

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO.120 OF 2023

WITH

SECOND APPEAL NO.72 OF 2023

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IN

SECOND APPEAL NO.72 OF 2023

JASPAL SINGH HANSPAL REP. THR. POA

ALISTAIR MARTINS

... APPLICANT

Versus

FEMILA HAZARAT BILAL BEPARI

... RESPONDENT

WITH

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FEMILA HAZARAT BILAL BEPARI

... RESPONDENT

Mr M.A. Fernandes, Advocate for the Applicant.

Mr C.A. Coutinho with Mr I. Santimano, Advocate for the Respondent.

CORAM:- VALMIKI SA MENEZES, J.

DATED :- 19th October, 2023

P.C.:

1. This is a Second Appeal against the Judgment and Decree of the District Court, Margao dated 13.09.2023 dismissing the Appellant's appeal against Judgment and Decree dated 15.09.2021 of the Civil Judge Junior Division at Margao in Regular Civil Suit No.160/2019. The suit was instituted at the behest of the Respondent for recovery of an amount of Rs.52,500/- with interest @ 21% p.a. The decree passed by the Trial Court directs the Defendant/Appellant herein to pay the

Plaintiff an amount of Rs.52,500/- with 15% interest from the date of the filing of the suit which is 18.05.2019.

2. The Appellant, though served in the suit, did not put in his appearance or file any written statement or at any point of time contest the proceedings. It is his claim on the memo of appeal before the District Court that it came to his knowledge that the decree was passed by the Trial Court on 15.09.2021 only after he was served with Execution Proceedings No.10/2022 for execution of the decree dated 15.09.2021.

3. It further transpires that instead of approaching the Trial Court to set aside the decree passed ex parte against the Defendant under Order 9 Rule 13 CPC, the Appellant preferred filing Regular Civil Appeal No.18/2023 before the District Court to challenge the decree on merits. One of the grounds raised before the District Court in that appeal was that the Trial Court proceeded against the Defendant without giving the Defendant reasonable opportunity to defend his case. In the appeal, the Appellant has also filed an application under Order 41 Rule 27 CPC seeking production of several documents, which according to him were his evidence, to prove that there was no contract between him and the Plaintiff on the basis of which the suit for recovery of money was filed.

4. The Appellate Court has considered the application under Order 41 Rule 27 CPC and has rejected the same on 13.09.2023 specifically holding that the conditions requested for exercise of its jurisdiction under Order 41 Rule 27, mainly the specific averment that despite the

Appellant having acted with due diligence, he was prevented from producing those documents earlier or that the documents came into his possession at some later date was not complied with.

5. The Appellate Court then considered the challenge to the decree on merits and has arrived at a concurrent finding of fact on the question of whether the amount was due to the Plaintiff or not, and has upheld the findings returned by the Trial Court, both on the quantum and on the rate of interest set down by the Trial Court.

6. On going through the substantial questions of law sought to be raised for the admission of this appeal, I do not find that any of these questions could be considered questions of law, much less substantial questions of law, since all of them operate within the realm of the evidence which both Courts below have considered and have rejected the contention of the Appellants. I am, therefore, of the considered view that there is no substantial question of law that arises for consideration of this Court. The appeal is hereby rejected. No orders as to cost.

7. In view of the rejection of the appeal, the Civil Application does not survive and is hereby rejected.

VALMIKI SA MENEZES, J.

JOSE
FRANCISCO
DSOUZA

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