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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 90 OF 2023
WITH
STAMP NUMBER (APPLICATION) NO. 1422 OF 2020 (F)
IN
FIRST APPEAL NO. 90 OF 2023

1. The Executive Engineer, Works Division VI, through its Engineer, Mr. Prasad Panandikar, Public Works Department, Fatorda, Margao, Goa.

2. The Principal Chief Engineer, Public Works Department, Altinho, Panaji, Goa.

3. The Secretary, Public Works Department, Government of Goa, Porvorim, Bardez, Goa.

4. Government of Goa, Secretariat, Porvorim, Bardez, Goa, through its Chief Secretary, Government of Goa, Secretariat, Porvorim, Bardez, Goa. ... APPELLANTS

VERSUS

1. M/s Jayshree Mallikarjun Constructions, A Partnership Firm, registered under Partnership Act 1932, having its Head Office at 3196, Murida Agalli, Fatorda, Margao, Goa.

1(a) Shri Amarnath Govind Dessai, son of Govind Desai, major of age, married, businessman, Murida, Agalli, Fatorda, Margao, Goa.

1(b) Shri Govind Yesso Desai, son of Yesso Desai, major of age, married, businessman, Resident of House

No. 164, Gaondongrim, Canacona, Goa.

1(c) Shri Avinav Amarnath Desai, son of Amarnath Desai, major of age, Resident of House No. 3196, Murida Agalli, Fatorda, Margao, Goa.

1(d) Miss Viplavi Amarnath Desai, daughter of Amarnath Desai, major of age, Resident of House No. 3196, Murida Agalli, Fatorda, Margao, Goa. ... RESPONDENTS

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Mr. Geetesh R. Shetye, Additional Government Advocate for the Appellants.

Mr. Vinoj K. Daniel, Advocate for the Respondents.

WITH
FIRST APPEAL NO. 113 OF 2023
WITH
CIVIL APPLICATION NO. 131 OF 2023
IN
FIRST APPEAL NO. 113 OF 2023

1. Government of Goa, Represented by the Chief Secretary with office at Secretariat, Porvorim, Bardez, Goa 401 002.

2. Secretary (PWD), Government of Goa with office at Porvorim, Bardez, Goa.

3. The Principal Chief Engineer, P.W.D., having office at Altinho, Panaji, Goa.

4. The Executive Engineer, Works Division VI, Public Works Department having office at Fatorda, Salcete, Goa. ... APPELLANTS

VERSUS

1. M/s C.K. George & Sons, PWD Civil Contractor, a registered Partnership Firm having its head office at 117, Mother Mary Villa, Near Chowgule College, Gogol, Fatorda, Margao, Goa, through its partner.

1(a) Shri Santosh C. George, Managing Partner of the Plaintiffs No. 1, son of Chachalayil Korthu George, major of age, Indian National, residing at Mother Mary Villa, Novo Waddo, Near Chowgule College, Gogol, Fatorda, Margao, Goa.

1(b) Chachalayil Korthu George, Partner of Plaintiffs No. 1, son of Korthu George, major of age, Indian National, residing at Mother Mary Villa, Novo Waddo, Near Chowgule College, Gogol, Fatorda, Margao, Goa.

1(c) Maria Suzana George, Partner of the Plaintiffs No. 1, wife of Chachalayil George, major of age, Indian National, residing at Mother Mary Villa, Novo Waddo, Near Chowgule College, Gogol, Fatorda, Margao, Goa. ... RESPONDENTS

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Ms. Susan Linhares, Additional Government Advocate for the Appellants.

Mr. Vinoj K. Daniel, Advocate for the Respondents.

