



GAHC010200972017



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
Principal Seat at Guwahati

RFA No. 100/2017.

Sri Prasanta Saha,
S/o Prabir Kr. Saha,
R/o Flat No. 304, Samranmay Abas Society, Japorigog, ASEB,
Guwahati, 781005,
Dist. – Kamrup (M), Assam.

..... Appellant.

-Versus-

Sri Biplab Kumar Chetia,
S/o Late Dr. Bipin Chetia,
R/o Katiram Mikir Path, Near Japorigog, ASEB, Guwahati, 781005,
Dist. – Kamrup (M), Assam.

..... Respondent.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the appellant	:-	Mr. B.K. Bhagawati.
Advocate for the respondent	:-	Mr. S.P. Choudhury.
Date of Hearing	:-	24.06.2025.
Date of Judgment & Order	:-	28.07.2025.

JUDGEMENT & ORDER (CAV)

Heard Mr. B.K. Bhagawati, learned counsel for the appellant
and Mr. S.P. Choudhury, learned counsel for the respondent.



2. In this appeal, under Order 41 Rules 1 & 2 of the CPC, the appellant has put to challenge the correctness or otherwise of the Judgment and Decree dated 30.03.2017, passed by the learned Civil Judge No. 2, Kamrup (M) at Guwahati (trial court hereinafter), in Title Suit No. 229/2010.

3. For the sake of convenience and to avoid confusion, the name of the parties appeared in the said title suit is adopted herein also.

4. It is to be noted here that vide impugned Judgment and Decree dated 30.03.2017, the learned trial court had dismissed the suit of the plaintiff, wherein the plaintiff had prayed for the outstanding amount of Rs.57,56,699/- along with interest @ 15% per annum.

Background Facts:-

5. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“The plaintiff is a Class I(A) contractor and the defendant is a government contractor running a proprietorship concern. On 16.05.2005, the defendant obtained a work order from the PWD (Border Roads), Government of Assam in respect of construction of IBB bund-cum-road including security fencing along the Surma river bank from Kinnerkhel to Harinagar, in Cachar and the bid price was Rs. 2,48,33,396/- and the Executive Engineer, Badarpur, BRC Division, vide letter dated 02.03.2006, directed the defendant to commence the work so as to



complete the same by December, 2006. Since the defendant could not execute the work properly due to resistance from local people, against acquisition proceedings, the work could not be executed. Thereafter, on 25.03.2008, the Government of Assam notified the acquisition of land for construction of the said road.

Since the year 2005-2006, the defendant requested the plaintiff to provide his services in executing the aforesaid work against the work order. Then, the plaintiff and the defendant mutually agreed that the plaintiff would take entire responsibilities for execution of the aforesaid work as per the terms of the agreement. However, no written contract was executed between them but, it was agreed that the plaintiff would raise bills and he would be compensated for the work. Thereafter, the plaintiff had completed the work and he received various payments for the period 2006 - 2008. But, after 2008, the defendant did not clear any of the bills for work done and the plaintiff has alleged that the work done worth of Rs. 1,07,76,699/-, he has received only Rs.50,20,000/- and despite repeated request, the defendant failed to pay the outstanding amount of Rs. 57,56,699/- along with an interest @ 15% per annum.

Being aggrieved, the plaintiff had instituted the suit before the learned trial court. But, the same came to be dismissed vide impugned judgment and decree dated 30.03.2017.



The defendant had contested the suit by filing his written statement, wherein a stand had been taken that there is no cause of action, there is no privity of contract between him and the plaintiff and the suit is not maintainable and barred by limitation and is bad for non-joinder of parties. It is also stated that though there was initial problem in commencing the work due to non-acquisition of land but, the land was acquisitioned and thereafter, he started the work as awarded to him. It is also stated that the plaintiff who came to him for providing some work and as he had a good relationship with the plaintiff and he asked the defendant to look after the execution of works and during that time, the plaintiff was awarded contract for construction of composite type fencing along BPP road on the right bank of river Surma and that the plaintiff asked the defendant for financial help to execute his work. It is also stated that the defendant intimated the PWD about the development and stated that the plaintiff was not handed over the entire responsibility of the work and on different dates, the defendant had paid Rs. 50,20,000/- to the plaintiff as financial assistance to carry out the works and the plaintiff assured him to return the same and due to plaintiff's negligence, the defendant's work suffered and for which, the defendant engaged one Enamuddin Laskar, who completed the work. It is also stated that the plaintiff instituted a false suit where he demanded his money back from him.



