

GAHC010010512012



2026:GAU-AS:4210

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/238/2012

THE OIL AND NATURAL GAS CORPORATION LTD. AND 3 ORS
TAL-BHAWAN, DEHRADUN, UTTAR PRADESH.

2: HEAD OF THE PROJECT OIL AND NATURAL GAS CORPORATION LTD.
CACHAR PROJECT
SILCHAR

3: DEPUTY SUPERINTENDING ENGINEER CIVIL
OIL AND NATURAL GAS CORPORATION LTD.
CACHAR
PROJECT
SRKONA
DIST. CACHAR
SILCHAR.

4: EXECUTIVE ENGINEER CIVIL
OIL AND NATURAL GAS CORPORATION LTD.
CACHAR
PROJECT
SRKONA
DIST CACHAR
SILCHAR, ASSAM

VERSUS

DIPAK CHOUDHURY
S/O LATE DINANDRA CHOUDHURY, HOSPITAL ROAD, SILCHAR-1, P.O. and
P.S. SILCHAR, DIST. CACHAR, ASSAM.

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

For the appellants : Mr. G. N. Sahewalla, Sr. Advocate
: Mr. T. Das, Advocate

For the respondent : Mr. S. Dutta, Advocate

Date of Hearing : **09.12.2025**

Date of Judgment : **24.03.2026**

JUDGMENT & ORDER

- 1.** Heard Mr. G. N. Sahewalla, the learned senior assisted by Mr. T. Das, the learned counsel for the appellants. Also heard Mr. S. Dutta, the learned counsel for the respondent.
- 2.** This regular second appeal, under Section 100 of the Code of Civil Procedure, 1908, has been filed by the appellants impugning the judgment and decree dated 29.08.2011 passed by the Court of the learned Additional District Judge, Cachar, Silchar, in Title Appeal No. 35/2006, whereby, the said appeal was allowed and the judgment and decree dated 29.06.2006 passed by the Court of learned Civil Judge No. 2, Cachar, Silchar, in Title Suit No. 102/1997 was set aside and reversed.
- 3.** The facts relevant for consideration of the instant appeal, in brief, are that the respondent herein is a contractor by profession. He was awarded a contract by the present appellants, by issuing a work order by letter No.

SLC/CE/9 (1658)/95-96/2084-92 dated 15.09.1995 allotting him a contract work. The said work had to be completed within a period of one month six days from the third day of the date of the order. By his letter No. SLC/CE/9(1658)/95-96/2452-54, dated 05.10.1995 had requested the present respondent to enter into a formal agreement within seven days of the date of the letter. Thereafter, the present respondent entered into the agreement with the appellants on 06.10.1995 and thereafter he started the work as per the terms of the contract with effect from 08.10.1995. It has been contended by the present respondent before the trial court that when the work was about to be completed, on 11.11.1995, the present respondent/plaintiff received a letter dated 02.11.1995 issued by the present appellant No. 4 alleging that the present respondent had failed to start the work till that date and asking him to show cause as to why the contract agreement should not be rescinded for breach of contract on his part. Before the aforesaid letter, the respondent had on 10.11.1995 sent a letter to the present appellants mentioning about the progress of the work and that he had completed 97% of the work and that the remaining work would be completed within short period of time. Again, after receipt of letter issued by the appellant No. 4 on 02.11.1995, the present respondent wrote another letter to the appellants, on 13.11.1995, intimating and reiterating that the 90% of the contract work has been completed by him and the remaining part would be completed very soon.

4. It was contended by the present respondent that the letter dated 02.11.1995 written by the appellant No. 4 to him was received by him only on 11.11.1995. On 18.11.1995, the present respondent received another

letter from appellant No. 4 bearing number SLC/CF/9(1658)/95-96/3111-14, dated 13.11.1995, by which the contract was rescinded and the earnest money paid by the respondent was forfeited. On 16.11.1995, the appellant No. 4 sent a telegram to the respondent directing him to remain present on 18.11.1995 for taking measurement of the *jhama* bricks collected at the work site in presence of technical staff. Thereafter, the respondent received another letter dated 28.11.1995, whereby the present respondent was threatened that he would be blacklisted as his claim of completion of 97% percent of work was a false claim.

