

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.115/2008

PREETI ENGINEERING SERVICES

represented by its sole proprietor

C. K. Varghese (since deceased)

represented by LRs:

a. Preeti Varghese

daughter of C. K. Varghese

45 years of age,

b. Praveen Varghese Charuvil

son of C. K. Varghese

41 years of age, and his wife;

c. Shilpa Praveen Charuvil

40 years of age,

All residents of H.No.133,

El-Shaddai, Anand Estate,

Near Naval Store Depot,

Alto-Dabolim Goa 403 801.

...APPELLANTS

Versus

STATE OF GOA

represented by Chief Secretary,

Government of Goa, Secretariat,

Porvorim, Goa.

...RESPONDENT

WITH

MISC. CIVIL APPLICATION NO.180/2021

PREETI ENGINEERING SERVICES

represented by its sole proprietor

C. K. Varghese Thr. proposed LRs.

... APPLICANTS

Versus

STATE OF GOA, Thr. Chief
Secretary, Govt. of Goa

... RESPONDENT

Mr. J. P. Mulgaonkar, Senior Advocate, Advocate *for the Appellants/
Applicants.*

Mr. P. Faldessai, Additional Government Advocate *for the
Respondent.*

**WITH
FIRST APPEAL NO.246/2008**

STATE OF GOA, Thr. Chief
Secretary, Govt. Of Goa

...APPELLANT

Versus

PREETI ENGINEERING
SERVICES Represented
By Proprietor C. K. Varghese

... RESPONDENT

Mr. P. Faldessai, Additional Government Advocate *for the Appellant.*
Mr. J. P. Mulgaonkar, Senior Advocate, Advocate *for the Respondent.*

CORAM: M. S. SONAK, J.

DATED: 30th September 2021

ORAL JUDGMENT:

- 1.** Heard learned counsel for the parties.
- 2.** Both these appeals are cross-appeals questioning the Judgment and Decree dated 27.12.2007 made by the Ad-hoc District Judge-1, Fast Track-I, South Goa, Margao (Trial Court)

partly decreeing the plaintiff's suit but dismissing the defendant's counter claim.

3. The appellant in First Appeal No.115/2008 is the original plaintiff and the appellant-State in First Appeal No.246/2008 are the original defendants. Both are aggrieved by the impugned Judgment and Decree. The plaintiff is aggrieved because the suit was not decreed in its entirety. The respondent-State is aggrieved because its counter claim came to be dismissed.

4. This is a case where the plaintiff had been awarded contract for executing project known as “Balance work for Construction of Branch Canal taking off at Ch.18.45 kms of Selaulim Irrigation Project Main Canal from Ch. 7.65 kms to 8.34 km in Sarzora Village of Salcete Taluka”. The plaintiff, on the grounds set out in the plaint had claimed a decree in an amount of ₹13,62,259/- together with interest @ 15% p.a. from 09.12.2001 till final payment. The defendant-State had denied the case of the plaintiff and raised a counter claim in an amount of ₹81,770/- claiming that there was delay on the part of the plaintiff in execution of work.

5. The Trial Court framed as much as 16 issues. Mr. Faldessai points out that two additional issues were in fact been

framed on 16.06.2006 but the same do not even find any reference in the impugned Judgment and Decree.

6. Parties lead both oral as well as documentary evidence. All this is quite voluminous. However, the perusal of the impugned Judgment and Decree indicates that the learned Trial Judge has virtually not even adverted, much less, discussed the oral and documentary evidence on record. In an extremely cursory manner, the suit has been dismissed.

7. According to me, the suit could have been disposed of either way without the learned Trial Judge adverting to the voluminous documentary and oral evidence on record. Most of the contentions of the parties have not even been adverted to, much less, considered by the learned Trial Judge. On this short ground, there is no option but to set aside the impugned Judgment and Decree and to remand the matter for fresh consideration and disposal.

8. Accordingly, the impugned Judgment and Decree is set aside and the matter is remanded to the concerned Trial Judge with the directions to re-hear the final arguments, consider the documentary as well as the oral evidence on record, consider the rival contentions and thereafter, make a reasoned Judgment and

Decree. All this exercise will have to be completed by the Trial Judge within a period of maximum four months from the date of filing of the certified copy of this order.

9. The learned counsel for the parties point out that the original plaintiff has expired and his legal representatives have already been brought on record in these proceedings. They request that the requirement of undertaking this exercise again in pursuance of remand may be dispensed with. They state that they will carry out formal amendment to the plaint/cause title on 18.10.2021 or in any case latest by 25.10.2021. According to me, this joint request made by the learned counsel for the parties is quite reasonable and the Trial Court may act on the basis that the legal representatives are now on record. The Trial Court to permit the party to carry out formal amendment and proceed to thereafter dispose of the suit.

10. The parties to appear before the Trial Judge concerned on 18.10.2021 at 10.00 a.m. and file a certified copy of this order.

11. Both the appeals are consequently allowed in the aforesaid terms. There shall be no order for costs.

12. The miscellaneous civil application does not survive and the same is also disposed of.

13. The amounts deposited by the State in this Court are now to be transmitted to the account of the Trial Court. This deposited amount will abide by the final orders in the suit.

M. S. SONAK, J.