The defendant had filed counter claim prayed for recovery of Rs. 50,20,000/- from the plaintiff along with interest @15% and there, the plaintiff filed written statement by stating that the counter claim is not maintainable and is barred by limitation and he had done his work as sub-contractor of defendant and he is entitled to get his money as agreed upon and he denied that he received the amount of Rs. 50,20,000/- for financial assistance. He also claimed that he took a loan and executed the work as per agreement and upon submission of bills, the defendant made part-payment and he also denied that he assured the defendant of returning the money as there was no money payable to the defendant and therefore, contended to dismiss the counter claim.

Upon the pleadings of the parties, the learned trial court had framed following issues :-

- ‘(1) Whether the suit is maintainable in its present form?**
- (2) Whether the plaintiff is entitled to recover an amount of Rs. 71,95,903/- with interest till realization from the defendant as prayed for?**
- (3) Whether the counter claim is maintainable?**
- (4) Whether an amount of Rs. 50,20,000/- received by the plaintiff from the defendant is an interest free financial assistance to the plaintiff and if so,**



whether the defendant is entitled to a decree for realization of the said amount along with the interest from 15-05-2010 till realization?

(5) To what relief/reliefs, the parties are entitled?’

Thereafter, hearing learned counsel for both the parties, the learned trial court had decided the issue Nos. 1 & 3 in affirmative and answered the issue No. 2 in negative against the plaintiff and issue No. 4 in negative against the defendant and issue No. 5 in negative against the parties. Thereafter, dismissed the suit.”

Submissions:-

6. Mr. Bhagawati, learned counsel for the appellant submits that the case of the plaintiff depend upon exhibit – 2, which is a letter issued by the defendant to the Executive Engineer, PWD, Badarpur, BRC Division, wherein the Executive Engineer is informed that the plaintiff is authorized to act as an agent for execution of the work of construction of IBB cum-Road including security fence along the right bank of river Surma from Kinnerkhal to Harinagar BP No. 1353 to 1355 and he is authorized to act on behalf of the defendant on the grounds that *firstly*, to make all arrangements for execution of the work and to engage men/material/machineries from his own; *secondly*, to attend the departmental inspection of site work and to meet up all the direction/instruction of the departmental officers; *thirdly*, to receive the cheque for payment of bill in favour of him; and *fourthly*, to receive store materials if issued by the department



for the work. Mr. Bhagawati further submits that the aforesaid letter goes to show that the petitioner worked as an agent and in view of Section 73 and 182 of the Indian Contract Act, when there is a breach of contract, the aggrieved party can claim compensation for any loss or damage caused to him, which naturally arose in the usual course of thing from such breach.

6.1. Mr. Bhagawati, further submits that the learned trial court had erroneously decided the issues framed in the title suit and the learned trial court had decided the case under Section 73 of the Indian Contract Act instead of Section 70 of the said Act and the exhibited documents, i.e. exhibit Nos. 6, 7, 8, 9 & 10 reveals that the plaintiff has been paid a sum of Rs. 50,20,000/- and the total value of the work was of Rs. 1,07,76,699/- and the plaintiff is entitled to rest of the amount and that there was oral agreement between the parties though admittedly there was no written agreement. Mr. Bhagawati further submits that the defendant as DW1 in his cross-examination had admitted that vide exhibit B, i.e. exhibit – 2 he had engaged the plaintiff for execution of the above work and he was authorized to make all arrangements for execution of the work and to engage men/material/machineries from his own; to attend the departmental inspection and to receive the cheque along with the store materials and the same goes a long way to show that there was a contract between the parties and as per the same, the petitioner is entitled to the amount. Therefore, Mr. Bhagawati has contended to allow the appeal by setting aside the impugned judgment and decree and to decree the suit of the plaintiff.