- 5.** Under aforesaid circumstances, the present respondent instituted the Title Suit No. 102/1997 before the Court of learned Civil Judge No. 2, Cachar, Silchar claiming the relief of declaration to the effect that the rescission order passed by the appellant No. 4 is illegal and void and that the agreement dated 06.10.1995 is a subsisting contract and also for a decree for recovery of Rs.2,08,019.70/- for the extent of the contract work which has already been executed by the present respondent along with interest thereon as well as for a decree for refunding the earnest money which has been forfeited by the present appellants.
- 6.** The present appellants, as defendants, contested the suit by filing written statement. In the written statement, apart from various defences taken by the present appellants, its main contention was that the plaintiff/respondent has breached the condition of the contract as contained in clause-III (a)(b)(c) of the same. It also took the plea that the plaintiff/respondent had failed to complete the work within the stipulated

time as provided in the contract and has prayed for dismissing the suit.

7. On the basis of the pleadings of both the parties, the trial court framed following issues:-

(i) Has the plaintiff any cause of action?

(ii) Is the suit maintainable?

(iii) Is the suit barred by limitation?

(iv) Whether the order terminating the contract dated 13/17.11.1995 is illegal, while, in operated and mala fide?

(iv) Whether the contract under the work order dated 15.09.1995 and the agreement dated 06.10.1995 subsisting?

(vi) Is the plaintiff entitled for decree as prayed for?

(vii) To what relief, if any the plaintiff is entitled to?

8. To prove its case, the plaintiff examined himself as PW-1 and exhibited several documents. The defendant side did not adduce any evidence to contradict the contentions raised by the plaintiff. Ultimately, by the judgment and decree dated 29.06.2006, passed in the Title Suit No. 102/1997, the trial court dismissed the title suit. While dismissing the suit of the plaintiff, it had decided the issue Nos. 1, 2 and 3 in favor of the plaintiff, however, the remaining issues i.e., issue Nos. 4, 5, 6 and 7 were decided against the plaintiff.

9. On being aggrieved by the judgment and decree of the trial court, the present respondent preferred an appeal before the Court of learned

Additional District Judge, Cachar, Silchar. The said appeal was registered as Title Appeal No. 35/2006. The aforesaid appeal was allowed by the First Appellate Court by its judgment dated 29.08.2011 whereby it reversed the finding of the trial court and decreed the suit in favor of the plaintiffs/present respondent. The aforesaid judgment and decree of the First Appellate Court has been impugned by the present appellants/defendants in this regular second appeal.

- 10.** By order dated 11.06.2013, this court has formulated following substantial question of law and admitted this appeal:-

“Whether the First Appellate Court was justified in decreeing the suit of the plaintiff by holding that the plaintiff has completed 97% of work, by 10.11.1995 ignoring the stipulation in the work order dated 05.09.1995 (Exhibit- 5) relating to the period for completion of the work?”

- 11.** It also appears that by order dated 11.06.2013, passed in Misc. Case No. 3478/2011, in connection with the present regular second appeal, the execution of the impugned judgment and decree was stayed subject to deposit of 50% of the decretal amount by the appellant before the trial court within a period of 45 days from the date of said order. It also appears that by order dated 22.02.2017, passed in I.A.(C) No. 557/2017, the present respondent was allowed to withdraw the said fifty percent of amount deposited by the appellant on furnishing a personal bond by giving undertaking to return the same, if it is required to be done in the

light of the final outcome of the present regular second appeal.

12. Mr. G. N. Sahewalla, the learned counsel for the appellants has submitted that the First Appellate Court had erred in decreeing the suit without considering the fact that the plaintiff did not complete the work within the time as stipulated by the contract. He has violated the terms of clause (iii)(b)(c) of the contract. He submits that the First Appellate Court also erred in decreeing the suit without considering the fact that the plaintiff has failed to prove that he had completed 97% of the contractual work. It also erred in ignoring the fact that in spite of issuance of notice for joint inspection, the plaintiff failed to remain present during the joint inspection to ascertain the percentage of work done by him.

