



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

SECOND APPEAL NO. 147 OF 2007

1. Maharashtra Industrial Development Corporation,
through its Chief Executive Officer,
having its MIDC Amravati Division office
at By Pass Road, Amravati.
(Original defendant no.4)
2. Executive Engineer,
Maharashtra Industrial Development Corporation,
At By pass road, Amravati.
(Original defendant no.3)

...APPELLANTS

Versus

1. Vikas s/o Sheshrao Mankar,
aged about 33 years, Occ. Service,
Area Manager Nav-Maharashtra
Chakhan Oil Mill Ltd., 43
Shaniwarpeth, Pune.
Home Address – C/0 – 9, Kamal Height,
Patangrao Kadam Nagar, Survey No. 34/4,
Dhankawadi, Pune – 43.
(Original plaintiff)
2. State of Maharashtra,
through Collector, Amravati.
(Original defendant no.1)
3. Tahsildar, Leave Reserve,
Recovery Officer, Collector Office, Amravati.
(Original defendant no.2)

...RESPONDENTS

Shri M.M. Agnihotri with Shri P.D. Daga, Counsel for the appellants.
Ms H.N. Prabhu, A.G.P. for respondent nos. 2 and 3.
None for respondent no.1.

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CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : JANUARY 8, 2024

JUDGMENT IS PRONOUNCED ON : JANUARY 11, 2024

JUDGMENT :

The Second Appeal has been admitted on the following substantial question of law :

“Whether the appellate Court was justified in reversing the findings recorded by the trial Court and holding that the respondents had not entered into the contract of maintenance of garden with the appellant without considering the effect of the documents i.e. the tender form, work contract and the agreement executed between the parties on the said issue?”

2] The appellants – MIDC, Amravati were original defendant nos. 3 and 4. Respondent no.1 was the original plaintiff and respondent nos. 2 and 3 were the original defendant nos. 1 and 2. The parties will be hereinafter referred to by their original nomenclature.

3] The plaintiff filed a suit for declaration that he has not entered into any transaction/deal with defendant no.3

(MIDC) and thereby is not liable to pay anything to the defendants and thereby the revenue recovery proceedings bearing No. 9-RRC/71/94-95 on the file of defendant no.2 be quashed and it be held that the plaintiff is not liable to pay any amount.

4] Having heard the learned Counsel for the appellants, it transpires that the parties, i.e., the plaintiff and defendant no.3 (MIDC) entered into an agreement dated 19/11/1991, which was preceded by submission of tender and followed by issuance of work order. The plaintiff came-up with a case that he has never submitted the tender under question, he has never produced solvency certificate, Shri B.T. Mathankar never stood guarantor for him and he never paid earnest money nor did he execute the agreement. The plaintiff has further averred that the alleged agreement and documents did not bear his signature.

5] These documents were filed by defendant nos. 3 and 4 (MIDC).

6] It appears that vide agreement dated 19/11/1991, the plaintiff has allegedly entered into an agreement with MIDC, Amravati and agreed to maintain trees located at Amravati Industrial Area. The contract was for the period from 22/11/1991 to 21/10/1992, i.e., for a period of twelve months. The plaintiff is said to have executed the agreement under his signature in the presence of the then Executive Engineer, MIDC (since deceased), who had also signed the agreement. According to the defendants, the plaintiff has submitted tender and along with it has deposited earnest money of Rs.1,150/-. His tender was accepted and the agreement was entered into by and between the parties. For obtaining the contract, the plaintiff submitted his bachelor's degree, an affidavit of B.T. Mathankar showing experience certificate and the solvency certificate.

7] The plaintiff is said to have neglected the work. He did not respond to repeated notices. Hence, as per the terms of agreement, the contract was terminated vide letter dated 10/12/1992. Out of 8905 trees, 4874 plants were found to be

dead due to negligence of the plaintiff.

8] It further appears that in addition to the contract at Amravati, the plaintiff was awarded a similar contract for maintenance of plants situated at Akola, Khamgaon and Malkapur. MIDC is said to have sustained loss to the tune of Rs.3,40,140/- and on adjusting the amount of security deposit paid by the plaintiff, the recoverable amount came to Rs.3,24,969/-. The plaintiff did not pay the amount of damages and, therefore, vide letter dated 14/6/1995, MIDC referred the matter to the Revenue Authorities for recovery of dues.

9] The plaintiff, however, has come-up with a case that the revenue proceedings, initiated by the Revenue Authorities, i.e., defendant nos. 1 and 2, were without jurisdiction, in the sense he has neither submitted the tender nor has he entered into any contract.

10] The learned trial Court has, while relying upon Section 102 of the Evidence Act, 1872, taken a view that the burden of proof lies upon the plaintiff. The learned trial Court

noted that the defendants have produced original agreement, tender form, solvency certificate and income tax clearance certificate. The solvency certificate was issued in the name of plaintiff's father, who was examined as the second witness by the plaintiff.

11] In his cross-examination, PW2 - Sheshrao has admitted that the property described in the solvency certificate is his house. The plaintiff failed to show as to how the solvency certificate, income tax clearance certificate and copy of degree of plaintiff were in possession of the defendants. The learned trial Court further noted that the plaintiff was duty bound to challenge the disputed signature on the tender form as also the agreement by obtaining an opinion from the handwriting expert. The Court further observed that defendant nos. 3 and 4 is the Government Department and there is no reason why should the department prepare a set of false documents to implicate the plaintiff.

