

(2012) 08 BOM CK 0201

In the Bombay High Court

Case No : Second Appeal No. 75 of 2003

M/s Marine Cret e (India), A Registered Partnership firm, with
its Office at 2nd Floor, Jose Falcao Road, Panaji, Goa

APPELLANT

Vs

M/s Gold Star Machinery and General Co., A registered
partnership firm, with its Office at 321, Hotel Gold Star
Building, Isidoro Baptista Road, Panaji, Goa

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Section 13, 16, 7
Civil Procedure Code Amendment Act, 2002 — Section 16, 16(2)(a), 16(2)(b), 5
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1, Order 6 Rule 5, 102
General Clauses Act, 1897 — Section 6

Citation : (2013) 2 ABR 201 : (2013) 1 BomCR 621

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

**Advocate : S.D. Lotlikar, with Mr. K.B. Surjuse, for the Appellant; Sudesh
Usgaonkar, for the Respondent**

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—This is plaintiffs' Second Appeal. The plaintiffs had filed Special Civil Suit No. interest at the rate of 18% per annum from the date of filing of the suit till the date of payment of entire amount. This suit was filed on 28/04/1981. By Judgment and Decree dated 06/08/1999, the learned First Additional Civil Judge, Senior Division, Margao (trial Court) decreed the suit and directed the defendants to pay the principal sum of Rs. 21,831.64 to the plaintiffs with interest at the rate of 18% per annum from 28/11/1980 till the date of actual payment.

2. The defendants preferred Regular Civil Appeal No. 85 of 1999 against the Judgment and Decree of the trial Court. By judgment and decree dated 09/07/2003, the learned Additional District Judge (III), South Goa, Margao (first Appellate Court) allowed the appeal and set aside the Judgment and Decree

dated 06/08/1999 of the trial Court. The Special Civil Suit No. 65/1981/I came to be dismissed.

3. It is against the said Judgment and Decree of the first Appellate Court that the plaintiff has filed this Second Appeal, which has been admitted on certain substantial questions of law.

4. There is no need to narrate the facts of the case as also the substantial questions of law, as formulated, in view of the preliminary objection that has been raised by the learned counsel for the defendants.

5. The learned counsel for the defendants has contended that this Second Appeal is not maintainable in view of the provisions of Section 102 of the Code of Civil procedure, 1908 (C.P.C.) read with Section 16(2)(a) of the CPC (Amendment) Act, 2002 (Amendment Act, 2002, for short).

6. In view of the above, the short question that arises for determination is whether the present Second Appeal is maintainable.

7. Section 102 of C.P.C., as substituted by Section 5 of the Amendment Act, 2002, provides as under :

102 No second appeal in certain cases.-

No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.

8. Indisputably, the subject matter of the original suit in the present case is for recovery of money not exceeding Rs. 25,000/-.

9. Section 16 of the Amendment Act, 2002, provides as under :-

16. Repeal and Savings. (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions are consistent with the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,-

(a) the provisions of section 102 of the principal Act as substituted by section 5 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 5; and every such appeal shall be disposed of as if section 5 had not come into force;

(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of the CPC (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16 of the CPC (Amendment) Act, 1999 and section 7 of this Act;

(c) the provisions of rule 1 of Order XX of the First Schedule as amended by section 13 of this Act shall not apply to a case where the hearing of the case had concluded before the commencement of section 13 of this Act

10. In terms of Section 16(2) (a) of the Amendment Act, 2002, the provisions of Section 102 of C.P.C. shall not apply to or affect any appeal which had been admitted before the commencement of Section 5 and every such appeal shall be disposed of as if Section 5 has not come into force. In other words, the amended provision of Section 102 of C.P.C. applies to the appeal which has been filed after the commencement of Section 5 of the Amendment Act, 2002. Section 5 of the Amendment Act, 2002 came into force as from 01/07/2002. The present Second Appeal was filed after the commencement of the said Section 5. It was filed on 08/09/2003 and was admitted on 09/10/2003. Though an appeal is continuation of the original proceedings, however, the vested right which was available to the plaintiffs, at the time of filing of original suit, has been expressly taken away by Section 16(2)(a) of the Amendment Act, 2002. Thus, in the light of above, Section 102 of C.P.C. is not available to the plaintiffs since the original suit is for recovery of money of Rs. 23,466/-, which amount is less than Rs. 25,000/-.

11. In this regard, I am supported by a judgment of the learned Single Judge of Aurangabad Bench of this Court in the case of "Shivram s/o. Sangram Yerne Vs. Harishchandra s/o. Bhujangrao Kawadekar" reported in 2009 (3) ALL MR 167. In the case supra, the dismissal of suit for recovery of Rs. 3,750/- on 10/1/2000 and first Appeal on 19/03/2002 was subject of the Second Appeal, which was admitted after 1/7/2002. The question framed was: "Does a right of second appeal accrue to the plaintiff in spite of inhibition envisaged in Section 102, C.P.C. by amendment dated 01.07.2002. The learned Single Judge held that there should not be any ambiguity in interpreting Section 102, C.P.C. in the light of Section 16(2)(b) [which should be Section 16(2)(a)] that it will not be applicable to appeal after 1st July, 2002 irrespective of cause to the lis prior thereto. It is observed that the right of appeal conferred on an individual was subject to restrictions being imposed, inhibiting second appeal for the dispute involving recovery of money not exceeding Rs. Twenty Five Thousand. The learned Single Judge has held that Section 6 of the General Clauses Act will not be attracted to the case in question and the vested rights are taken away by express provision embodied in Section 16(2)(a) [which should be Section 16(2) (a)].

12. Therefore there is no doubt that the present Second Appeal which has been filed after 01/07/2002 is not maintainable, since the amendment is prospective. In the result, the second appeal is dismissed as not maintainable. No order as to costs in the facts and circumstances of the case.