



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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SECOND APPEAL NO. 163/2016

M/s Mahadeo Car Upholstery Works
A Proprietary concern having its
office behind Saraf Chambers
Sadar, Nagpur : Through its Proprietor
Shri Mahadeo s/o Atmaram Malkhede
Aged 66 years, R/o Block No.23
Shri Dhannu Complex, Ulhasnagar
Manewada Road, Nagpur.

..APPELLANT

v e r s u s

- 1) State of Maharashtra
Through its Secretary
Home Department
Government of Maharashtra
Mantralaya, Mumbai.
- 2) The Collector
~~Chandrapur Collectorate~~
Nagpur Collectorate
~~Civil Lines, Chandrapur~~
Civil Lines, Nagpur.
- 3) The Director General of police
Mantralaya, Mumbai.
- 4) The Commissioner of Police
Nagpur City Civil Lines, Nagpur.
- 5) The Police Inspector
Motor Transport Office
Police Line, Takli, Katol Road
Nagpur.

..RESPONDENTS

.....
Mr. S.G. Malode Advocate for the appellant.
Mr. K.L.Dharmadhikari, Assistant Govt.Pleader for Respondent Nos.1 to 5
.....

Corrected as
per Court's
order dtd.
06.05.2024

CORAM: ANIL L. PANSARE, J.

DATE OF RESERVING : 11.08.2023.

DATE OF PRONOUNCEMENT: 18.08.2023.

JUDGMENT:

Heard Mr.S.G.Malode, the learned counsel for the appellant and Mr.K.L.Dharmadhikari, the learned Assistant Government Pleader for Respondent Nos.1 to 5.

2. The appellant/original plaintiff has taken an exception to the judgment and decree dated 05.10.2015 passed by the learned *Ad-hoc* District Judge-6, Nagpur in Regular Civil Appeal No. 374/2012 (Old No.960/2010), whereby the judgment and decree dated 11.03.2010 passed by the learned 3rd Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.1038/2006 was upheld. Thus, the Appeal came to be dismissed. The trial Court has partly decreed the suit.

3. The appellant will be hereinafter referred to as the 'plaintiff' and the respondents as the 'defendants'.

4. The Appeal has been admitted on the following substantial question of law :-

“ Whether the reasons assigned by the trial Court and affirmed by the appellate Court for disallowing part of the claim of the appellant can be said to be perverse when these reasons are considered in the light of the entire evidence on record ?”

5. The plaintiff is a proprietary concern and engaged in the business of repairs of vehicles, so also the cushion works. The defendant no.5-Police Inspector Motor Transport Office, Katol Road,

Nagpur used to get departmental vehicles repaired from the workshop run by the plaintiff. These vehicles were used in the Police Department under the Commissionerate of Police, Nagpur, supervised by the Superintendent of Police. The defendant nos.3 to 5 used to issue work orders specifying the works to be executed, to the plaintiff. After execution of works, the vehicles were inspected and certified by the authorised officer, namely, P.I., Motor Transport Office, Nagpur. Once certified, the plaintiff used to submit bills, either to the Driver of the vehicle or to the office of defendant no.5.

6. It is/was the case of the plaintiff that the Officer holding the post of defendant no.5 from the year 2005 onwards, had an uncooperative attitude. The bills submitted by the plaintiff were not forwarded to the defendant no.4- Commissioner of Police, Nagpur, for payment. Thus, the defendants failed to pay the bills of the works executed by the plaintiff for the period from 10.01.2001 to 22.12.2003. The entire list of 124 unpaid bills was submitted, firstly on 02.04.2003 and thereafter its duplicate copy, on 28.12.2005. The defendants disputed the said unpaid bills and their liability to pay the same. There occurred exchange of correspondences. According to the plaintiff, the Assistant Commissioner of Police vide letter dated 13.04.2005 assured him to make payment of unpaid bills. Further, by another letter dated 10.01.2006, the plaintiff was informed that the bills were not received for payment from the defendant no.5. Hence, the suit for recovery of the amount of Rs.07,13,056.10 along with interest at the rate of 14 per cent came to be filed. The interest has been charged on the basis of cash credit facility utilized by the plaintiff for purchasing spare parts, to execute the work.

