
(2011) 02 GUJ CK 0182
In the Gujarat High Court
Case No : First Appeal No. 3658 of 2010

Indravadan V. Shah and Another

APPELLANT

Vs

Spunpipe and Construction Company (Baroda) Private
Limited

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Citation : (2011) 02 GUJ CK 0182

Hon'ble Judges : Jayant M. Patel, J;B.M. Trivedi, J

Bench : Division Bench

Advocate : Dilip L. Kanojiya, for the Appellant; P.R. Thakkar, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Admit. Mr. Thakkar learned advocate waives service of notice of admission. With the consent of the learned advocates appearing for both the sides, the matter is finally heard.

2. The present appeal arises against the judgment and order passed by the learned 4th Addl. Senior Civil Judge, Vadodara dated 1.7.2010, whereby, the suit has been decreed for an amount of Rs. 22,17,202.88ps with the interest at the rate of 12% per annum from the date of the suit until it is realisation.

3. It appears that the suit was filed for Rs. 22,17,202.88ps being Summary Suit No. 567/2007. In the said suit, the Appellant-original Defendant applied for leave to defend. The lower Court passed the order of granting permission for leave to defend on condition that the Appellant furnishes the bank guarantee of Rs. 19,62,944-00. As per the Appellant, prior to the said order, the amount of Rs. 8,00,000/- was already paid pending the suit by the Appellant - original Defendant to the Respondent-original Plaintiff and, therefore, he had preferred an application for modification of the condition of furnishing the bank guarantee below the application for leave to defend. The said application was dismissed, against which, Appellant did not prefer the appeal or revision at the relevant

time. Thereafter, as the condition for leave to defend was not complied with, the trial Court passed the judgment and decree, as aforesaid. Under the circumstances, the present appeal before this Court.

4. We have heard Mr. RS Sanjanwala with Mr. Kanojia for the Appellant and Mr. Thakkar for the Respondent.

5. Learned advocates appearing for both the sides, after some arguments and suggestions and counter suggestions, agreed on the following aspects:

The Appellant-original Defendant shall deposit an amount of Rs. 7,62,944/- with the trial Court within a period of three months from today.

6. The Respondent-original Plaintiff shall be at liberty to withdraw the said amount of Rs. 7,62,944/- on furnishing the bank guarantee before the trial Court.

7. After the amount is deposited, the trial Court thereafter may take up the suit for adjudication on merits and the attempt may be made to dispose of the suit as early as possible preferably within a period of one year therefrom.

8. In view of the aforesaid agreement between the parties, the judgment and decree passed by the trial Court may be set aside and the suit may be tried on merits as observed earlier.

9. The Appellant-original Defendant shall file an undertaking before this Court to the effect that the amount of Rs. 7,62,944/- shall be deposited with the trial Court within a period of three months from today, failing which, the Respondent-original Plaintiff should be at liberty to execute the decree in accordance with law. The learned trial Judge may decide the suit independently on its own merits without being in any manner influenced by the order, which may be passed.

10. The post dated cheques which has been issued by the Appellant - original Defendant in the execution proceedings, shall stands cancelled.

11. In view of the aforesaid agreement between the parties, and considering the fact and circumstances of the case that no trial had taken place, we find that the judgment and decree passed by the trial court can be set aside on compliance of the conditions that:

The Appellant-original Defendant shall file an undertaking before this Court that he shall deposit the amount of Rs. 7,62,944/- with the trial Court within a period of three months from today and further shall actually deposit the amount as per the undertaking. It is further observed that the undertaking shall also state that upon failure to deposit the amount of Rs. 7,62,944/-, the Respondent-original Plaintiff should be at liberty to execute the judgment and decree of the trial court in accordance with law.

12. After the undertaking is filed and the amount is deposited, the original Plaintiff-Respondent herein shall be at liberty to withdraw the amount on furnishing bank guarantee of Rs. 7,62,944/-.

13. The trial Court shall take up the suit for adjudication on merits and the attempt shall be made to dispose of the suit as early as possible preferably within a period of one year therefrom.

14. The learned trial Judge shall decide the suit afresh independently on the basis of the evidence as may be available on record without being in any manner influenced by any of the observation made in the present order.

15. The appeal is allowed to the aforesaid extent. No order as to costs.

16. In view of the order passed in first Appeal, Civil Application No. 13981/2010 stands disposed of accordingly.