

vinita

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 16 OF 2021

MOHAMMAD YASSER ... Appellant.

Versus

V.S. BETAGERI ...Respondent.

Mr. K. Kerkar, Advocate *for the appellant.*

CORAM: MANISH PITALE, J.

DATED: 16th November, 2021.

P.C.:

1. By this Second Appeal(original defendant) has challenged concurrent orders passed by the two Courts below whereby the respondent/original plaintiff was granted relief of a decree directing the appellant to pay an amount of Rs. 5,43,000/- along with interest at the rate of 6% per annum. According to the appellant, the amount so calculated and directed to be paid to the respondent is in the teeth of the pleadings in the plaint itself. The appellant also claims that the basis of awarding the said amount of money is not passed on proper appreciation of the evidence on record.

2. The facts in brief leading to filing of the present appeal are that the appellant engaged the respondent who is a civil Engineer and Building Contractor for construction of two bungalows at Sangolda Village. As per agreement between the parties the respondent was to be paid an amount of Rs.30,00,000/- for construction of two bungalows. According to the respondent, during the

process of construction of bungalows, the appellant sought some changes and increased the floor area of the construction of the two bungalows. According to the respondent, the appellant paid sum of Rs.27,50,000/- from the agreed amount and failed to pay balance amount of Rs.2,50,000/-.

3. In this backdrop, the respondent filed aforesaid suit claiming that the appellant was liable to pay aforesaid balance amount of Rs.2,50,000/- and apart from the said amount, further amount towards construction of increased floor area in the two bungalows and also for construction of two septic tanks.

4. The appellant denied the claim of the respondent and *inter alia* claimed that the agreement itself was cancelled on the ground of alleged substandard nature of the construction work carried out by the respondent. Record shows that while the respondent led oral and documentary evidence in support of his pleadings, the appellant failed to enter the witness box. Be that as it may, the respondent as the plaintiff was expected to prove his case to the hilt.

5. The concurrent judgments of the two courts below show that the claims made by the respondent were partly accepted and findings of fact were rendered in his favour. The Courts below found that apart from balance amount of Rs. 2,50,000/- to which the respondent was found entitled, he was also entitled for recovery of an amount of Rs.2,93,000/- towards additional construction of the

floor area undertaken as per the direction given by the appellant. The claim of Rs.80,000/- towards construction of two septic tanks was rejected by the Courts below.

6. In this backdrop, when the present appeal was taken up for hearing, the learned counsel Mr. Kerkar, appearing on behalf of the appellant submitted that the decreed amount did not match with the pleadings of the respondent(plaintiff), on a perusal of the paragraph 17 of the plaint. This Court has perused the entire plaint, and it is found that although there appears to be some discrepancy in the addition of the figures stated in paragraph 17 of the plaint, the contents of the paragraphs 7, 8 and 9 of the plaint are absolutely clear, wherein the respondent (original plaintiff) has specifically pleaded that he is entitled to a decree towards payment of Rs. 2,50,000/- for the balance amount, Rs 293,000/- towards additional construction and Rs.80,000/- towards construction of two septic tanks.

7. The Respondent led evidence on the basis of such specific claims, made in the plaint. It is found as a matter of fact by the two Courts below concurrently that the respondent was able to prove his case for entitlement of the amount. As noted above, the appellant failed to enter the witness box to support the claim that the agreement was cancelled due to alleged substandard construction work undertaken by the respondent. This Court is of the opinion that no substantial question of law arises in the present appeal and, therefore, no case is made out for interference under Section 100 of the CPC.

Consequently, the Appeal stands dismissed. Pending applications, if any, stand disposed of.

MANISH PITALE,J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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