



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 SECOND APPEAL NO. 164 OF 2021

KISHOR GULABCHAND BHANDARI
VERSUS
PRESIDENT AND TRUSTEE OF TRIMURTI PAVAN PRATISTHAN TRUST
SUMATI SAHEBRAO GHADGE AND OTHERS

.....
Advocate for Appellant : Mr. Bora Satyajit S.
Advocate for Respondents : Mr. Pathan Zafar M.
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CORAM : Y.G. KHOBRAGADE, J.
DATE : 13.03.2024

PC.:-

1. Heard Mr. S. S. Bora, the learned counsel appearing for the appellant and Mr. Zafar Pathan, the learned counsel appearing for the respondents at length.
2. The present appeal under Section 100 of the C.P.C. is directed against the judgment and decree dated 15.01.2020 passed in R.C.A. No. 272/2016 by the learned District Judge-11, Ahmednagar, thereby upheld the judgment and decree dated 29.07.2016 passed in R.C.S. No.392/2012 by the 5th Joint Civil Judge, Senior Division, Ahmednagar, whereby suit of the Appellant/Plaintiff dismissed for recovery of amount of Rs.3,35,950/-.
3. The appellant is the original plaintiff and the respondents are the

original defendant Nos.1 to 3. For the sake of brevity, I would like to refer the parties to the present appeal in their original capacity. The facts arisen in the plaintiff's case are that, he running the shop in the name and style of M/s. Gulabchand & Sons. He dealing with the business of laying Carpet and Furniture. The defendant No. 3 is the Public Trust registered under the Bombay Public Trusts Act 1950. The defendant Nos.1 and 2 are the Chairman and Secretary respectively of the respondent No.3-Trust. The defendant No. 3 running various educational institutions including D.Ed. College for Boys and Girls at Newasa Phata Secondary High School, Sharad Sahakari Grahak Bhandar, B.Ed. College, Trimurti Public School at Shevgaon, District Ahmednagar. The defendant Nos.1 and 2 are looking after affairs of defendant No.3. On instructions and as per requirement of the trust, he (plaintiff) installed curtains, carpets and sofa sets cover at different branches of defendant No.3-Trust. After completion of the work, he raised bills out of which some amount of bills are being paid by the Defendants, but some bills to the tune of Rs.2,24,795/- are due against the defendants. The plaintiff further pleaded that, though he demanded said amount time to time, but they avoided to pay the same. Therefore, on 29.11.2010, he issued letter to the defendants and demanded unpaid amount, but they failed to pay bill amount. Therefore, on 08.03.2011, he issued legal notice by R. P. A. D. through his counsel, but the defendants fails to pay the same, hence, prayed for decree of

recovery of Rs.2,24,795/- with interest @ 18% per annum which comes to Rs.3,35,950/-.

4. The defendant Nos.1 and 2 filed their written statement at Exh.11. The defendant No.3-Trust filed written statement at Exh.19. The defendants denied claim of the plaintiff. According to defendant No. 3, they are running education institutions, however, prior to giving any work order, the Trust requires to call General body meeting of the Trustees, the Resolution required to be passed in the meeting, then tenders requires to be floated for calling bids and the lowest bidder can be allotted the tender. However, no any such procedure taken place and no any order placed with the plaintiff, which was claimed by the plaintiff. The Defendants further pleaded that, after service of legal notice an inquiry was conducted, but it revealed the plaintiff carried out certain works in some educational institute in respect of repairs and old carpet patching work for which payment already made and no any material purchased from the plaintiff. Therefore, they are not liable to pay any amount to the plaintiff, hence prayed for dismissal of the suit.

5. On the basis of rival pleadings of the parties, the learned Trial Court framed issues at Exh.17. In order to prove Issues, the plaintiff examined himself at Exh.18 and 94. The plaintiff produced bills at Exh-22 to 33, remarks given by certain department Exh. 34 to 39 and written

communications Exh.42 to 60. The defendants examined the Defendant No. 1 at Exh.69 and 96, DW2 Sahebrao Patil at exh. 102, D.W. 3 Sunil Bhonde at exh. 109, D.W.4 Sharad Khedkar at exh. 134. The defendants have produced documentary evidence such as the registration certificate of Sharad Sahakari Grahak Bhandar and Trust at exh. 127 and 128, Letter dated 15.11.2008 at exh. 111, Voucher dated 26.12.2008 at 112, Receipt dated 26.12.2008 at exh. 113, bill no. 5508, 5510, 5512, at exh. 114 to 116, voucher dated 1214/2009 at exh. 117, Receipt dated 12.06.2009 at exh. 118, bill no. 5640 at exh. 119, bill no. 5641, bill no. N-1, bill no. 5757, 5755 and 5756 at exh. 120 to 126.

6. After considering the evidence and material placed on record, the learned trial Court passed the impugned judgment and decree dated 29.07.2016 holding that, the bills produced by the plaintiff at Exh.22 are for the amount of Rs.19,053/- demanded against the Principal of Trimurti Public School, Shevgaon. The Bill Exh.23 in respect of amount of Rs.7,973/- raised against the Principal D.Ed College, Shevgaon. The bills at Exh.24 to 30 raised against the Manager, Sharad Sahakari Grahak Bhandar or the Secretary, Sharad Sahakari Grahak Bhandar. Therefore, all these bills are being raised against various different institutions and none of the bills have been raised against these defendants. Further, neither the plaintiff pleaded nor adduced evidence that the persons against whom bills Exh.22 to 33 are raised are

branches of defendant No.3 or office bearers or concerned with the defendant No.3-Trust. The learned trial Court further held that the defendants have produced documentary evidence Exh.11 which proves that the plaintiff issued a letter to Secretary, Sharad Sahakari Grahak Bhandar claiming about making payment of Rs.87,000/- out of amount of Rs.1,11,859/- and Rs.24,859/- remain unpaid. Therefore, if this fact is considered in such circumstances, the plaintiff fail to claim any amount against the defendant No.3-Trust and defendant Nos. 1 and 2 are joined in suit being office bearers of defendant No.3-Trust are not liable to pay said amount.

7. The learned First Appellate Court re-appreciated the entire evidence available on record and held that though the plaintiff claimed about supply of carpet, curtains amounting to Rs.2,24,795/- against the defendants, but the plaintiff nowhere pleaded specifically particulars on which date and to which institution of the defendant No.3 material of particular amount supplied. The Bills Exh. 24 to Exh. 30 being issued against the Manager or Secretary, Sharad Sahakari Grahak Bhandar, however, said establishment was not party to the suit. Neither the plaintiff pleaded these facts nor it came in evidence that the establishments against whom bills Exh. 22 to 33 are raised are the branches of defendant No.3-Trust or any office bearer of Defendant No. 3 are concerned with the transactions.

8. Therefore, the learned First Appellate Court confirmed the decree passed by the learned trial Court which does not appears contrary to the pleadings as well as evidence available on record. No any substantial question of law arises in the present appeal, hence, it is dismissed. No order as to the costs.

[Y.G. KHOBRAGADE, J.]