WITH
FIRST APPEAL NO. 56 OF 2023

1. The Government of Goa, represented through Chief Secretary, Secretariat, Porvorim, Bardez, Goa.

2. The Secretary (PWD), Government of Goa, Porvorim, Bardez, Goa.

3. The Principal Chief Engineer, PWD, having office at Altinho, Panaji, Goa.

4. The Executive Engineer, Works Division VI, Public Works Department, having office at Fatorda, Salcete, Goa. ... APPELLANTS

VERSUS

1. M/s Naik Constructions, PWD, Civil Contractor, Flat No. F-2, First Floor, Kankeshwari Apartments, M. Dias Road, Pajifond, Fatorda, Margao, Goa, represented by its sole Proprietor.

2. Shri Vinod V. Naik, son of late Shri Vasant V. Naik, major of age, Indian National, residing at H. No. 2136, Vijaylaxmi, Next to Braganza Hospital, Agalli Gogol, Margao, Goa. ... RESPONDENTS

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Mr. Vinoj K. Daniel, Advocate for the Respondents.

CORAM: BHARATI DANGRE, J.

DATED: 18th MARCH 2025

ORAL JUDGMENT:

1. In the three Appeals filed by the State of Goa, a challenge is raised to the judgments delivered in the civil suits filed by the Respondents for recovery of money and compensation.

2. In First Appeal No. 113 of 2023, the challenge is raised to the judgment and decree passed by the District and Sessions

Judge at Margao in Civil Suit No. 78/2015 delivered on 02.05.2018 whereas in First Appeal No. 90 of 2023, the judgment and decree is passed in Civil Suit No. 07/2016 on 15.11.2019 and as far as First Appeal No. 56 of 2023 is concerned, the challenge is raised to the judgment and decree dated 02.05.2018 passed in Civil Suit No. 77/2015.

3. I have heard the respective learned Additional Government Advocates for the State of Goa and the learned Counsel representing the Respondents in all three Appeals.

4. For the sake of convenience, First Appeal No. 90 of 2023 is treated as the lead Appeal, since the cause of action for the Respondents for instituting the suits and the findings rendered in the impugned judgments and decree passed by the Trial Judge are based on identical pleadings including the stand adopted by the Respondents and the issues been formulated in an identical way, reference is made to Civil Suit No. 07/2016, of which, the judgment and decree is subject matter of which is challenged in First Appeal No. 90 of 2023

5. M/s Jayshree Mallikarjun Constructions, a partnership firm through its partners filed a civil suit for recovery of money and compensation by pleading that Plaintiff No. 1 is a registered Class 1A contractor of PWD and pursuant to the tender being awarded for the contract of hot mixing and widening of roads from Holy Spirit Church to Sonsodo (MDR-43) in Fatorda constituency for an amount of Rs.2,95,89,660/- vide work order dated 20.05.2011.

The Plaintiffs specifically pleaded that as per the work order, the work could not commence immediately as the major portion of the road was to be surfaced with hot mix and the asphalt material was in possession of another contractor engaged by the Electricity Department for laying underground cables and this work had caused substantial damage to the road, which was beyond the scope of the contract awarded to the Plaintiffs. This fact was brought to the notice of Defendant No. 4 i.e. the Executive Engineer, PWD. Pursuant thereto, the Assistant Engineer and the Junior Engineer visited the site. It is the pleaded case of the Plaintiffs that instructions were given to take additional reinstatement/restoration work as the same pertained to the same stretch of road awarded to the Plaintiffs and the Plaintiffs were informed that necessary approvals would be obtained for the additional work of soiling, laying full grout so as to restore the same to enable the Plaintiffs to undertake the work assigned to them i.e. hot mixing and widening of the roads.

6. As per the Plaintiffs, the Plaintiffs had commenced the execution of the “additional work”, which was duly monitored and inspected by Defendant No. 4 i.e. the Executive Engineer and the cost for additional work was estimated at Rs.15,02,912/-. Since the Defendants failed to release this payment towards additional work despite repeated correspondence, the claim was raised for the said work at Rs.15,02,912/- with interest at the rate of 18% per annum from December 2011 till payment and compensation was also prayed for the loss of profits suffered by the Plaintiffs during the said period due to inaction on the part of the Defendants in releasing the amount.

