

(2010) 09 GUJ CK 0001
In the Gujarat High Court
Case No : First Appeal No. 2018 of 1992

State of Gujarat

APPELLANT

Vs

Jayendra Construction Co.

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2010) 09 GUJ CK 0001

Hon'ble Judges : J.C. Upadhyaya, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : H.L. Jani, AGP, for the Appellant; G.T. Dayani, for the Respondent

Judgement

A.M. Kapadia, J.—The challenge in this First Appeal u/s 96 of the CPC is to the correctness of the judgment and decree dated 5/5/1992 rendered in Special Civil Suit No. 37/1987 by the Ld. Civil Judge [S.D.] Ahmedabad [Rural] at Mirzapur, by which suit filed by the respondent - original plaintiff against the appellant to recover amount of Rs. 6,62,940/- by way of damages came to be allowed and thereby it was held that the respondent - plaintiff do recover Rs. 6,62,940/- at the rate of 18% interest on the decretal amount, from the date of the suit till realization from the appellant, so also the costs of the suit.

2. The appellant original defendant - State of Gujarat being aggrieved by the said judgment and decree, is in appeal before us.

3. At the time of hearing of this appeal, Mr. G.T. Dayani, learned advocate for the respondent has drawn our attention on the Civil Application No. 2608/1995 filed by the appellant - State of Gujarat and order dated 26/6/1995 passed therein by a Division Bench of this Court.

In Civil Application No. 2608/1995 following prayers were made:

[A] to allow the appeal partly by modifying the rate of interest from 18% to 10% in suit claim as decreed by the learned trial Court;

[B] to direct the respondent-plaintiff to make appropriate endorsement on the decree as stated hereinabove and the appeal may accordingly be disposed of;

[C] to pass such other and further order or orders as the nature and circumstances of the case may require.

4. After hearing the learned advocates appearing for the parties, the Division Bench of this Court vide order dated 26/6/1995 has disposed of the Civil Application in following terms:

Rule.

Mr. G.T. Dayani, Ld. Advocate for respondent waives service of Rule.

Having heard the Ld. Advocates for the parties, prayer [A] is granted. Decree of the trial Court stands modified accordingly.

Rule is made absolute accordingly with no order as to costs.

F.A. No. 2018/92 stands disposed of accordingly.

5. On perusal of the aforementioned order, it is clearly seen that the application filed by the appellant came to be allowed and thereby the prayer in terms of [A] of the application has been granted and accordingly decree of the trial Court stood modified and aforementioned First Appeal has been disposed of accordingly. However, through inadvertent mistake, this order has not been transcribed in the order sheet of the First Appeal, which has resulted into listing of this First Appeal though it has been disposed of.

6. In view of this, First Appeal stands disposed of in terms of the order dated 26/6/1995 rendered in Civil Application No. 2608/1995 by the Division Bench of this Court.

Decree to be modified accordingly.

Appeal is disposed of with no order as to costs.