore, on this count also no error can be attributed to the impugned judgment and order.

14. In view of the above, the point framed hereinabove is answered in favour of the respondent and it is found that no case is made out to interfere with the judgment and order. Accordingly, the appeal is dismissed.

15. This Court is informed that during the pendency of the appeal, the appellants had deposited the entire decretal amount and that the respondent had withdrawn 25% of the said amount.

16. As a consequence of the dismissal of the appeal the balance 75% amount alongwith interest, if any, shall be released forthwith in favour of the respondent.

MANISH PITALE, J.