

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

IIInd Appeal No. 03 of 2019

Appellant : Muhammad Ramzan through
Mr. Farhan Ahmed Bozdar, Advocate

Respondent : Town Committee Khipro through
Mr. Allah Bachayo Soomro, Addl. A.G.

Date of hearing : **19.09.2022**

Date of Judgment : **14.10.2022**

J U D G M E N T

ADNAN-UL-KARIM MEMON, J -. Through instant IIInd Appeal, the appellant has called in question the vires of Judgment dated 10.10.2018 passed by learned Additional District Judge, Khipro in Civil Appeal No. 148 of 2017 whereby the learned Judge while dismissing the appeal maintained the Judgment dated 7.12.2017 passed by learned Senior Civil Judge, Khipro in F.C. Suit No. 02 of 2016.

2. At the very outset I asked learned counsel as to how this second appeal is maintainable in terms of its scope; Mr. Farhan Ahmed Bozdar, learned counsel for applicant replied that the findings of learned trial court on issue No.2 are erroneous and not in accordance with law as the documents produced by the appellant in evidence were not refuted by respondents being public documents of Town Committee Khipro for which the respondents stated that the work was awarded to appellant in 2012; that the finding of learned trial court that the documents produced by the appellant are suspicious and unreliable as the same have been produced by himself notwithstanding there is no denial of official respondents with regard to those documents on the ground that the record of Town Committee was burnt and nothing has been brought on record that how the record was burnt i.e. inquiry or FIR etc; that learned trial court did not consider the fact that Sub-Engineer Town Committee Khipro admitted his signatures and his evidence was sufficient to prove his claim; that learned trial court while discussing issue No.6 has erroneously held that appellant has not produced any written agreement notwithstanding the documents produced by him was held by the trial court to be suspicious and unreliable; that learned appellate court committed illegally in dismissing the appeal in line with the Judgment of trial court and did not apply its judicious mind independently while deciding the appeal. He lastly prayed for allowing the instant IIInd Appeal.

3. In the present case, the trial court and the appellate court after reading and appraising all the relevant and admissible evidence adduced by the parties in support of their respective assertions, recorded the findings with the narration that the appellant failed to prove Recovery of Rs.566,870/- against respondents.

4. Appellant filed Suit for Recovery of Rs.566,870/- against respondent/ Defendants claiming therein that he was/is Government Contractor and in 2013 respondent No.1 / Defendant No.1 published an advertisement calling bids for various development schemes and after completing codal formalities, he was awarded six works as mentioned in the plaint; that the Plaintiff completed the works and submitted bills duly verified by concerned authorities to Defendant No.1 & 2 for payment but despite lapse of more than two years the payments were not made; therefore, he approached the defendants who demanded percentage as bribe which he refused and resultantly his payments were withheld; therefore, he served legal notice dated 7-12-2015 but the same was not replied, hence, he filed suit for recovery of Rs.566,870/- with following prayer:

1. Direct the Defendants to pay the amount of Rs.566,870/- of the Plaintiff of the contracts completed by the Plaintiff along with profit due on the amount.
2. Cost of the suit be borne by the Defendant
3. Grant any other relief which this Honourable Court deems fit and proper under the circumstances of the case.

5. Upon service, defendants No. 2 filed written statement whereas defendants 1, 3, 4, 5, 6, 7 & 8 adopted the written statement of defendant No. 2. The defendants in their written statement generally denied all the contents of the plaint, and further stated that defendants 2, 4 & 5 were not posted in Khipro in 2013 nor any tender was published in the newspaper; that if it was a quotation work, the same would have completed within 3 to 7 days and payments relating to quotation work were made at once and all payments if any of the Plaintiff towards Town Committee Khipro for quotation work had been made by the then Taluka Municipal Officers; that Plaintiff was not a direct contractor nor Town Committee Khipro executed any agreement with him rather he was a petty contractor. The defendants denied any outstanding amount of Plaintiff and further denied the allegation of demand of gratification. The Defendants further stated that due to General Election 2013 there was complete ban upon any development scheme therefore Bills for April 2013 were false & fabricated. The defendants further submitted that payment of quotation work had already been made to Plaintiff and other contractors through cross cheque amounting to Rs.567,656/- vide statements with payments dated 6.9.2012, 13-11-2012, and 13-12-2012. From the pleading of the parties, learned trial court framed the following issues:-

1. Whether the suit is maintainable under the law?
2. Whether Plaintiff has no cause of action?
3. Whether Plaintiff was awarded the following contracts of construction work in the year 2013, by the Town Committee Khipro amounting to Rs.566,870/-:
 - i. Repair of surface drain road cross at Riaz Colony worth

- ii. Surface drain at Mushki House 7G Road Khipro
 - iii. Repair of the surface drain at Gul Khan Pathan
 - iv. Surface drain at Aziz Colony Khipro
 - v. Surface drain at Sarfaraz Street Khipro
 - vi. Surface Drain at Murad Colony Khipro.
4. Whether all contract was completed by Plaintiff within time?
 5. Whether an amount of Rs.566,870/- (Rupees Five lacs, sixty though eight hundred and seventy) relating to construction work are outstanding against Defendant No.1?
 6. Whether Defendant No.1 has not executed any agreement/contract with Plaintiff regarding construction work?
 7. Whether Plaintiff is entitled to recovery of Rs.566,870/- from Defendant No.1?
 8. What should the decree be?

6. On the above issues both the parties adduced their respective evidence and learned trial court after hearing the parties dismissed the suit on the analogy that the plaintiff had failed to prove the documents produced at Exhibit No.36/A/1 to Exhibit No.36/A/2, as such, Plaintiff was held not entitled to recover Rs.566,870/- from Defendant No.1, as such, issues No. 7 was determined as "Negative" and issue No. 8 was determined as "suit is dismissed with no order as to cost". The appellant/ plaintiff being aggrieved with the above Judgment of trial court filed Civil Appeal No. 148 of 2017, which was also dismissed on the same analogy, vide judgment and decree dated 10.10.2018.

7. Mr. Allah Bachayo Soomro, Addl. A.G. has supported the viewpoint of learned Appellate Court and prayed for dismissal of the appeal.

8. I have heard learned counsel for the parties and perused the record with their assistance.

9. In principle this Court while hearing second appeal is not required to reappraise the evidence as the same has already been done by the first appellate court; besides there is clear distinction between the scope of first appeal and second appeal under Section 100 CPC; A second appeal lies only when the decision of first appellate court is contrary to law; and having failed to determine some material issue of law; and substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may have produced error or defect in the decision of the case upon merits. Thus the scope of second appeal is restricted and limited to the aforesaid grounds, as Section 101 CPC expressly mandates that no second appeal shall lie except on the grounds mentioned in Section 100.

10. Learned counsel has not been able to point out any misreading or non-reading of evidence by the courts below or any illegality or infirmity in the impugned judgments and decrees which are based upon proper appreciation of evidence and sound reasoning.

11. The decision rendered by the two courts below was in no way based on no evidence, on irrelevant or inadmissible evidence, or non-reading or misreading of relevant and admissible evidence.

12. In view of the above, concurrent findings of both the courts below do not require any interference by this Court. Accordingly, the appeal must fail and is accordingly dismissed with cost.

JUDGE

Karar_Hussain /PS