7. On the suit being instituted, the claims raised therein were contested by the Defendants on a specific ground that the scope of the main work to be executed by the Plaintiffs also consisted of similar items which were required for repairs of trenches of the road for laying underground cables before the hot mix was laid and that the Plaintiffs have been paid for the work of reinstatement of the trenches in the original work itself and therefore, no dues are payable. It was also pleaded that the items of restoration were similar to the items which were already included in the original work and therefore, it could not be termed as “additional work”. One more defence that was adopted is that no bill was raised by the Plaintiffs with regard to the additional work done and therefore, no payment is due and payable.

8. In the wake of the rival contentions surfacing on record through the pleadings, the Trial Judge framed the following issues in all the suits:-

> 1. *Whether the plaintiffs prove that the defendants were due and liable to pay to the plaintiffs ₹15,02,912/- for the additional work of reinstatement of various roads from Holy Spirit Church to Sonsodo (MDR-43) in Fatorda ?*
>
> 2. *Whether the plaintiffs prove that they have suffered a loss of ₹12,77,475/- due to non-payment of the said amount by the defendants ?*
>
> 3. *Whether the plaintiffs are entitled for interest on the aforesaid amounts, if yes, at what rate ?*

9. In support of the claims, Plaintiff No. 1(a) examined himself and also examined two other witnesses whereas the Defendants examined Mr. Armstrong Fernandes, the Assistant Engineer (DW-1) of Defendant No. 4 and DW-2 Mr. Mahantesh Hiremat, who was working as a Junior Engineer in PWD, during the period from June 2010 to March 2012.

10. It is pertinent to note that in two other civil suits i.e. Civil Suit No. 77/2015 and Civil Suit No. 78/2015, the issues framed were identical except that it was at variance as regards the amount claimed from the Defendants as due and payable along with the cost of additional work done and to state it precisely in Civil Suit No. 77/2015, the amount claimed was to the tune of Rs.48,20,020/- as cost of the additional work whereas in Civil Suit No. 78/2015, the claim was staked at Rs.45,95,090/- towards the cost of additional work done.

11. In addition, as regards issue no. 2 for recovery of the amount from the Defendants in Civil Suit No. 77/2015, the claim was staked for the sum of Rs.19,52,108/- towards interest at the rate of 18% per annum for a period of two years and in Civil Suit No. 78/2015, the amount was claimed at Rs.19,29,937/- towards interest at the rate of 18% per annum for a period of 28 months. There was also a slight variation in the amount of loss suffered towards future profits due to non-payment of the amount of additional work. It is worth to note that the Plaintiffs led its case through their witnesses but as far as the Defendants are concerned, the two witnesses, DW-1 and DW-2 were examined in all three cases and in fact, it is worth to note that 11 such work orders were issued in favour of 11 contractors.

12. Upon consideration of the pleadings and the evidence led before it, the Trial Judge arrived at a finding that the Plaintiffs are entitled to the sum claimed towards the cost of additional work along with interest at the rate of 12% per annum from December 2011 till final payment.

13. The claim of the Defendants that the suit was barred by limitation was also specifically considered as it was an argument advanced that Article 18 prescribes the period of limitation as three years to file a suit for the price of the work done by the Plaintiffs for the Defendants, where no time has been fixed for payment and therefore, the time begins to run when the work is done. The learned Trial Judge specifically pronounced upon the said issue in paragraph 46 and rendered a finding that Section 18(1) of the Limitation Act lays down that where, before the expiration of the period prescribed for a suit or an application in respect of any property or right, an acknowledgment of the liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. In this regard, the specific observations in the impugned judgment are to the following effect:-

> *"47. The explanation (a) to this Section states that an acknowledgment may be sufficient though it omits to*

specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or ts coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right. The explanation (b) states that the word "signed" means signed either personally or by an agent duly authorised in that behalf.

