
(2014) 03 BOM CK 0231
In the Bombay High Court
Case No : First Appeal No. 316 of 2007

Uday M. Salkar

APPELLANT

Vs

Chief Secretary, Government of Goa

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Citation : (2014) 5 ABR 583 : (2015) 2 ALLMR 366 : (2015) 2 MhLj 842

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : Parag S. Rao, Advocate for the Appellant; M. Salkar, Government Advocate and A.R. Kantak, Advocate for the Respondent

Judgement

F.M. Reis, J.—Heard Mr. P. Rao, learned counsel appearing for the appellant, Mr. M. Salkar, learned Government Advocate appearing for the respondent Nos. 1 and 3 and Mr. A.R. Kantak, learned counsel appearing for the respondent No. 2. The above appeal challenges the judgment and decree dated 17.05.2007 passed by the District Court, Panaji, in Civil Suit No. 175/2004 whereby a suit filed by the appellant against the respondents for recovery of damages came to be dismissed.

2. Briefly, the case of the appellant is that he is occupying the premises wherein he is running a jewellery shop in a building belonging to the respondent No. 2 wherein the respondent No. 3 also has a RTO office on the first floor. It is further the case of the appellant that the respondent No. 3 had installed an air conditioner to their office premises located immediately above the jewellery shop No. 1 and consequently, from March, 2003 to December, 2003 despite of a series of the objections raised by the appellant that the water from the air conditioner was percolating into the premises occupied by the appellant, the respondent No. 2 has failed to take any action which resulted in total deterioration of the furniture equipment installed in the premises of the appellant. It is further the case of the appellant that immediately after such water was entered the premises occupied by the appellant, notices were issued initially to the

respondent No. 2 who is the landlord of the premises and thereafter to the respondent No. 3 bringing to their notice the nuisance of water of the air conditioner was creating to the business premises occupied by the appellant. It is further the case of the appellant that in April, 2003 a specific notice was also issued to the respondent No. 3 bringing to their notice such illegal acts which resulted in damages to the business equipments in the shop of the appellant. Despite of such warning, the respondent Nos. 2 and 3 had failed to take any remedial measures which resulted in totally deteriorating the furniture equipment installed in the premises of the appellant. It is further his case that in December, 2003 a drain pipe installed by the respondent No. 3 which was initially placed to the air conditioner for allowing the water to be collected in a drain was replaced and consequently, the water seeping into the shop of the appellant came to a halt as the water was diverted into their own premises. It is further his case that on account of such acts on the part of the respondent Nos. 2 and 3, the appellant was forced to substitute the furniture equipment which resulted in damages to the tune of Rs. 2,11,920/-.

3. The respondents disputed the said contention of the appellant by filing their written statement inter alia contending that no such water had entered into the premises of the appellant. It is further disputed that on account of such water from the air conditioner the appellant had suffered any damages or that the furniture equipment was destroyed. It is also contended by the respondents that in any event, the furniture equipment was more than 14 years old and as such according to them the question of paying any damages to the appellant would not arise. The learned Trial Court after framing the issues and recording of evidence by the impugned judgment dismissed the suit filed by the appellant. The learned Judge has essentially rejected the claim of the appellant on the ground that the appellant has failed to establish any damages that had occasioned to the appellant on account of any water having seeped into the premises of the appellant from the air conditioner installed by the respondent No. 3. The learned Judge after appreciating the evidence on record has also come to the conclusion that the appellant had failed to establish the actual damages claimed by him in the suit. Being aggrieved by the said judgment and decree, the appellant has preferred the present appeal.

4. Mr. P. Rao, learned counsel appearing for the appellant has pointed out that it is not in dispute that the premises occupied by the respondent No. 3 is located immediately above the shop premises occupied by the appellant. It is further his contention that the respondent No. 3 installed an air conditioner immediately above the premises occupied by the appellant to the outer wall and as such the water from the air conditioner was passing through the drain pipe into the shop of the appellant. The learned counsel further pointed out that the fact that the water had entered into the premises of the appellant has been established by the appellant as the appellant has examined the customers who have visited the shop as well as the sweeper who has categorically stated that the water had entered into the shop of the appellant which required continuous cleaning of such

shop. The learned counsel further pointed out that on account of accumulation of such water in the premises of the appellant, the furniture equipment in the shop got deteriorated which forced the appellant to get it substituted after December, 2003 after the respondent No. 3 took the remedial measures for preventing such water from entering into the premises of the appellant. The learned counsel thereafter has pointed out that the appellant has also examined the carpenter who had given an estimate to carry out such work and who has corroborated the contention of the appellant that he has suffered such losses on account of water entering into the shop of the appellant. The learned counsel has thereafter taken me through the impugned judgment passed by the learned Judge and pointed out that the learned Judge has erroneously come to the conclusion that the appellant had failed to establish that the water had entered into the shop of the appellant and that this resulted in damages to the appellant. The learned counsel thereafter has taken me through the evidence on record as well as the material produced by the appellant and pointed out that the learned Judge was not justified to pass the impugned judgment which calls for interference by this Court in the present First Appeal.

