

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO.18-K OF 2020

(On appeal against order dated 06.03.2020 passed by the High Court of Sindh, Karachi in IInd Appeal No.149/2018.)

Malik Muhammad Riaz

...Appellant

VERSUS

Muhammad Hanif & others

...Respondents

For the Appellant:

Mr. Muhammad Safdar, ASC
Mrs. Abida Parveen Channar, AOR

For respondent No.1:

Syed Ehsan Raza, ASC

For Respondents No.2 & 3 (Proforma)

Date of Hearing:

26.04.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J.- This Civil Appeal is directed against the judgment of the learned High Court of Sindh, Karachi dated 06.03.2020, passed in IInd Appeal No.149 of 2018 whereby the concurrent findings recorded by the learned Trial Court and learned first Appellate Court were upset and the Civil Suit filed by the appellant was dismissed.

2. The concise features of the case are as under: -

The appellant had filed a Civil Suit No.861/2015 for Specific Performance, Recovery of Rs.7,010,500/- along with the damage of Rs.7,000,000/- and permanent injunction against the respondent No.1 on the premise that the respondent No.1 is the owner of Plot No.A-49, Block-1, Sector 14-A, Scheme-33 Metrovil-III, Karachi who had engaged the appellant in September 2014 to demolish old building structure and construct a Plaza/Building, ground plus one (Ground floor consisting of Two shops and Car garage cum showroom and on upper floor for residential purpose on the subject plot). The demolition

cost of old structure was agreed at Rs.3,00,000/- and Rs.2000/- per Square feet with complete work and finishing. The terms and conditions were reduced in writing vide agreement dated 05.01.2015. It was further alleged in the plaint that the appellant had almost completed 80% work of construction of the Ground Floor and 30% of the First Floor and some construction material valuing at Rs.15,00,000/- was also lying at building site. The appellant forwarded a bill to the respondent No.1 for payment of Rs.52,01,500/- but the respondent No.1 refused to pay the same. It was further alleged that 31.05.2015 the respondent No.1 came with some persons and forcibly occupied the possession of site and started the construction work through some other contractor without clearing the dues of appellant. The respondent No.1 filed the written statement and after settlement of issues, the parties adduced the evidence. The Trial Court decreed the suit vide Judgment and decree dated 10.01.2017, thereafter, the respondent No.1 filed the Appeal which was also dismissed on 01.10.2018. The respondent No.1 then challenged the concurrent finding recorded by the lower fora in the High Court vide Second Appeal No.149/2018 which was allowed and the suit filed by the appellant was dismissed.

3. The learned counsel for the appellant argued that the impugned judgment passed by the learned High Court suffers from legal infirmities and it is also based on misreading and non-reading of evidence. It was further contended that the learned High Court upset the concurrent findings recorded by the lower fora without any lawful justification so also without considering the material facts, documents and evidence available on record, set aside the concurrent findings on incorrect appreciation of law.

4. The learned counsel for the respondent No.1 supported the judgment passed by the learned High Court and argued that the learned Trial Court and Appellate Court below failed to decide the case in accordance with law. The entire burden of proof was shifted on the respondent No.1, while it was the responsibility of the appellant to prove that the suit for specific performance of contract of service was maintainable which the appellant failed to prove despite that the learned Trial Court held that the suit was maintainable. It was further averred that the appellant failed to discharge the burden of proof, hence, both the judgments passed by the Courts below were rightly set

aside in the Second Appeal by the learned High Court and the suit was also rightly dismissed.

5. Heard the arguments. According to the terms and conditions of agreement dated 05.01.2015 and the schedule of payment incorporated therein, the appellant prayed for a decree in the sum of Rs.70,10,500/- out of which, a sum of Rs.52,10,500/- was for construction charges and Rs.15,00,000/- for the raw-material lying at the building site plus Rs.300000/- as demolishing charges of old structure. In addition, the appellant also claimed the damages to the tune of Rs.70,00,000/- on account of irreparable losses, mental agony and severe financial losses. After filing the written statement, the learned Trial Court settled nine issues and after recording evidence of the parties, the suit was decreed with the directions to the Defendant/Respondent to pay a sum of Rs.70,10,500/- as balance construction charges in view of the agreement dated 05.01.2015. and a further sum of Rs.70,00,000/- as damages. The judgment & decree of Trial Court were affirmed in appeal, however vide impugned judgment, the concurrent findings of the Trial Court as well as the first Appellate Court were set aside and the suit filed by the appellant was dismissed. According to Order VI, Rule 1 CPC, the "pleading" means plaint or written statement, whereas under Order XIV, Rule 1 CPC, it is the obligation of the Court to settle the proper issues after reading the plaint and the written statement for recording of issues on which the right decision of the case appears to depend. The material propositions are those propositions of law and fact which the plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defense before the Trial Court. If any party finds out that issues are not properly framed or some issues need to be recast or

some additional issues are required to be framed then obviously, such party may apply to the court for framing of additional issues.

6. We have minutely gone through the issues settled by the learned Trial Court and the evidence adduced by the parties to discharge the onus of proof. So far as principal amount of Rs.52,10500/- as outstanding charges of construction is concerned, it appears from the record that this amount was rightly decreed in favour of the appellant and on this account, the judgment does not suffer from any instance of non-reading or misreading of evidence. So far the claim of 15,00,000/- as cost of raw-material lying at the building site and the claim of damages is concerned, no specific issues were settled by the learned Trial Court and no specific findings are available on record except that the huge sum was decreed as compensation for loss or damage caused by breach of contract in terms of Section 73 of Contract Act, 1872. The survey of Prayer Clauses as incorporated in the plaint for the relief of damages, it is somewhat mix of special and general damages claim but no convincing evidence was adduced to the effect of sustaining any serious financial losses even no evidence was adduced with regard to the alleged irreparable losses or mental agony. Similarly, in the findings recorded against Issue No.8, the arguments of the learned counsel for the appellant are depicted wherein he argued that no amount for damages was fixed in the agreement but he articulated that under Section 73 of the Contract Act, the Court has ample powers to grant damages on which the learned Trial Court overwhelmingly relied and granted huge damages without adverting to the crucial aspect that neither any issue was framed nor at any point of time, the appellant applied for framing any additional issue nor any evidence was led for substantiating the claim of damages (special or general both) or to justify the claim of cost of material allegedly lying at the building site.

7. We have noted that the learned High Court while rendering its judgment in second appeal instead of examining the evidence available on record at least to the extent of granting decree against the principal amount, the appeal was decided predominantly on mere presumption rather than reading out the evidence in its true perspective for reaching just and proper conclusion. It makes sense that the relief of damages along with payment of cost of material lying at the building site was unjustified and not supported by any evidence on record but at the same time, remaining relief of Rs.52,10500/- being an outstanding amount could not be turned down which was established through evidence and rightly decreed by the learned Trial Court which aspect was ignored by the learned High Court and the suit of the appellant was out rightly dismissed, therefore, on 26.04.2022, this appeal was allowed by the our short order which is reproduced as under:-

“We have heard the learned counsel for the parties at considerable length. For reasons to be recorded later, the instant appeal is allowed in a manner that the suit of the appellant is decreed in the sum of Rs.52,10,500/-. Modified decree be prepared accordingly.”

Above are the reasons in support of short order.

Judge

Judge

Judge

Karachi,
26th April, 2022
Khalid.
Not approved for reporting