7. The amount of recovery was, later on, restricted to Rs.03,87,315/- on the ground that an amount of Rs. 2,28,070 /- out of the total 124 bills mentioned in Schedule "A" of the plaint has been released by the Department. The plaintiff has, thus, restricted his claim to the remaining unpaid 86 bills. A *pursis* to that effect was filed on 15.02.2010.

8. The defendants resisted the suit by filing written statement. One of the contentions was that the suit is barred by limitation. However, this issue has been answered in favour of the plaintiff. The defendants did not challenge this finding and, therefore, it has attained finality. Even otherwise, Mr. K.L.Dharmadhikari, learned AGP did not raise any grievance whatsoever in this regard, may be because the suit itself was dismissed and also the first appeal.

9. The learned trial Court has referred to various bills. According to it, except for the few bills for which the suit has been partly decreed, the rest of the bills issued were for the same vehicles, having same date, showing the same nature of work. The response of the plaintiff is that he has divided the bills of the same work in order to get the amount of each bill below Rs. 10,000/- so that it could be released at the local office.

10. It will be appropriate to clarify one fact here itself, and as rightly argued by Mr. S.G. Malode, the learned counsel for the plaintiff, that it is nobody's case that the plaintiff has charged twice for the same repairs. What the plaintiff has done is that the work consisted in one

work order, though executed on a particular day, the expenses incurred has been divided by restricting the amount of bills below Rs.10,000/-, in order to get it released at the local office. Simply put, in order to get expedited the bills, the plaintiff has made such an arrangement.

11. I do not find in the reasoning put forth by the trial Court or the first appellate Court nor did the learned AGP argued that there was a forbidden clause as regards division of bills or that such arrangement itself was unlawful. In other words, there is no provision that would require the plaintiff to raise one bill for one work order. The Courts below have exercised much labour on this point, to render a finding against the plaintiff which, to my mind, was totally uncalled for.

12. The learned counsel for the plaintiff has rightly argued that in the communications exchanged between the parties, the defendants had never denied the liability. The learned counsel invited my attention to the evidence led by the defendants. The first witness examined was Mr.Jabbar Imam Khan, Assistant Police Commissioner (Exh.184). It appears that he did not subject himself to cross-examination. His evidence is, therefore, rightly ignored by the Courts below. The second witness is Mr.Vijay Abhimanyu Bahekar. He was also serving as an Assistant Commissioner of Police (Exh.191). In his chief- examination, he stated that the plaintiff has submitted 124 bills but has restricted his claim for 86 bills. The Department, as per the office record, has received only 54 bills of which 42 bills have been cleared. In the cross-examination, it is elicited that the original bills submitted by the plaintiff were found in the record itself. He has admitted that he did not find any bill in which excess payment was charged. He has then deposed that he

would produce the record if it is found that the plaintiff has charged excess amount for the works but has not filed any such document on next date or thereafter. He admitted that in the written statement the Department has not mentioned of any letter indicating that the plaintiff has submitted bills with excess charge or double payment for the same work. The witness was confronted with the letter dated 24.01.2005. He admits that his office received the said letter. The other letters (Exhs. 37 to 44) were also admitted to be received by the office. He admits that with the letter the list annexed, is also mentioned and that the list contained Bill No., date, work order no., vehicle no. and the amount due. This witness then admits that an explanation was called for from one of the officers namely, Mr. Ladikar as regards the pending bills of the plaintiff. The explanation from Mr.Ladikar was not received till 31.05.2006 and it is so mentioned in the office correspondence. The witness admits that the then Assistant Commissioner of Police had issued a letter dated 28.06.2006 in favour of Mr.Ladikar, marked as "important and urgent". The reminder letter dated 14.09.2006 was also given.