6.2. Mr. Bhagawati has referred to a decision of Hon'ble Supreme Court in the case of **State of W.B. vs. M/s B.K. Mondal and Sons**, reported in **1962 1 SCR 876**, in support of his submission.

7. Per contra, Mr. Choudhury, learned counsel for the respondent submits that though the plaintiff has exhibited some documents, yet, he has failed to prove the contents of the same and further, the plaintiff failed to show how he has to receive that much of amount and under such circumstances, it is contended to dismiss the appeal as the learned trial court has rightly decided the issue so framed by it.

Discussion and finding :-

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal as well as the grounds mentioned therein and also gone through the impugned judgment and decree dated 30.03.2017, passed by the learned trial court and also the case laws referred by Mr. Bhagawati, learned counsel for the appellant.

9. It appears from the impugned judgment and decree, dated 30.03.2017, that while deciding the issue Nos. 2 & 4, the learned trial court had held that having taken stock of evidence on record along with the pleadings of the parties, it is pellucid that the plaintiff has based his claim of money on the strength of verbal agreement with the defendant in respect of the execution of work so awarded to the defendant and though there was verbal agreement between the parties, the same were not memorialized in writing and the verbal agreement are generally valid and legally binding as long as



they are reasonable, equitable, conscionable and made in good faith.

9.1. Thereafter, the learned trial court had held that the verbal agreements are difficult to enforce in court and the parties should make a concerted effort to discuss enforceability, which can be achieved by incorporating the following elements:-

- (i) Mutual consent and understanding, which means that both parties are cognizant about what they are agreeing to;
- (ii) Offer and acceptance, which means that one party is proposing something that the other party may accept under certain conditions;
- (iii) Mutual consideration, which means that there must be an exchange of valuable goods, rights or services;
- (iv) Performance, which means that the contractual parties have certain duties to perform in addition to the mutual consideration;
- (v) Good faith, which means that the parties should not attempt to enter into verbal agreement to cheat each other or to break the law.

9.2. Thereafter, considering the evidence on record, the learned trial court had held that the plaintiff, as PW1, does not show that there was mutual understanding or offer and acceptance or mutual consideration of good faith between the plaintiff and defendant in



respect of the execution of work for construction of IBB-cum-road including security fence along the right bank of river Surma and discussing the exhibit – 2, the plaintiff was authorized to act as an agent for making all arrangement for execution of the above work. But, it cannot be inferred that there was a verbal agreement between the plaintiff and defendant as regards to the execution of any work. Moreover, Exhibit – 6 - 9 series do not, in any manner, disclose that the defendant had a contractual liability towards the plaintiff, which shows only various suppliers issued vouchers/money receipts in lieu of goods supplied to the plaintiff at the construction site and those documents do not bind the defendant so as to reimburse the plaintiff. And the exhibit – 5 i.e. the statement of account is also not admissible in evidence as it is not in accordance with Section 2(8) of the Bankers' Book of Evidence Act and when the plaintiff's mode of proof of entries in bankers' book as envisaged under Section 4 of the said Act is absent, no liability can be fastened on the defendant.

9.3. Thereafter, the learned trial court had discussed Section 73 of the Indian Contract Act and thereafter, held that the plaintiff, by his evidence and of other witnesses, could not establish that he sustained loss or damage on account of breach of contract, as there was no valid contract between the parties. Thereafter, decided the issue No. 2 in negative, against the plaintiff.

9.4. Also, the learned trial court, while considering the Exhibit – C - L, so exhibited by the defendant, which contains only statement by plaintiff to pay a certain sum of money to the defendant and



thereafter, held that there is nothing in those exhibits to hold that any money was lent by the plaintiff to the defendant. Thereafter, it had decided the issue No. 4 against the defendant.

10. Before a discussion is directed to the merit of this appeal, let us deal with the submission of Mr. Bhagawati, the learned counsel for the appellant, who had submitted that the case of the appellant ought to have been dealt with under Section 70 of the Indian Contract Act, instead of Section 73 of the said Act. It is to be noted here that Section 70 of the Indian Contract Act, 1872 read as under:-

"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

10.1. A careful perusal of the Section 70 of the Indian Contract Act indicates that it embodied the principle of unjust enrichment. The main idea behind Section 70 is to prevent "unjust enrichment". In other words, the law does not allow a person to get a benefit at someone else's expense without giving fair compensation. If 'A' does something for 'B' with the expectation of payment and 'B' enjoys the benefit, then 'B' cannot simply walk away without paying 'A'. Even if there is no written contract, the law steps in to ensure justice.

