

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
REGISTRY BRANCH SKARDU.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

**Civil Appeal No. 01/2017
In
CPLA No. 21/2017**

Fida Trading Company through Haji Fida Muhammad, Managing Director, Naya Bazar Skardu **Petitioner.**

VERSUS

Government of Pakistan through Secretary Defence and 6 & others

Respondents.

PRESENT:-

1. Mr. Muhammad Issa Senior Advocate of the petitioners.
2. The Deputy Attorney General for Pakistan at Gilgit-Baltistan alongwith Naib Subedar Mazhar Hussain 141 Road Maintenance Battalion Danyore Camp, FWO Gilgit for respondents.

DATE OF HEARING: - 03.05.2017.

JUDGMENT

Dr. Rana Muhammad Shamim, CJ..... This petition for leave to appeal has arisen out of the Impugned Order dated 29.08.2016 passed in Civil First Appeal No. 02/2012 by the learned Chief Court wherein the appeal filed by the petitioner was dismissed by maintaining the Judgment/decrees of the learned Civil Judge 1st Class Skardu. The petitioner being aggrieved by and dissatisfied with, filed this petition for leave to appeal. This Court vide order dated 05.04.2017 issued notices to the respondents and the case was finally heard today.

2. Briefly the facts of the case are that the petitioner filed a Civil Suit No. 118/1991 in the court of the learned Civil Judge Skardu for rendition of Accounts against the respondents in respect of the completion of 19.4 kilometer road from Kundus Mouth to Siachin Sector on the basis of labour supply agreement vide Agreement dated 14.09.1988 and 23.09.1988 between the respective parties. Later on terms and conditions altered and it was agreed that the payment shall be made on the basis of work done. The work on the site completed in the year 1990 under the said terms / conditions resultantly a sum of Rs. 26,00,000 (Rs. 2.6 million) has been paid to the petitioner by the respondents. The remaining amount as claimed by the petitioner has not been paid by the respondent No. 02 to 07 in violation of the agreed terms and conditions. Consequently, the petitioner constrained to file the Civil Suit in the court of learned Civil Judge Skardu-II. As per averments of the petitioners issues were framed by the learned trial Court and the main issues have also been proved in favour of the petitioner, however, the said suit upon hearing was dismissed vide judgment dated 20.10.201, on the sole ground of cause of action. The petitioner feeling aggrieved filed CFA No. 02/2012 which upon hearing was also dismissed vide impugned judgment dated 29.08.2016 on the basis of lack of evidence by declaring the judgment of the learned trial Court in accordance with law. Earlier to this the learned Chief Court vide order dated 10.06.1999 directed

the plaintiff /petitioner to amend the said Suit into recovery suit which was acted upon by the petitioner accordingly.

3. The learned counsel for the petitioner submits that the petitioner fully proved his case by producing and adducing oral as well as documentary evidence in support of its claim. The learned trial court failed to appreciate the same and fell in error in dismissing the suit by holding that the petitioner /plaintiff has no cause of action to file the suit against the respondents/defendants. Per learned counsel the Chief Court instead of disposing off the first appeal in accordance with the provisions of Order 41 Rule 31 CPC, arbitrarily and summarily dismissed it beyond the pleadings and record of the case. He further submits that in case the issue No. 4 i.e. with regard to the existence of cause of action is proved in favour of the petitioner, the nature and status of the suit would have been changed altogether but the learned trial court failed to resolve the same. The learned Appellate Court has also failed to resolve the issue No.04 as well. Per learned counsel for the petitioner both the courts below fell in error while deciding the disputed questions of fact. Consequently, the impugned order dated 29.08.2016 passed by the learned Chief Court as well as the judgment dated 20.10.2011in Civil Suit No. 51/2010 (Old No. 58/2003) passed by learned trial court are not sustainable as a result of misreading and non-appreciation of evidence and material on record. He prays that the impugned order/judgment passed by the Courts below be set aside by remanding back the

case to the learned first appellate court for disposal of appeal on merit to secure the ends of justice.

4. On the other hand, the learned Deputy Attorney General for Pakistan at Gilgit-Baltistan supports the concurrent findings of the two courts below. He contends that the respondents have already made payment to the petitioner as per agreement for the construction of the said road and there is nothing payable to the petitioner by the respondents. The agreement and the payment on the basis of work done is past and closed transaction which can not be re-opened. He also contends that the respondents not only made all payments as per agreement but also provided explosives, detonators and cement etc to the petitioner for completion of the road project. He further contends that the claim for remaining amount by the petitioner is baseless and uncalled for. Admittedly the petitioner had failed to produce any evidence to support his claim except two witnesses i.e. one was his driver and the other was his mason who may be termed as interested witnesses. Per learned Deputy Attorney General the petitioner produced certain fake and fabricated documents in support of his claim which were not considered by the Courts below. He also contends that no corroborative evidence was produced by the petitioner in support of his claim. Per learned Deputy Attorney General the learned counsel for the petitioner, otherwise, could not point out any illegality, irregularity and infirmity in the concurrent findings of the Courts below as such interference into it is not warranted.

5. We have heard the learned counsels for the respective parties at length, perused the record of the case and gone through the concurrent findings of both the Courts below. In our considered view, the learned counsel for the petitioner could not point out any illegality, irregularity, infirmity, misreading or non-appreciation of evidence in the order/Judgment of the two Courts below. We convert this petition into an appeal and is dismissed. Consequent thereto, the impugned order dated 29.08.2016 in Civil First Appeal No. 02/2012 passed by the learned Chief Court as well as the judgment dated 20.10.2011 in Civil Suit No 51/2010 passed by the learned Civil Judge, First Class Skardu are affirmed.

6. The appeal is dismissed in above terms.

Chief Judge.

Judge.