48. The report dated 25.06.2014 is made by the Asst. Engineer and also has notings of the defendant no.4. The said report is thus an acknowledgment of the liability and therefore, in terms of Section 18 of the Limitation Act, a fresh period of limitation is required to be computed from 25.06.2014. As such, this suit, filled on 28.03.2016 cannot be said to be barred by limitation.

49. The Hon'ble Apex Court in the case of Kotari & Associates (supra), also observed that a notice issued under Section 80 of the Code of Civil Procedure filed after the suit was time barred is irrelevant and if it should have been issued before the suit became time barred, would have extended the period for a further two months.

50. A copy of the notice under Section 80 CPC is produced at Exh.31 colly. The same is dated 09.04.2015. This notice, having been issued within a period of three years from the date of the said acknowledgment, cannot be said to be irrelevant."

14. In the light of the aforesaid, the point of limitation which was raised by the Defendants was turned down by the aforesaid findings. Admittedly, the claim as regards the loss suffered by the Plaintiffs for non-payment of the amount by the Defendants was specifically declined.

15. Learned Counsel for the Respondents, at the outset, has placed reliance on the decision of this Court in the case of **Government of Goa & Others Vs. M/s Furtado Associates & Others** delivered by the learned Single Judge (Manish Pitale, J.) on 08.12.2021 in First Appeal No. 120 of 2019, where the challenge was raised to the judgment and order dated 02.05.2018 passed by the District and Sessions Court, South Goa, when the suit for recovery filed by the Respondents was decreed and the Appellants/Government were directed to pay a sum of Rs.21,94,010/- along with interest at the rate of 14% per annum from March 2013 till final payment.

16. It is worth to note that the judgment and decree was based on identical facts, the suit being filed by M/s Furtado Associates through its partners, the firm being a Class 1B contractor of the Public Works Department, who was awarded a contract of road work at some places in Goa and according to the contractor, the payment for additional work was not released, which had constrained him to file a suit for recovery. An argument was raised on behalf of the State Government that the Respondents never raised any bill for additional work and therefore, there was no question of making the payment, nonetheless at the rate of interest that has been awarded. It was argued before the learned Single Judge that the findings rendered in the impugned judgment were not based on any cogent material on record and awarding interest at the rate at which it was awarded, was not at all justified in the facts and circumstances of the present case.

17. On consideration of the rival contentions, the point was formulated for consideration of the Appeal to the following effect:-

> *"Whether the Court below was justified in granting decree of recovery of specific amount with interest at the rate of 14% per annum in favour of the Respondent ?"*

18. On perusal of the pleadings, evidence and material on record, the specific stand of the Respondents that no bill was raised by the contractor for the additional work and therefore, no case of action in fact accrued was specifically taken note of. In paragraphs 10 and 11, the following observations were made with regard to the entitlement of the Respondents who had been awarded the amount along with interest when a challenge was raised by the State Government:-

> *"10. A perusal of the evidence and material on record shows that while the witnesses who deposed for the rival parties made statements in consonance with the stands taken in the pleadings, but it was conceded on the part of one of the witnesses for the appellants that as many as 11 contractors who were awarded similar work were paid amounts only on the basis of measurement books and running account bills, even when independent bills were not raised. In fact, it was admitted that various payments were made to the respondent itself under running bills and on the basis of the measurement books. The evidence on record also shows that joint measurement was carried out and that the witness deposing on behalf of the respondent admitted the contents of such measurements jointly carried out and that he was not disputing the same.*
>
> *11. In the face of such material on record, it becomes clear that the stand taken by the appellants while disputing the claim of recovery raised on behalf of the respondent, was unsustainable. The Court below correctly appreciated the evidence and material on record to* render findings in favour of the respondent."

19. As far as interest granted at the rate of 14% per annum, it was specifically observed that it is not the case of no evidence for the grant of interest and the rate at which the interest is granted by the Court below appears to be reasonable in the face of the evidence placed on record and therefore, no error was found to be attributed on that ground also. With the aforesaid findings, the Appeal filed by the State was dismissed.

