

(1999) 04 GUJ CK 0024
In the Gujarat High Court
Case No : First Appeal No. 1332 of 1983

State of Gujarat

APPELLANT

Vs

S.K. Gadhvi and Co. and Others

RESPONDENT

Date of Decision : 13-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 2, 96

Citation : AIR 2000 Guj 16

Hon'ble Judges : J.N. Bhatt, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : B.D. Desai, A.G.P, for the Appellant; Maya N. Bhavnani, (for No. 1) and G.T. Dayani, (for No. 4), for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—The appellant State, original defendant, has challenged the judgment and decree recorded in Civil Suit No. 3751/77 decided by the learned Judge of City Civil Judge, Ahmedabad, whereby, the suit of the respondents -- original plaintiffs -- came to be partly decreed for the recovery of sum of Rs. 55,561/- against the claim of Rs. 1,52,861/-.

2. The plaintiffs instituted the aforesaid suit for the recovery of the aforesaid amount for the work done by original plaintiff No. 1, a partnership firm, for damages in respect of construction of bridge across river Andheri near Vataman in Ahmedabad District. The plaintiffs, inter alia, contended that the defendant State committed default and delayed giving designs and, therefore, they suffered damages.

3. As per agreement, Ex.47, the work was required to be started on 4th November, 1968 and was to be completed on or before 3rd November, 1969. The agreement could not be fulfilled by the plaintiff on account of the failure on the part of the defendant State to carry out its contractual obligations. However, instead of repudiating the contract, the plaintiffs completed the work and chose

to claim damages.

4. Original defendant appeared and resisted the suit, inter alia, contending that the claim made by the plaintiffs in the suit is not maintainable. On the contrary, the State claimed an amount of Rs.42,6.82/- by way of counter claim. It was the case of the defendant that there was failure on the part of the original plaintiffs to perform their part of the contract as they did not complete the work within the stipulated period.

5. The claim made by the plaintiffs for Rs.1,52,861/- is elaborately mentioned in the plaint, the break-up of which is as follows:

1.

Amount of work done as per tendered rates but not measured and paid

9498.00

2.

Loss of profit at 20% on the remaining work which is got executed by the Executive Engineer of the Department Rs. 1,00, 000

20000.00

3.

Damage due to increase in costs of materials, labour wages, etc. for work executed as per tender amounts

20671.00

4.

Damages due to increase in costs of materials and Labour wages etc- for well foundation work executed as per changed design

65382.00

5.

Cost of materials lying oil site of the work

1041.00

6.

Damages due to loss suffered in establishment on account of prolongation of work beyond time limit

19200.00

7.

Amount deducted from running bills as alleged penalty and/or compensation

4223.00

8.

Wrongful recovery of cost of empty cement bags.

3900.00

9.

Amount of security deposit paid in cash and/ or deducted from R.A. bills and/or Bank guarantee furnished.

8946.00

Total Rs.152861.00

6. After having considered the facts and circumstances and the evidence on record, the Trial Court, partly, decreed the suit and dismissed the counter claim. The Trial Court found that plaintiff No. 1A to whom the right came to be vested is entitled to recover an amount of Rs. 55,561/- along with proportionate costs and interest at the rate of 6 per cent per annum till realisation from the defendant State. The counter claim of the State, therefore, stood dismissed with costs. The impugned judgment came to be recorded on 4th February, 1983, six years after the institution of the suit and the appeal is now being disposed of after the expiry of 16 years.

7. The assessment made by the Trial Court of the evidence and the appraisal of the facts and circumstances emerging from the record, the Trial Court found that there was fault on the part of the original-defendant State and therefore the defendant had committed breach of the contract. The ultimate conclusion recorded by the Trial Court and the reasons assigned in support of the conclusion are quite weighty and justified. We, broadly, agree with the said reasons. The decision of this Court rendered in First Appeal No. 1154/82 between the same parties is attracted to the facts of the present case. Since we have found, upon assessment of the evidence and examination of the record and the rival submissions of the advocates that the ultimate conclusion recorded by the Trial Court is justified, we do not divulge on meticulous and minute tautology of the evidence. It is a settled proposition of law that when the appellate Court, broadly, agrees with the view adopted by the Trial Court, it is not incumbent upon the appellate Court to repeat and reiterate the same grounds on which the ultimate conclusion is arrived at. The submissions raised before us that the original plaintiff No. 1A was not competent to claim damages against the original defendant State is found unsustainable in view of the evidence on record and we agree with the view taken by the Trial Court. By virtue of an agreement between the parties, the assets and liabilities of the firm had been taken over by the plaintiff No. 1A. Therefore, the suit is rightly decreed by the Trial Court in favour of him. We are also of the clear opinion that breach was committed by the defendant State and not by the plaintiff as, rightly, held by the Trial Court.

Therefore, the defendant State, obviously, would be liable for the payment of damages resulting from the breach of the contract. We, therefore, find no substance in this appeal. The cross objections are not pressed. Therefore, they are not required to be examined.

In the result, the appeal is dismissed. Cross objections shall also stand dismissed as not pressed, leaving the parties to bear their own costs.