



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

SECOND APPEAL NO. 116 OF 2009

Gayatri Mahila Udyog Sahakari Sanstha, Borta,
Regd. No. 655, having its Registered Office at
Near Santoshi Mata Mandir, Kalkar Wada,
Murtijapur, Tq. Murtijapur, Dist. Akola,
by its President, Mrs. Sushama Malani,
aged about 58 years, R/o Murtijapur,
Tq. Murtijapur, Dist. Akola.

...APPELLANT

Versus

Maharashtra Jeevan Pradhikaran
(Previously named and styled as
“Maharashtra Water Supply and Sewerage
Board Division No.1”, Amravati) through

- 1] Superintendent Engineer,
Maltekdi Road, Amravati,
Tq. and Dist. Amravati.
- 2] Executive Engineer,
Jal Bhawan, Jail Road, Camp,
Amravati, Tq. & Dist. Amravati.

...RESPONDENTS

Shri Vinay Dahat, Counsel for the appellant.
Shri D.M. Kakani, Counsel for respondent no.2.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : APRIL 23, 2024

JUDGMENT IS PRONOUNCED ON : APRIL 30, 2024

JUDGMENT :

The appeal has been admitted on the following

substantial question of law :

“Whether the 1st Appellate Court was justified to direct dismissal of suit in view of the fact that goods were supplied as per approved sample, as contended by appellant ?”

2] The appellant – plaintiff had filed suit for recovery of Rs.1,30,000/- against the respondent – Maharashtra Jeevan Pradhikaran. According to the appellant, in terms of work order (Exh. 35), the appellant had supplied the goods, namely, Duck Back Raincoats and Gumboots, to the respondents. The goods were delivered vide delivery memo Exh. 37. Part payment was made, however, balance of Rs.1,30,000/- was not paid. The respondent contested the suit on the ground that the Raincoats, which were supplied, were not of Duck Back make and that despite repeated requests and reminders, the appellant failed to supply the Raincoats in terms of the work order.

3] The trial Court, vide judgment and decree dated 13/8/2003, decreed the suit against the respondents for

Rs.1,30,000/- with interest @ 12% per annum.

4] The respondents carried the matter in appeal being Regular Appeal No. 231/2003. The Appellate Court allowed the appeal and, thus, dismissed the suit. The main issue considered by the Appellate Court was whether the appellant herein, who was plaintiff before the trial Court, has proved that 359 Raincoats were supplied as per the order and approved sample. The First Appellate Court found that the Raincoats were not supplied as per the order and approved sample.

5] Having heard both sides, the issue could be resolved by referring to Exhs. 35, 68, 70 and 71. Exh. 35 is a work order issued by the defendants to the plaintiff requesting the plaintiff to arrange to supply Duck Back make Raincoats and Gumboots. Exh. 68 is a letter addressed to the plaintiff by the Executive Engineer of the respondents stating therein that the plaintiff has supplied Gumboots, but the Raincoats were not fully supplied and secondly, the supplied Raincoats were not of Duck Back make. The respondents has, in clear terms,

stated that the goods supplied are not acceptable to it and instructed plaintiff to take back the same and to supply/deliver the ordered Raincoats. Exh. 70 is yet another letter issued by the defendants to the plaintiff stating therein that the Raincoats were not of Duck Back make and accordingly requested the plaintiff to replace the same. Exh. 71 is yet another letter issued by the defendants to the plaintiff stating therein that since the Raincoats, which were supplied, were not in terms of work order and the approved sample, the defendants shall not make the payment.

6] The learned Counsel for the appellant could not point out any document or evidence that satisfactorily deals with these letters, in the sense, there is nothing on record to show that the appellant had supplied Duck Back make Raincoats to the respondents. As such, the learned Counsel referred to delivery memo (Exh. 37), which is dated 11/7/1997, which indicates that the storekeeper of the defendants had accepted delivery of goods mentioned therein, which indicates delivery of Duck Back make Raincoats and

Gumboots. However, this delivery memo by itself cannot be said to be proof of delivery of Duck Back make Raincoats inasmuch as the storekeeper has only taken the delivery and immediately thereafter, i.e., on 1/8/1997, the respondents issued first letter to the appellant stating therein that the Gumboots are of required quality but the Raincoats are not of Duck Back make. This was followed by subsequent letters, which have been not satisfactorily dealt with by the appellant. The First Appellate Court was, therefore, justified in dismissing the suit because the appellant failed to prove that the goods were supplied as per the approved sample. The substantial question of law is answered in the affirmative.

7] There is, thus, no substance in the appeal. The same is accordingly dismissed.

JUDGE

Sumit