

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.152 OF 2012

The Transport Corporation of India
Ltd., House No. 1-8-271 to 273,
Flat No. 306 & 307, IIIrd floor, Ashok
Bhopal Chambers,
S.P. Road, Secunderabad - 500 003,
(A.P.)

... APPELLANT

Versus

M/s. Narcinva Damodar Naik,
A Partnership firm constituted under
The Indian Partnership Act, 1932
with its Office at House No. 618,
V.N. Naik Road, Fatorda, Margao,
Goa; represented by its Two
partners:

a) Shri Damodar Narcinva Naik,
Son of Narciva Damodar Naik,
Major, Business man,
Residing at House No. 1940,
'Saket', Monte Hill, Margao, Goa;

b) Shri Ashwin Kumar Damodar
Naik, Son of Damodar Narcinva
Naik, Major, Business man, Residing
at House No. 1940, 'Saket', Monte
Hill, Margao, Goa; Above are the
registered addresses of the Parties.

... RESPONDENTS

None for the Appellant.

Mr M.S. Joshi, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATE: 19th APRIL 2024

ORAL JUDGMENT :

- 1.** None for the appellant. Mr M.S. Joshi appears for the respondents.
- 2.** This Second Appeal relates to the year 2012; accordingly, there is no point in adjourning the same any further.
- 3.** The appellant is the original defendant, and the respondents are the original plaintiffs in Regular Civil Suit No.75/2003/D, which was instituted in the Court of Civil Judge Junior Division at Margao. The respondents instituted the above Civil Suit seeking recovery of an amount of ₹59,790/- (Rupees Fifty Nine Thousand Seven Hundred and Ninety only) for the repairs carried out by the plaintiffs to the defendants' commercial vehicle. The defendants raised a counterclaim for an amount of ₹70,000/- (Rupees Seventy Thousand only) by alleging that there was a delay in such repairs as a result of which their business suffered.
- 4.** The Trial Court decreed the suit partly, i.e., to the extent of ₹26,330/- (Rupees Twenty Six Thousand Three Hundred and Thirty only) with interest at the rate of 10% per annum, but the counterclaim was dismissed.

5. The defendants instituted Regular Civil Appeal No.36/2012, and the plaintiffs filed cross-objections. By the impugned judgment and decree dated 26.07.2012, the First Appellate Court dismissed the Regular Civil Appeal No.36/2012 but upheld the cross-objections and directed the defendants to pay a total sum of ₹59,790/- (Rupees Fifty Nine Thousand Seven Hundred and Ninety only) with interest at the rate of 10% per annum from 15.05.2002 till the actual payment.

6. Aggrieved by the above, the defendants have instituted this Second Appeal, which was admitted on 22.11.2012 on the following substantial question of law:

“1. Whether the Lower Appellate Court was justified to modify the Judgment passed by the learned Trial Judge dated 25.01.2012, by relying upon two bills marked ‘X’ for identification which were not exhibited and proved in accordance with law?”

7. Mr Joshi learned Counsel for the respondents, argued that the above question was not a substantial question of law because it related to appreciation or reassessment of the evidence. In any case, he submitted that the First Appellate Court had relied on the oral evidence and documentary evidence, such as an email letter dated 11.06.2002 (Exhibit 37) and a telefax letter dated 13.05.2002 (Exhibit 32), to uphold the cross-objections.

8. From the perusal of the impugned judgment and decree made by the Trial Court, it is seen that the Trial Court only partly decreed the suit on the ground that the two bills, which were marked ‘X’ for

the purpose of identification, were ultimately not proved by the plaintiffs. However, the Trial Court failed to take into account the oral evidence of PW1 and PW2. These two witnesses had clearly deposed that the items referred to in the two bills were used for undertaking repairs to the defendants' commercial vehicle. In addition, the Trial Court also failed to appreciate the evidence of Abhinav Kumar Samal (DW1), who admitted to having seen the Job Card. This Job Card contains clear references to the two works that were the subject matter of the bills marked 'X' for identification. Evidence is rendered by PW1, PW2, and DW1 about the works undertaken at Officina Bhandare and Vernekar Diesels' workshops. The two bills issued to these agencies could not ultimately be approved because the two workshops had been closed.

9. The Appellate Court, unlike the Trial Court, has considered both the oral and documentary evidence. Apart from the oral evidence of PW1, PW2 and DW1, the Appellate Court has gone by the documentary evidence like the email letter dated 11.06.2002 (Exhibit 37), telefax letter dated 13.05.2002 (Exhibit 32) and the Job Card (Exhibit 29). Based on all these documentary evidence and without even taking into account the two bills that were marked 'X' for the purpose of identification, the Appellate Court concluded that the works that were referred to in the said two bills were indeed carried out by the plaintiffs and the defendants took the delivery of the commercial vehicle after such works were carried out and without any purchase. After considering the oral and documentary evidence on

record, there is no perversity whatsoever in the finding of fact recorded by the First Appellate Court.

10. Thus, the substantial question of law as framed does not arise because it is not as if the First Appellate Court has relied upon the two bills marked as 'X' for the purpose of identification. The First Appellate Court, in fact, has relied on the oral evidence of PW1, PW2, and DW1 and the documentary evidence, inter alia Exhibits 29, 32, and 37.

11. From the oral and documentary evidence on record and even after excluding the two bills marked as 'X' for the purpose of identification, the First Appellate Court was fully justified in decreeing the plaintiff's suit for an amount of ₹59,790/- (Rupees Fifty Nine Thousand Seven Hundred and Ninety only) instead of ₹26,330/- (Rupees Twenty Six Thousand Three Hundred and Thirty only) as decreed by the Trial Court.

12. For all the above reasons, this appeal is liable to be dismissed and is hereby dismissed without any order for costs.

M. S. SONAK, J.

NITI KISHOR
HALDANKAR

Digitally signed by NITI
KISHOR HALDANKAR
Date: 2024.04.23
10:17:08 +05'30'