12] The plaintiff took a defence that the solvency certificate was a bogus document. However, he did not lodge

any complaint to the police department nor did he take any action in this regard. Thus, considering all the attending circumstances, the learned trial Court found that the plaintiff failed to discharge his burden and, therefore, dismissed the suit.

13] The First Appellate Court, however, was of the view that the burden of proof would lie upon defendant nos. 3 and 4 and not upon the plaintiff to prove the negative things. The First Appellate Court has taken a view that the plaintiff has examined himself and his father in support of his case of complete denial and, therefore, rebutted the presumption under Section 114(e) of the Evidence Act, which favours the defendants. The First Appellate Court was of the view that despite filing copy of degree certificate, solvency certificate and income tax return, the presumption stood rebutted because defendant nos. 3 and 4 were under obligation to prove, by leading evidence, that these documents were filed by the plaintiff.

14] Shri M.M. Agnihotri, learned Counsel for the appellants has argued and rightly so that the expectation of the First Appellate Court that the Officers of MIDC ought to have proved filing of documents by the plaintiff is far-fetched, particularly when the Executive Engineer, who was in-charge of the work at the relevant time and who is signatory to the tender and agreement, has expired. He further submits that the defendants have examined its Officers, namely, Arvind Thakare, Deputy Engineer and Subhash Lanjewar, Accountant. They have led the evidence on the basis of office record, which is the only way available for the Officers to lead evidence. According to him it will be difficult for the Officers to identify the persons, like the plaintiff, and to lead evidence that it is he who had come to the office and filed documents, particularly when it is nobody's case that the plaintiff has repeatedly visited the office and met these two witnesses. Similarly, there is no reason for these witnesses to identify the plaintiff's father or the person in whose name the solvency certificate was given. I find substance in the argument.

15] The another plea put forth by the plaintiff was that at the relevant time, he was in employment at Aurangabad and Pune. He has produced documents to that effect, which are at Exhibits 51 and 52. The first document is dated 19/12/1990 and the second document is dated 8/1/1996, which only indicate that he was in employment on those two dates. What happened in the intervening period has been not placed on record by the plaintiff. Thus, on the basis of these documents, one cannot jump to the conclusion that during the period from 19/12/1990 till 8/1/1996, the plaintiff was in continuous employment at Aurangabad and Pune and did not visit the office of MIDC at Amravati.

16] The fact remains that the documents, which were in possession of the department, could have been supplied only by the plaintiff unless otherwise proved. In the circumstances, if the provision under Section 102 of the Evidence Act is invoked, the learned trial Court has rightly placed burden upon the plaintiff to prove his claim, which though was formulated in negative form, but was a case put forth by the plaintiff

against the Government Department. Applying the principles envisaged under Section 102 of the Evidence Act, the effect of absence of evidence from both the sides would have lead to dismissal of the suit, meaning thereby, the burden of proof was on the plaintiff. In the circumstances, the least which the plaintiff could have done was to make an application seeking report of handwriting expert to show the correctness and truthfulness of his case.

17] That apart, the presumption under Section 114 of the Evidence Act is that all official acts will be presumed to have been regularly performed. In the present case, the documents belonging to the plaintiff were found to be submitted with the then Executive Engineer of MIDC, Amravati. It is nobody's case that these documents were available with any other person, except the plaintiff. In the circumstances, the official acts done by the then Executive Engineer, which includes signing agreement, issuing work order on the basis of documents submitted by the plaintiff etc. having been performed in the official capacity, will have to be

presumed to have been regularly performed. In the circumstances, mere denial by the plaintiff of having done such acts will not serve the purpose.

18] The First Appellate Court was of the view that the plaintiff has examined two witnesses in support of his denial and, therefore, has rebutted the presumption. This view is apparently erroneous. If this view is to be accepted, then it will be easy for the persons, like the plaintiff, to do certain acts viz. submit a tender, solvency certificate, other documents etc. and thereafter to simply deny the same. Thus, a person will do certain acts and thereafter put forth denial. In such eventuality, if the burden is shifted upon the other side, particularly a public department on the ground that negative pleadings are not to be proved, then it will be quite challenging for the defendants to prove the acts done by the persons, like the plaintiff. The Appellate Court ought to have considered the distinction between negative pleadings and negative relief.

19] Further, the First Appellate Court lost sight of the fact that the defendants too have examined couple of

witnesses. They have proved that the documents were filed with the then Executive Engineer. In that sense, the defendants have discharged their burden.

20] In the circumstances, the Appellate Court could not have ignored the documents viz. the tender form, work order and the agreement executed between the parties. The substantial question of law will have to be, therefore, answered in negative and stands answered accordingly. The question having been answered in negative, the judgment and decree passed by the First Appellate Court is liable to be quashed and set aside, being unsustainable. Hence, the following order :

ORDER

- i] The Second Appeal is allowed.
- ii] The judgment dated 11/12/2006 passed by the Principal District Judge, Amravati in Regular Civil Appeal No. 67/2003 stands quashed and set-aside.

iii] The judgment dated 24/1/2003 passed by the Civil Judge (Senior Division), Amravati in Special Civil Suit No. 271/1998 stands restored.

JUDGE

Sumit