20. The learned Counsel for the Respondents has specifically urged that all the three Appeals which challenge the impugned judgments are based on identical facts and are in fact, covered by the decision of this Court delivered in the aforesaid Appeal on 08.12.2021.

21. This contention is specifically contested by the learned Additional Government Advocate for the Appellants in First Appeal No. 90 of 2023, who specifically insisted that the point of limitation should be taken into consideration as, despite the completion of the works, a civil suit was instituted in 2016 and which was beyond the period of limitation.

22. I have perused the impugned judgment in which the learned Judge has taken into account the point of limitation and this was also a matter for consideration while deciding First Appeal No. 21/2019, though it was not specifically argued and since this point was not raised by the Advocate for the State, it was not adverted to. In any case, when a finding is rendered by the learned Judge as regards the limitation if the impugned order is perused, I am satisfied that on reliance upon Section 18(1) of the Limitation Act, a specific conclusion is drawn that a fresh period of limitation shall be computed when the acknowledgment was so signed and explanation (a) to the said Section was specifically quoted with reference to the report dated 25.06.2024 made by the Assistant Engineer with notings of Defendant No. 4 and this was accepted as an acknowledgment of liability and it was conclusively held that in terms of Section 18 of the Limitation Act, a fresh period of limitation is required to be computed from 25.06.2014 and therefore, the suit filed on 28.03.2016 cannot be said to be barred by limitation.

It is worth to note that the procedure adopted by the learned Judge is proper and I do not deem it appropriate to refer to the issue of limitation since no legal error is to be found as regards the said finding.

23. The moot question for consideration is as to whether the amount claimed for additional work was included in the original work which was allotted to the contractor. Though the learned Single Judge in First Appeal No. 120 of 2019 has already rendered a finding, to which I have already made reference, in addition, I would like to comment upon certain important facets.

When the work order was issued in favour of the contractor pursuant to the tender being invited for hot mixing and widening of the road in a particular stretch, is looked into, the work order clearly reflects that the tender for the mentioned work is accepted on behalf of the Government of Goa at the negotiated amount which was quoted and the time allowed for carrying out the work as entered in the tender shall be reckoned from the date of the order being communicated. From the evidence of the witnesses of the State Government i.e. DW-1, Assistant Engineer and DW-2, Junior Engineer, working at the relevant time has brought on record that the work was awarded on 20.05.2011 and it was concluded on 01.02.2011 in Civil Suit No. 7/2016. It is categorically deposed by the witnesses of the Department that the Electricity Department had laid underground electric cables on the portion of the road which was widened by the Plaintiffs. It was also deposed that the scope of the main work to be executed by the Plaintiffs consisting of similar items were required for repairs of trenches of the road, dug for laying underground cables before hot mix. Though a specific stand was adopted in the affidavit filed by the witnesses of the State Government that no amount was due and payable, with a specific averment to the effect that the bill claimed for the additional work was never raised and therefore, there is no question of acknowledging the same as whatever was due under the contract of "widening of road" was already paid to the Plaintiffs. In the cross examination of DW-1, when he was confronted with the report dated 25.06.2014, he identified that the report was prepared by him from the signature which was the part of the said report. He categorically admitted that there was some mistake in the said report, wherein it was inadvertently stated as "reinstatement amount as executed" whereas it should have been read as "tentative amount of reinstatement".

In cross examination, DW-1 specifically admitted his calculations in the report dated 25.06.2014 in column "amount of reinstatement of road" on the basis of rate analysis on sheet no. 8. He also admitted that "reinstatement of the damaged roads" was not a part of the work order issued to the Plaintiffs.

