

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.84 OF 2019

UDAY KUMAR S. PRABHU DESSAI ... Appellant

Versus

D. PRATAP CHANDER REDDY (DEC)
THR. LEGAL HEIR, DOLDA SHRIYA
REDDY.

... Respondent

Mr. Jatin Ramaiya, Advocate for the Appellant.

CORAM: M. S. SONAK, J.

DATED : 6th OCTOBER 2022

P.C.:

1. Heard Mr. Ramaiya, learned counsel for the Appellant.
2. Mr. Ramaiya proposes the following substantial questions of law:-

(1) Whether whilst passing the impugned judgment and decree the Ld. First Appellate Court failed to substantially and purposefully comply with the mandate of Order XLI Rule 30 (2) and 31 of the Code of Civil Procedure, 1908 and thereby rendering the judgment and decree passed erroneous and bad in law?

(2) Whether the Ld. First Appellate Court as also the Ld. Trial Court failed to appreciate material documentary evidence on

record including Letter dated 4/7/2008, addressed by the Respondent to the Appellant returning the original receipts cum declaration of contract by the Appellant and the receipt dated 11/1/2008 and the recitals therein in the specific background of the specific pleadings and/or defence raised by the parties?

(3) Whether the Ld. First Appellate Court impugned judgment and decree has upheld and rendered perverse and erroneous findings of the Ld. Trial Court and has relief upon material inadmissible in evidence and/or has not considered material evidence in the right perspective and arrived at perverse finding more particularly in the background of pleadings of the parties to the lis?

(4) Whether both the Ld. Courts were duty bound to cast adverse inference upon the Respondents in terms of Section 114 of the Indian Evidence Act for not have offered him for cross examination?

3. In my judgment, the above substantial questions of law or for that matter any other substantial questions of law do not arise for determination in this Second Appeal.

4. This is a case where two Courts have concurrently held that the Appellant- Defendant received from the Plaintiff an amount of ₹11,50,000/- towards the purchase of property or towards advance payable to the owner for the purchase of the property. The Appellant – Defendant had admitted that he was a broker who was involved in purchasing the property for the Plaintiff.

5. The record bears out that the Appellant refunded ₹5,00,000/- to the Plaintiff on 26.02.2008. The Appellant however claimed that this refund was in the full and final settlement. The Appellant led evidence but on assessment of this evidence, two Courts have concurrently found that there was no question of any full and final settlement and therefore, the Appellant was liable to refund the balance amount as well.

6. Though the interest at the rate of 24% per annum was claimed by the Plaintiff, the two Courts have awarded interest only at the rate of 8% per annum.

7. This is a case where the two Courts on assessing the evidence have recorded the concurrent findings of fact. There is no perversity in the record of such findings. No inadmissible evidence has been considered. This is not a case of exclusion of relevant evidence. Even otherwise the case of the Appellant that the original Plaintiff agreed to settle the matter by accepting less than 50% of the amount paid for by him is quite unbelievable.

8. This is also not a case of any substantial non-compliance with the provisions of Order XLI Rules 30 and 31 of the Civil Procedure Code as alleged. No prejudice is demonstrated by the Appellant. The evidence has been fairly considered and there was no question of drawing adverse inference against the original Plaintiff.

9. For all the above reasons, this appeal is liable to be dismissed and is hereby dismissed. There shall be no order for costs.

M. S. SONAK, J.