



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

SECOND APPEAL NO. 474 OF 2023
WITH
CROSS OBJECTION NO. 73 OF 2024
(ST NO. 16123/2024)

SECOND APPEAL NO. 474 OF 2023

M/s. S. T. Kamble Construction through
Shri S. T. Kamble, Aged 59 years,
Occ. Business, R/o. 31, Thawre Colony,
Behind Chalks Colony, Kamptee Road,
Post Jaripatka, Nagpur.

... APPELLANT
(Original plaintiff)

// VERSUS //

The Corporation of the City of Nagpur,
through its Municipal Commissioner,
Civil Lines, Nagpur.

... RESPONDENT
(Ori. defendant)

Shri Pushkar Ghare, Advocate for appellant.
Shri A. M. Quazi, Advocate for respondent.

WITH

CROSS OBJECTION NO. 73 OF 2024
(ST NO. 16123/2024)

The Corporation of the City of Nagpur,
through its Municipal Commissioner,
Civil Lines, Nagpur.

... CROSS OBJECTOR
(Ori. respondent/defendant)

// VERSUS //

M/s. S. T. Kamble Construction through
Shri S. T. Kamble, Aged 60 years,
Occ. Business, R/o. 31, Thawre Colony,
Behind Chalks Colony, Kamptee Road,
Post Jaripatka, Nagpur.

... RESPONDENT
(Ori. appellant/plaintiff)

Shri A. M. Quazi, Advocate for cross-objector.
Shri Pushkar Ghare, Advocate for respondent.

CORAM :- M. W. CHANDWANI, J.

DATED :- 27.09.2024

ORAL JUDGMENT :-

The cross-objection is admitted and the appeal and cross-objection are finally heard by consent of the learned counsel for the parties. The parties are referred to herein, as per their nomenclature in the Second Appeal.

2. Correctness of the common judgment and decree dated 30.03.2022 passed by the learned District Judge-1 & Additional Sessions Judge, Nagpur in Regular Civil Appeal (RCA) Nos. 37/2016 and 140/2016 has been challenged in this Second Appeal, whereby RCA No. 37/2016 filed by the respondent came to be allowed and RCA No. 140/2016 filed by the appellant came to be dismissed.

3. Before touching to the substantial questions of law framed in this appeal and cross-objection, it will be advantageous to state the facts which give rise to filing of the Second Appeal and the Cross-objection.

4. The appellant, a registered contractor, was awarded with contracts of various works vide different work-orders by the respondent-Municipal Corporation. The appellant filed a suit bearing Special Civil Suit No. 1197/2007 for recovery of Rs.16,11,365/- against the respondent on the premise that all the work-orders that have been awarded to the appellant were completed. However, inspite of completion of the work-orders, the amount outstanding and due towards the respondent-Corporation has not been paid. The Trial Court partly decreed the suit directing the respondent to pay an amount of Rs.2,48,204/- to the appellant alongwith simple interest @ 6% p.a. from the date of institution of the suit till actual realization of the said amount. Feeling aggrieved with the part of the impugned judgment passed by the Trial Court, the appellant filed separate appeal before the First Appellate Court, Nagpur challenging the said judgment and decree. The respondent also filed cross-appeal on the ground that the suit is barred by law of limitation. The Appellate Court, after hearing both the appeals, by the impugned judgment and decree allowed the appeal filed by the respondent holding that the suit filed by the appellant is barred by law of limitation. However, in the said judgment, the First Appellate Court found that the appellant has done the work to the tune of Rs.16,11,365/- as claimed by him in the suit. Since, the First Appellate Court held that the suit is barred by

limitation, therefore, by the impugned common judgment, the appeal of the appellant came to be dismissed and by allowing the appeal of the respondent, the Appellate Court reversed the decree passed by the Trial Court and dismissed the suit of the appellant. Feeling aggrieved with the said common judgment and decree passed by the First Appellate Court, the appellant preferred this Second Appeal. The respondent has also filed cross-objection to the same.

5. In the Second Appeal, following substantial question of law was framed:-

“In the light of fact that the trial Court has held that the suit for recovery of amount is well within limitation, whether the reversal of the said finding by the first Appellate Court is just and proper ?”

6. In the Cross-objection, following substantial question of law was framed:-

“Whether the learned Appellate Court was right in holding that the appellant has completed the work to the tune of Rs.16,11,635/-, in teeth of the findings of the learned Trial Court that the appellant did not produce measurement bill for the work to the tune of Rs.7 lakhs.”

7. Perusal of the impugned judgment reveals that the First Appellate Court reversed/over-turned this finding of the Trial Court and held that the work-orders were issued in the year 1999-2000 and the bills were also tendered. Even the appellant claimed the interest

from the year 1999, therefore, the First Appellate Court found that the suit is hit by the law of limitation and dismissed the suit on the said ground.