13. The learned senior counsel for the appellants has also submitted that the First Appellate Court also failed to take into consideration that the plaintiff failed to prove the wage register as to payment to the laborers. He also failed to prove the payment of forest royalty and payment as to collection of earth and alleged filling at the spot to establish that he has done substantial quantity of work and without there being any proof of the aforesaid facts, the First Appellate Court had erred in decreeing the suit. He further submits that the mere exhibiting of documents which are exhibited as Exhibit-2, Exhibit-3, Exhibit-8, Exhibit-11 and Exhibit-21 to Exhibit- 527 does not dispense with its proof. He submits that the plaintiff has failed to prove the aforesaid documents in accordance with law. He submits that as the First Appellate Court relied on the aforesaid documents without proper proof of the same, it amounted to perversity in

relying on the aforesaid documents.

14. He submits that the First Appellate Court relied on the documents exhibited by the plaintiff without ascertaining its probative value and has, therefore, committed perversity. In support of his submission, the learned Senior Counsel for the appellants has cited following rulings:-

(i) "***H. Siddiqui (Dead) By Lrs. Vs. A. Ramalingam***" reported in "***(2011)4 SCC 240***".

(ii) "***Mukhtiar Singh Vs. State of Punjab***" reported in "***AIR 1971 Supreme Court 1864***".

(iii) "***Life Insurance Corporation of India and another Vs. Ram Pal Singh Bisen***", reported in "***(2010) 4 SCC 491***".

15. On the other hand, Mr. S. Dutta, the learned counsel for the respondent has submitted that in this second appeal, there is no substantial question of law involved. He submits that the question formulated by this court is not a substantial question of law, as for deciding the aforesaid question, the court has to delve into the factual aspects also.

16. He submits that at the stage of second appeal, this court cannot go into the questions of facts again, as the First Appellate Court is the final courts on facts. He submits that in exercise of its powers under Section 100 of the Code of Civil Procedure, 1908, this court, by taking a different view from the factual findings recorded by the First Appellate Court, cannot disturb the findings of the First Appellate Court, which is the final court as regards questions of facts. In support of his submission, he has cited a

ruling of the Apex Court in the case of "***Mallanaguoda and others Vs. Ninganagouda and others***", reported in "***Live Law 2021SC 188***".

- 17.** The learned counsel for the respondent has submitted that the present appellants, as defendants, have failed to adduce any evidence to counter the case of the plaintiff. He submits that when a party to the suit does not appear into the witness box and state his own case on oath and does not offer himself to be cross-examined by the other side, a presumption may be drawn that the case set up by him is not correct. To substantiate his submission, he has cited a ruling of the Apex Court in the case of "***Vidyadhar Vs. Manikrao***", reported in "***(1999)3 SCC 573***".
- 18.** The learned counsel for the respondent has submitted that the contract was rescinded by the appellants without affording a reasonable opportunity of showing cause by the present respondent. He submits that before rescinding the contract, no inquiry was conducted by the appellants to ascertain the percentage of work which was already completed by the plaintiff. He further submits that the First Appellate Court has rightly relied on Exhibit-A, Exhibit-11, Exhibit-21 to Exhibit-527 as the said exhibits remain uncontroverted by the present appellants. He submits that the First Appellate Court had not done any perversity in arriving at the decision leading to the decreeing of the suit. He, therefore, submits that the instant regular second appeal is liable to be dismissed with cost.
- 19.** I have considered the submissions made by learned counsel for both sides and have gone through the materials available on record. I have also

gone through the rulings cited by learned counsel for both sides in support of their respective submissions.

20. In a catena of judgments, the Apex Court has held that the existence of a substantial question of law is the *sine qua non* for exercising the jurisdiction under Section 100 of the Code of Civil Procedure, 1908. As to what may be regarded as a substantial question of law or various interpretations have been given by the Apex Court as well as various High Courts including this Court. However, it is a settled proposition of law that where a question is settled by the highest court or the general principles to be applied in determining the question are well settled and the mere question of applying those principle or the question raised is palpably absurd, such a question could not be regarded as a substantial question of law.