24. My attention is also invited to the report dated 31.05.2012 in relation to the subject "reinstatement of damaged roads dugged for laying underground electrical cable by Goa Electricity Department in Fatorda constituency". The said letter categorically states that the work mentioned therein was awarded to the contractor for their quoted rate but the hot mix work cannot be taken up unless the reinstatement of trenches dug by the

Electricity Department is carried out. The communication is reproduced below:-

"No. PWD/WD VI/ADM/F-69/12-13/35 Dated 31/5/12

Sub:	*Reinstatement of damaged roads dugged for laying underground electrical cable by Goa Electricity Department, in Fatorda Constituency.*
Name of the work:	*Hot mixing and widening of road from Holy Spirit Church to Sonsoso (MDR 43) in Fatorda Constitueny.*
Name of the agency:	*M/s Jayshree Mallikarjun Constructions.*
Agreement No.:-	*57/AG/SD IV/MR/11-12 dt:- 20/5/2011*

The above work is awarded to M/s Jayshree Mallikarjun Constructions for their quoted rate of Rs.2,95,89,660/- (4.87% above). The hot mix work cannot be taken up unless reinstatement of trenches dug by electricity department is carried out, since both works are interlinked. It is seen that most of the areas in Fatorda Constituency the underground cabling work has been proposed by the G.E.D. some places the laying of cable work has already been started & at some places already completed. As per estimates submitted by the office to G.E.D. towards reinstatement charges, so far GED has deposited Rs.1.56 crore only out of estimate submitted for Rs.2,59,02,000/- for reinstatement of trenches & balance amount is not deposited by G.E.D.

Due to urgency of work & to have proper co-ordination between both works it is proposed to get it *repaired/reinstatement of damaged roads through the same agency as there are items available/quoted in the above agreement, by deviated quantities of these items. The total financial implications of the reinstatement of the roads under this contract will be Rs.15,11,926/- (rate at Rs. 581.51 per RM as per his quoted rates) for a length of 2600.00 mts.*

The said amount will be debited to the amount deposited by G.E.D. in parts. Since many representations and complaints are coming to this office for not repairing the roads and the same may be repaired before the onset of the monsoon and also to maintain the roads during the monsoon period.

A necessary permission/approval may be given to take up this work as proposed. In principle subject to deposit of balance amount by G.E.D."

25. In the wake of the aforesaid, it is clear that due to urgency of work mentioned in the said communication, which was identified as two distinct works, a proper co-ordination was expected and for the purpose of reinstatement of the roads a special figure of Rs.15,11,926/- (rate at 581.51 per RM) as per the quoted rates was mentioned by categorically stating that the amount will be debited to the amount deposited by the Goa Electricity Department in parts. DW-1 has categorically admitted in his affidavit that the Electricity Department had deposited a sum of Rs.6 crores towards repairs of the damaged road and this makes one wonder if the amount was deposited by the Electricity Department for the damage caused to the road and resulting into trenches, which were required to be filled in before the contractors complete the work of hot mixing and widening of roads, why this work should be treated as a part of hot mixing and widening which was allotted to the contractors as per the work after the tender was floated. There is a clear admission on behalf of DW-1 that the reinstatement of the damaged road work order was not issued to the Plaintiff, if the contractor was asked to undertake the additional work, the State cannot run away from its liability of making payment of the said amount. This is what has been clearly established by the Trial Judge through the evidence, the pleadings and the findings rendered that the contractor was held entitled to the amount due and payable towards the additional work that was carried out, which admittedly was not the part of the contract that was awarded with and pursuant to which the work of hot mixing was executed, no legal infirmity can be found in the impugned judgment for the aforesaid reasons.

In any case, I am not persuaded to take any other view than the one which was expressed by the learned Single Judge in First Appeal No. 120 of 2019 when the Appeal filed by the State Government came to be dismissed. As a result of this, First

Appeal No. 90 of 2023, First Appeal No. 56 of 2023 and First Appeal No. 113 of 2023 filed by the State are liable to be dismissed and they are accordingly dismissed.

26. It is informed that the amounts payable by the impugned judgments and decree are already deposited by way of cheque under the orders of this Court, which the Respondents in the respective Appeals are entitled to withdraw.

27. In view of the disposal of the First Appeals, pending Civil Applications, if any, are disposed of.

BHARATI DANGRE, J.