13. The learned counsel for the plaintiff submits that Mr.Ladikar was the officer who, at the relevant time, was dealing with processing of the bills submitted by the plaintiff.

14. Thus, there is ample evidence to show that the bills submitted by the plaintiff were not processed by Mr.Ladikar, the officer then responsible for processing the same, for the reasons best known to him. In that sense, the submission of bills by the plaintiff has been proved with the amount of bills as mentioned in respective bills. It is nobody's case nor could the defendants show that the plaintiff has

charged excess amount to carry out the repair works under the work orders given to him. It is also not the case of the defendants that the plaintiff has not carried out the repair works, not envisaged in the work orders. It could thus very well be inferred that the plaintiff has carried out the repair works in terms of the work orders and has submitted the bills. The only discrepancy was that he submitted multiple bills of one work order. The plaintiff tendered plausible explanation for submitting multiple bills by stating that the arrangement was so made to reduce the amount of one bill below Rs. 10,000/- for its clearance from the local competent authority, which was situated at Nagpur, else the bills (i.e. above Rs.10,000/-) were required to be forwarded to the Director General of Police, M.S. Mumbai, which used to take longer period of time for its processing.

15. This explanation has been rejected by the first appellate Court, on the ground that there are no such pleadings in the plaint. The explanation is coming forth for the first time in the first appeal.

16. Thus, the plaintiff is being blamed for the only reason of submitting multiple bills for the work carried out under one work order.

17. The Courts below, in my view, have completely lost sight of the definition of “proved” as envisaged under section 3 Interpretation - clause of the Indian Evidence Act, 1872, which reads thus:-

“Proved” - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the

supposition that it exists.”

18. If one considers the entire evidence in the light of the above definition, when the plaintiff has put forth his claim on the basis of work orders, the bills and the correspondence exchanged between the parties indicating that his bills were not processed by the officers of the defendants, his claim could not have been defeated only on the ground that the plaintiff has submitted multiple bills of one work order. As stated earlier, there is no prohibition either in the clause of the work order or in the law, to submit multiple bills of a contract. In the circumstances, even if the explanation of plaintiff is to be ignored on the ground that he did not plead so or that an explanation has been not given in the evidence, in absence of prohibition to submit multiple bills, the Courts below could not have thrown the case of the plaintiff, merely on the basis of some conjectures, surmises and guesswork that submission of multiple bills would create doubt about execution of work. The Courts below, therefore, committed a grave error in appreciating the evidence and have arrived at a perverse finding which requires correction. The substantial question of law is answered accordingly.

19. At this stage, the learned AGP submits that interest amount be reduced to 9% *per annum*. The submission cannot be accepted, because the trial Court, while allowing the suit partly, has directed the defendant nos.1 to 5 to jointly and severally pay an amount of Rs. 73,860/- with interest @14% per annum from 14.09.2006 till realization of the amount. This decree has not been challenged by the defendants, either on the count of excess interest or on the count of limitation. This interest has been granted on the ground that the plaintiff

was required to purchase the spare-parts by invoking overdraft facility from the banks which had charged interest @ 14 % *per annum* on the amount overdrawn by the plaintiff. I do not find any reason not to allow the aforesaid rate of interest in favour of the plaintiff, once he has established his claim. The submission of learned AGP in that regard is accordingly rejected.

209. Hence, the following order:

ORDER:

- (i) The judgment and decree dated 05.10.2015 passed by the learned *Ad-hoc* District Judge-6, Nagpur in Regular Civil Appeal No. 374/2012 (Old No.960/2010), and the judgment and decree dated 11.03.2010 passed by the learned 3rd Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.1038/2006, are set aside.
- (ii) The SCS No. 1038/2006 is decreed. The Defendants shall jointly and severally pay to the plaintiff an amount of Rs. 3,87,315/- along with interest @ 14% *per annum*, from 14.09.2006 till its realization.
- (iii) Decree be drawn up accordingly.

(ANIL L. PANSARE, J.)