10.2. While dealing with the requirement of Section 70 of the Indian Contract Act, Hon'ble Supreme Court in the case of **M/s B.K. Mondal and Sons**(supra) has held as under:-



“It is plain that three conditions must be satisfied before this section can be invoked. The first condition is that:-

- (i) A person should lawfully do something for another person or deliver something to him.
- (ii) The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and
- (iii) The third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof.

When these conditions are satisfied s. 70 imposes upon the latter person, the liability to make compensation to the former in respect of or to restore, the thing so done or delivered.

In appreciating the scope and effect of the provisions of this section it would be useful to illustrate how this section it would operate. If a person delivers something to another it would be open to the latter person to refuse to accept the thing or to return it; in that case s. 70 would not come in to operation. Similarly, if a person does something for another it would be open to the latter person not to accept what has been done by the former; in that case again s. 70 would not apply. In other words, the person said to be made liable under s. 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under s. 70 arises. Taking the facts in the case before us, after the respondent constructed the warehouse, for instance, it was open to the appellant to refuse to accept the said warehouse and to have the benefit of it. It could have called upon the respondent to demolish the said warehouse and take away the materials used



by it in constructing it; but; if the appellant accepted the said warehouse and used it and enjoyed its benefit then different considerations come into play and s. 70 can be invoked.

Section 70 occurs in chapter V which deals with certain relations resembling those created by contract. In other words, this chapter does not deal with the rights or liabilities accruing from the contract. It deals with the rights and liabilities accruing from relations which resemble those created by contract. That being so, reverting to the facts of the present case once again after the respondent constructed the warehouse it would not be open to the respondent to compel the appellant to accept it because what the respondent has done is not in pursuance of the terms of any valid contract and the respondent in making the construction took the risk of the rejection of the work by the appellant. Therefore, in cases falling under s. 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract nor ask for damages for the breach of the contract for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. All that s. 70 provides is that if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises.

Thus, where a claim for compensation is made by one person against another under s. 70, it is not on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was done by the party for another and the said work so done has been voluntarily accepted by the other party. That broadly stated is the effect of the conditions prescribed by s. 70.



10.3. In *Kanhayalal Bisandayal Bhiwapurkar v. Indarchandji Hamirmalji Sisodia*, reported in 1946 SCC OnLine MP 48, a learned Single Judge of the M.P. High Court while dealing with an appeal to Sections 68 and 70 of the Contract Act had held as under:-

“10. In the course of the argument, an appeal was made to the principles underlying Sections 68 and 70 of the Contract Act, for making the husband liable. Indeed Section 68, deals with the supply of necessaries but that is in respect of a person incapable of entering into a contract or “any one whom he is legally bound to support” i.e. the dependent of a person incompetent to contract. Indarchandji was not incompetent to contract and this section is inapplicable to him. As to Section 70, it must be observed that this section cannot be availed of by a person who relies on an express contract as the plaintiff alleged to have entered into with Mt Laxmibai in this case. The husband never entered into the picture when the plaintiff settled the terms with her. Nor is there anything to show how the husband received any benefit. It is only actual benefit which will furnish a ground of action. If the wife had been cured of her ailment completely, perhaps that circumstance might be material; but there is no evidence on the point.”

10.4. In *Mulamchand v. State of M.P.*, reported in AIR 1968 SC 1218, Hon’ble Supreme Court in dealing with a claim made under Section 70 of the Contract Act, went on to hold as under:-

“6. ... In other words if the conditions imposed by Section 70 of the Contract Act are satisfied then the provisions of that section can be invoked by the



aggrieved party to the void contract. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third condition is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied, Section 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered. The important point to notice is that in a case falling under Section 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. So where a claim for compensation is made by one person against another under Section 70 it is not on the basis of any subsisting contract between the parties but on a different kind of obligation. The juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution.”