21. In the instant case, on a bare perusal of the substantial question of law, which was formulated by this court on 11.06.2013, it appears that it only relates to question as to whether the First Appellate Court while holding that the plaintiff has completed 97% of work by 10.11.1995 ignored the stipulations in the work order dated 05.09.1995 (Exhibit-5) relating to the period of completion of the work is a question of fact and cannot be regarded as a substantial question of law. However, the said question may be slightly reformulated in the manner as to whether the First Appellate Court committed perversity in holding that the plaintiff has completed 97% of work by 10.11.1995, ignoring the stipulation in the work order dated 05.09.1995 (Exhibit-5) relating to the period of completion of the

work.

22. The Apex Court in the case of "**Associate Builders Vs. Delhi Development Authority**" reported in "**(2015) 3 SCC 49**" has observed as follows:-

"32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)

"7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held : (SCC p. 14, para 10)

"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

23. Thus, from above, it appears that there is a broad distinction between decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse.

However, if there is some evidence on record which is acceptable and which could be relied upon, howsoever, compendious it may be, the conclusion would not be treated as perverse and the finding would not be interfered with.

- 24.** In the instant case, the First Appellate Court, while, decreeing the suit, had relied upon uncontroverted documentary evidence which were exhibited as Exhibit-8, Exhibit-11, Exhibit-21 to Exhibit-527. It also took into consideration that no rebuttal evidence was adduced by the present appellants as defendants in the suit. The First Appellate Court also took into consideration that while rescinding the contract, no inquiry was conducted by the appellants to find out the extent of work which has been done by the present respondent and to verify as to whether his claim of completion of 97% of the work is genuine or not. The First Appellate Court also took into consideration the fact that the present appellant failed to produce any document like AD card or similar documents to prove that the notice dated 11.11.1995 was duly served on the respondent. It also took into consideration that the appellants failed to adduce any evidence to bring on record anything from which it could be ascertained as to when the notice issued to the respondent was received by him. As such, the First Appellate Court came to the conclusion that the contract work was rescinded without affording reasonable opportunity of hearing to the plaintiff and without giving him opportunity of explaining the circumstances as to why he could not complete the work within the stipulated time.

- 25.** The First Appellate Court has stated the reasons for arriving at the decision in paragraph No. 15 of the impugned judgment. The finding arrived at by the First Appellate Court cannot be regarded as a finding which is based on no evidence at all or based on irrelevant materials. Though, on the basis of same evidence, a different view may also be taken by this court from the view taken by the First Appellate Court. However, merely for that reason, the impugned judgment of the First Appellate Court does not become perverse.
- 26.** If we apply the test of perversity as propounded by the Apex Court in the case of ***Associate Builders Vs. Delhi Development Authority***" (supra), it becomes clear that the First Appellate Court based its decision on the uncontroverted evidence led by the plaintiff in the suit. Hence, same cannot be regarded as perverse.
- 27.** In view of the discussions made and reasons stated in the foregoing paragraphs, this court is of considered opinion that the First Appellate Court, while deciding the issue No. 4 & 5, relied on the uncontroverted evidence on record, as same could not be demolished during the cross examination of the PW-1. Accordingly, the finding of the First Appellate Court that the plaintiff was able to prove that he has completed 97% of the work of the contract is based on the materials which were before the Trial Court as well as the First Appellate Court and hence, same cannot be regarded as perverse. The substantial question of law formulated in this appeal is accordingly decided.

- 28.** Apart from the question of perversity, the other questions raised by the learned counsel of the appellants regarding probative value of the documents which were admitted in evidence need not to be gone into in this regular second appeal as the appropriate stage of agitating the said question is the First Appellate Court only and as same is not a substantial question of law, the court is not delving into those questions.
- 29.** This appeal is accordingly dismissed with cost.
- 30.** Send back the records of the Trial Court as well as First Appellate Court along with a copy of this judgment.

JUDGE

Comparing Assistant