8. It is a matter of record that the Municipal Corporation Contractors' Welfare Association, of which the appellant is a member, preferred a Writ Petition No. 3112/2005 before this Court, wherein the learned Senior Counsel appearing for the respondent-Corporation made a submission that the issue of payment of bills of the contractors will be discussed in the next meeting of the Corporation and the said Writ Petition came to be disposed of on the basis of the statement made. Accordingly, on 29.01.2006, the respondent-Corporation passed a resolution in its General Body Meeting to release the payment of the contractors. The Trial Court found that the suit is within limitation on the basis of the resolution passed by the respondent-Corporation.

9. In the case of *M/s. P. G. Waghmare Construction Vs. The Corporation of the City of Nagpur*¹, this Court while deciding the Second Appeal, out of a batch of Second Appeals consisting of the issue raised in the present Second Appeal, has relied on the decision of the Division Bench of this Court in the case of *Canara Bank Vs. Vijay Shamrao Ghatole*² and held that the resolution passed by the

¹ Second Appeal No. 127/2021, decided on 01.08.2023

² 1996 (5) Bom CR 338

respondent-Corporation is a promise under Section 25(3) of the Contract Act and will give sufficient cause of action. The case in hand is identical, rather, the case is from a same batch of appeal filed raising the same issue, but remained to be decided. There is no reason for me to take a view different from the view taken by the Division Bench of this Court in the case of *M/s. P. G. Waghmare Construction* (supra). The resolution giving fresh cause of action passed on 21.01.2006, whereas the suit is filed in the year 2007 therefore, it is within limitation. Therefore, the substantial question of law framed in the Second Appeal is answered accordingly.

10. This takes me to the substantial question of law framed in the cross-objection raising the query whether the work order has been completed or not. It is submitted by the learned counsel for the respondent that, unless the work is certified by the Engineers of the Corporation, a contractor is not entitled to claim the amount of the work-order. Taking this argument further, he took me to the cross-examination of the appellant, wherein the appellant has admitted that he has not produced the measurement bill for the work to the tune of Rs.7 lakhs and relying on the said admission, the Trial Court has deducted the amount of the said work-orders and decreed the suit of the appellant, partly. According to the learned counsel for the respondent, this aspect has not been considered by the Appellate Court

and erroneously held that the appellant has completed the work to the tune of Rs.16,11,635/- as claimed in the suit.

11. *Per contra*, Shri Pushkar Ghare, learned counsel for appellant submitted that, after his cross-examining, the plaintiff examined three Engineers of the respondent-Corporation as PW2, PW3 and PW4 and in their evidence they have stated that the work-orders awarded by the respondent-Corporation to the appellant have been measured by them and entered in the measurement book maintained by the respondent-Corporation and it has been properly approved, therefore, there is no question of erroneous finding by the First Appellate Court. The learned counsel for the appellant took me to the statement prepared by the officials of the respondent-Corporation, which he got under the Right to Information Act.

12. A perusal of the version of Prakash Harbaji Wase (PW2), Niranjan Shyamrao Waghmare (PW3) and Mohd. Shafique Abdul Habib (PW4) goes to show that they measured the work executed by the appellant under the work-orders awarded to the appellant, therefore, I do not find force in the argument of the learned counsel for the respondent. The Trial Court gave the findings in question ignoring the evidence of PW2, PW3 and PW4, who are employees of the respondent-Corporation, examined by the plaintiff/appellant.

Therefore, the First Appellate Court has rightly considered that the appellant has proved that he has completed the work to the tune of Rs.16,11,635/-. This finding is supported by the statement of the work executed by the appellant, which was prepared by the officials of the respondent-Corporation and which has been received by the appellant under the Right to Information Act. Perusal of statement at Exh.32 in suit goes to show the appellant executed the work to the tune of Rs.16,11,635/- as claimed by him in the suit, therefore, no interference is required in the findings of the First Appellate Court that the appellant has executed the work for the aforesaid amount.

13. In view the answer to the substantial question is no.1 that the suit is within limitation. The decree passed by the First Appellate Court in RCA Nos. 37/2016 and 140/2016 is required to be set aside. Accordingly, the Second Appeal succeeds. Hence, I proceed to pass the following order:-

- i) The Second Appeal is **allowed**.
- ii) The Cross-objection is **dismissed**.
- iii) The common judgment and decree passed by the First Appellate Court in RCA Nos.37/2016 and 140/2016 is hereby set aside.

iv) The Special Civil Suit No. 1197/2007 filed by the appellant is **allowed**.

v) The respondent-Corporation to pay an amount of Rs.16,11,635/- to the appellant alongwith simple interest @ 8% p.a. from the date of institution of the suit till actual realization of the said amount.

vi) The decree be drawn up accordingly.

(M. W. CHANDWANI, J.)

RR Jaiswal