

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA**

**SECOND APPEAL NO. 17 OF 2023**

PRABHU ROCKSHAPE  
MACHINERY PVT., LTD., THR., ITS  
DIRECTOR SIDHARAM  
PRABHUCHITTE ... Appellant

***Versus***

S. CHEMS AND ALLIED  
PRODUCERS PVT. LTD.,  
THR., ITS AUTH SIGN.  
RAJESH MAHESHWARI ... Respondent

Mr Sanman R. Keny, Advocate for the Appellant.

**CORAM: M. S. SONAK, J.**

**DATED : 24<sup>th</sup> FEBRUARY 2023**

**P.C.:**

1. Heard Mr Keny, learned counsel for the Appellant.
2. This appeal challenges the concurrent decrees dated 20.12.2019 and 26.02.2021 decreeing the Respondent's (plaintiff's) suit and directing the Appellant to pay an amount of ₹4,70,276/- with interest at the rate of 15% per annum from 16.01.2012 till the actual payment for the material which the Respondent admittedly supplied to the Appellant.

3. Mr Keny submitted that the entire material was defective, and the Appellant telephonically informed this to the Respondent. He states that the Respondent never demanded the money, but it was the Appellant who, in writing, notified the Respondent about the defective material. He submits that the two Courts misconstrued the email at Exhibit 33 dated 03.03.2012 when it is evident that this email had no nexus with the material delivered and the payment demanded in the suit. He submits that the Appellate Court has acknowledged that the purchase order referred to in Exhibit 33 is not the purchase order based on which the suit was instituted. Yet, the response about the outstanding amount is misconstrued and held as an admission of liability. Mr Keny submits that perversity is involved in the finding recorded by the two Courts, thus giving rise to a substantial question of law.

4. Upon duly considering Mr Keny's submission and evaluating the material on record, I am satisfied that there is no perversity in the two Courts' concurrent findings of fact.

5. The two Courts have held that the delivery of material on or about 16.01.2012 was never disputed. The two Courts held that a part of such material amounting to almost 4500 kgs was consumed/used by the Appellant. At the highly belated stage, when it was apparent that payments would have to be made for the delivered material, an email was addressed complaining about its inferior quality. On the evaluation of evidence on record, the two Courts have disbelieved this

version of the Appellant and held that the Appellant is liable to pay for the material delivered.

6. However, Mr Keny disputed the position about the Appellant's partial consumption of delivered material. The basis for such a dispute was not clarified. The Appellant's witnesses, DW1 and DW2, have admitted that the Appellant did use 4500 kgs of material supplied by the Respondent. Thus, the evidence on record supports the finding about partial consumption of the delivered material. Such a finding cannot be regarded as perverse and, therefore, liable for interference in a second appeal under Section 100 of C.P.C.

7. Further, there is no record of any immediate protest by the Appellant about supplied material being allegedly inferior or defective. The Appellant's case of telephonic protest is not proved. Except for the self-serving statement of one of the Appellant's witnesses, there is no other evidence to back the same. Therefore, it does appear that the complaint about supplied material being allegedly inferior or defective was in the nature of an afterthought.

8. The email dated 03.03.2012 addressed by the Appellant to the Respondent refers to certain outstanding amounts payable by the Appellant to the Respondent. This email also states that the Respondent need not send any further material since the Appellant has enough stock. This email even promises that the payments will be made in March and April 2012. The two Courts evaluated the oral and documentary evidence and recorded a finding that the Appellant

did not establish the defence of inferior or defective supplied material. Again, there is no perversity in the record of such a finding of fact to warrant interference under Section 100 of C.P.C.

**9.** The two Courts have justifiably held that the defence of supplied material being of inferior quality or defective was in the nature of an afterthought. Once the Appellant realized that the payments would have to be made for the delivery already made and even partly consumed, the Appellant addressed an email at the late stage and tried to create grounds for avoiding payments. These findings of fact are by no means contrary to the record or contrary to the weight of evidence on record.

**10.** Therefore, this is a case of appreciation and evaluation of evidence by two Courts. Upon appreciation and assessment of oral and documentary evidence on record, the two Courts have recorded concurrent findings of fact. These findings, as noted earlier, suffer from no perversity. Accordingly, no substantial question of law is involved in this appeal.

**11.** For all the above reasons, this appeal is dismissed without any order for costs.

**12.** Accordingly, the Civil Application No. 23 of 2023 does not survive the disposal of the appeal, and the same is also disposed of.

**M. S. SONAK, J.**