5. On the other hand, Mr. Salkar, learned Government Advocate appearing for the respondent Nos. 1 and 3 has supported the impugned judgment. The learned counsel pointed out that the appellant has examined PW 1 who has taken inconsistent stand at the hearing and in the evidence before the Trial Court which itself suggest that the claim put forward by the appellant is fictitious and without any basis. The learned counsel has thereafter taken me through the plaint as well as the cross-examination of PW 1 and pointed out that in the plaint it is pleaded by the appellant that there was a drain pipe installed to the air conditioner for the water to lead to the existing drain but however, in the cross-examination of PW 1, the said witness has stated that prior to December, 2003 there was no pipe installed by the respondent No. 3 and only thereafter the pipe was installed. The learned counsel further pointed out that this inconsistent stand of the appellant itself disentitle the appellant from claiming any damages from the respondents. The learned counsel further pointed out that it is not in dispute that the furniture equipment allegedly substituted by the appellant was 17 years old at the time of the filing of the suit which itself suggest that the furniture was affected by wear and tear and required replacement. The learned counsel further pointed out that the photographs itself suggest that the premises occupied by the appellant was not in a very good shape even in the year 1994 and as such the contention of the appellant that the water had entered into the premises which resulted in deterioration of the furniture equipment is totally without any basis. The learned counsel further pointed out that there is no evidence on record to establish any damages that had occasioned to the appellant on account of any water entering into the premises due to the air conditioner installed by the respondent No. 3. The learned counsel has thereafter taken me through the impugned judgment and pointed out that there is no case made out by the appellant for any interference in the impugned judgment.

6. Mr. Kantak, learned counsel appearing for the respondent No. 2 has supported the submissions of the learned Government Advocate appearing for the respondent Nos. 1 and 3 and further pointed out that any complaint lodged by the appellant with regard to such water was immediately transmitted by the respondent No. 2 to the respondent No. 3. The learned counsel further pointed out that according to the respondent No. 2, there was no damages suffered by the appellant on account of any seepage of water as alleged by the appellant.

7. Upon hearing the learned counsel and on perusal of the records, the following point for determination arises in the present appeal:

POINT FOR DETERMINATION

Whether the learned Judge was justified to come to the conclusion that the appellant has failed to establish that the appellant has suffered the damages due to water entering into the premises from the air conditioner installed by the respondent No. 3?

8. For the purpose of examining the said point for determination, on perusal of the plaint, I find that it was the specific case made out by the appellant in the pleadings at paras 4, 5 and 9 inter alia that a drain pipe was installed to the air conditioner by the respondent No. 3 in their own premises to allow the flow of water to the drain on the ground floor. It is further their case that after the complaints were lodged by the appellant, the respondent No. 3 took remedial measures and substituted the said pipe and consequently collected the water in a bucket which stopped the flow of water into the premises of the appellant. But however, in the cross-examination of PW 1, the said witness has stated that the air conditioner was installed somewhere in March, 2003 and there was no drain pipe installed by the respondent No. 3 which resulted in water entering into the premises of the appellant. This statement of PW 1 is contrary and inconsistent with the pleadings of the appellant in the plaint. It is further found in the deposition of PW 1 that in December, 2003 the respondent No. 3 had installed a pipe which led the water into the premises occupied by the respondent No. 3 on the first floor which stopped the flow of water into the premises of the appellant. This statement is also contrary to the pleadings of the appellant. In such circumstances, though the pleadings of the parties are otherwise to be liberally construed, nevertheless, I find that such inconsistency in the deposition of PW 1 and the pleading in the plaint would materially affect the claim of the appellant for damages in the present suit. Considering the evidence of PW 1, I find that the contention of the appellant that the water had entered into the premises through the defective drain pipe has not been established by the appellant by any evidence on record though the oral evidence of the remaining witnesses suggest that some water was found in the premises of the appellant. These statements of the remaining witnesses do not support the case of the appellant as stated by PW 1 during his deposition. Considering that allowing a claim for damages is a matter which has to be established by cogent and reliable evidence on record, I find that, considering the said inconsistency in the evidence of PW 1 it would not

be sufficient for the Court to come to the conclusion that on account of the seepage of water into the premises of the appellant he had suffered damages to the tune of the sum claimed in the suit. The findings of the learned Judge that the appellant has failed to establish that water had in fact entered into the premises of the appellant on account of water from the air conditioner installed by the respondent No. 3 cannot be faulted. Apart from that, it is not in dispute that the air conditioner was installed at a distance of 2 feet from the outer wall of the premises occupied by the respondent No. 3. In such circumstances, it is very difficult to accept, unless there is cogent evidence on record, that the water from such air conditioner could directly entered into the premises of the appellant herein. In such circumstances, I find that the findings of the learned Judge on that count cannot be faulted.

9. In view of the findings rendered herein above, otherwise the question of going into the quantum of damages as claimed by the appellant would not arise but however, the learned Judge on examining the evidence on record has come to the conclusion that the appellant has failed to establish the actual damages suffered by him on account of such illegal acts committed by the respondent No. 3. Apart from that, producing an estimate would not by itself establish the actual amount spent by the appellant to replace such furniture. Besides that it is not in dispute that the furniture equipment allegedly substituted was nearly 14 years old at the time of the alleged incident and about 17 years old when the suit was filed. Considering the normal wear and tear of furniture equipment, the question of claiming the amount as claimed by the appellant in the suit would not arise. The learned Judge has rightly appreciated the evidence on record and has come to the conclusion that the appellant has failed to establish the actual damages suffered by him to the furniture equipment installed in the disputed shop. The findings of the learned Judge cannot be faulted with that regard and as such, I find that the learned Judge has rightly appreciated the evidence on record to come to the conclusion that the appellant has failed to establish his claim in the suit. The point for determination is answered accordingly. In view of the above, the appeal stands dismissed with no order as to costs.