11. In the case of *Mahanagar Telephone Nigam Limited vs. Tata Communication* reported in (2019) 5 SCC 341, the question before the court was when there already exists a contract which lays down the liquidated damages in a case of breach, can a claim of quantum meruit be brought under Section 70 of the Indian Contract Act. Then Hon’ble Supreme Court has held that - in cases where a



contract already exist and lays down the damages in a case of a breach, a claim of quantum meruit under Section 70 of the Indian Contract Act is not maintainable. A person is entitled only to the amount stipulated in the main contract and any amount other than that has to be refunded as specified by Section 74 of the Indian Contract Act. Any amount levied above such stipulated sum has to be refunded.

12. In the instant case, having examined the plaint and the evidence of P.W.1, 2 and 3, this Court finds that the plaintiff and the defendant mutually agreed that the plaintiff would take the entire responsibilities for execution of the aforesaid work, as per the terms of the agreement. But, there was no written agreement between them. However, it was agreed that the plaintiff would raise bills and he would be compensated for the work completed. Thus, it appears that admittedly, there was no written agreement between the parties. But, it appears from the evidence of all the three witnesses of plaintiff that the work was sub-contracted to him. Thus, it becomes apparent that there was oral agreement between the parties and though there was no written communication in respect of offer and acceptance, there was oral communication between them.

12.1. Thus, it is clear that although the existence of oral agreements in India is recognized, their enforceability is lacking as per law. The Hon'ble Supreme Court too, upheld the validity of oral agreements in the case of **Aloka Bose v. Parmatma Devi**, reported in (2009) 2 SCC 582 in following terms:



“16. On the other hand, the observation in *S.M. Gopal Chetty* [AIR 1998 Mad 169] that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it.

17. Section 10 of the Act provides that all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. The proviso to Section 10 of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid.”



12.2. Further, from a careful perusal of Exhibit-2, the letter authorized by the defendant to the Executive Engineer, P.W.D.B.R.C. dated 01.4.2008, this Court finds that the plaintiff/appellant was authorized to act as an agent of the defendant for execution of the contract work and also (i) to make all arrangements for execution of the work and to engage men/material/machineries from his own; (ii) to attend the departmental inspection of site work and to meet up all the direction/instruction of the departmental officers; (iii) to receive the cheque for payment of bill in favour of him; and (iv) to receive store materials if issued by the department for the work.

13. And since there was oral communication between the parties in respect of the sub-contract of the work that was allegedly executed by the plaintiff, the parties are bound by the terms of the said oral communication. That being so, to the considered opinion of this Court Section 70 of the Indian Contract Act, though contended by Mr. Bhagawati, the learned counsel for the appellant, would not come into his assistance. It is well settled from the decisions discussed herein above that Section 70 applies only in absence of formal contract. Therefore, this Court is unable to record concurrence with the submission of Mr. Bhagawati, the learned counsel for the appellant.

14. It is a fact that the learned trial court had dealt with the case of the plaintiff under Section 73 of the Indian Contract Act. And it is well settled that the party claiming damages must prove the loss suffered.



15. In the instant case, though the plaintiff had exhibited some documents, being Exhibit – 6 - 9, the same also does not bind the defendant so as to reimburse the plaintiff the amount mentioned in the aforementioned exhibits. Further, the statement of the account, being Exhibit – 5 is also not maintained in accordance with Section 2(8) of the Bankers' Book of Evidence Act, for being admissible in evidence. The learned trial court had dealt with this aspect in the impugned judgment and arrived at the finding that when the plaintiff had failed to prove the entries as envisages under Section 4 of the said Act is absent; no liability can be fastened upon the defendant. The finding so arrived at appears to be reasonable and justified.

15.1. Thus, the plaintiff/appellant had failed to establish the quantum of damage suffered by him on such breach of oral agreement. And as the plaintiff, who has been claiming damages, had failed to prove the loss suffered by him, the learned trial court to the considered opinion of this Court, has rightly dismissed the suit of the plaintiff. There is no infirmity or illegality in the impugned judgment and decree so passed by the learned trial Court.

16. In the result, I find no merit in this appeal and accordingly, the same stands dismissed.

17. Send down the record of the learned trial court with a copy of this judgment.

JUDGE

Comparing Assistant

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