$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Pronounced on: 20.08.2025

\+ **RFA(COMM) 107/2022**

HLK INFRASTRUCTURE PVT. LTD.

..... APPELLANT

versus

AJAY KUMAR

..... RESPONDENT

Advocates who appeared in this case

For the Appellant : Mr. Kshitij Sharda, Advocate.

For the Respondent : Mr. Pradeep Kumar Kar, Advocate

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

VINOD KUMAR, J.

1. Present Regular First Appeal challenges a judgment dated 01.06.2022 passed by learned District Judge (Commercial Court-01), South East District, New Delhi vide which civil suit CS (Commercial) No. 291/2020 filed by the appellant for recovery of Rs.07,02,856/- was dismissed.

2. For the sake of convenience, the appellant would also be referred to as 'plaintiff' and the respondent as 'defendant'.

3. For the disposal of this appeal, it is necessary to briefly state more relevant portions of pleadings and evidence led by parties before the Trial Court.

Plaint

4. As per the plaint, the plaintiff company is engaged in the business of designing, installation and execution of civil work including construction, electrical and plumbing etc. The defendant, being the sole proprietor of M/s Aditya Enterprises, entered into an agreement with plaintiff on 19.12.2015 for executing interior designing, civil construction and other works in defendant's property bearing No. D-117, Lower Ground Floor, Lajpat Nagar-I, New Delhi-110024 (hereinafter referred to as 'Project Site').

5. In para 5, it is averred that this agreement contained details of the works to be done, material to be used and quality thereof. The scope of the work to be done also included certain other works than those detailed in the agreement. Such work pertained to electricity, networking, phone line installation, CCTV Camera, and Air Conditioning etc. The estimated cost of the total work was Rs.20,50,153/- excluding applicable taxes.

6. In para 7 of plaint, it is averred that the work was started in January, 2016 and the defendant was regularly updated about its progress. The defendant never expressed dissatisfaction about the work or the material. During the construction of bathroom in the last week of January, 2016, water seepage in two walls was detected and the defendant was intimated about it. On closer inspection, it was found that seepage was from an active

Delhi Jal Board sewer that had been laid adjacent to the damaged walls. It was mutually decided that the remedial measures for repair of the damaged wall would be carried out by the plaintiff. Also, the defendant decided for installation of a Central Heating Ventilating and Air Conditioning System (HVAC) at the project site, instead of 05 split air conditioners that were to be installed as per original agreement. Cost estimated for remedial measures and installation of HVAC system was prepared and shared through an email dated 30.01.2016, but there was a typographical error and hence cost was shared again vide email dated 03.02.2016 as per which the cost of damage to the wall was Rs.1,31,894/- and for installation of the HVAC system, it was Rs.3,07,553/-. An amount of Rs.1,90,000/- was adjusted against the cost provision that had already been made in the original agreement for the installation of five Split Air Conditioners, which was later substituted with an HVAC system. Certain extra work was also done on the asking of the defendant.

7. As per para 12, the defendant further desired execution of additional works at the project site, which were beyond the original bill of quantities. Details of extra work were mentioned in Schedule 'B' of the plaint. A discount of 5 percent plus Rs.1,781.31/- was given to the defendant even on the extra work done.

8. As per the para 13 of the plaint, the defendant paid a sum of Rupees Eight Lakhs between 22.12.2015 and 19.03.2016 in respect of the ongoing work. On completion of major portion of the work, invoice of Rs.21,52,905/- including VAT and Service Tax of Rs.2,45,991/- was raised

by the plaintiff on account for the works executed till 31.03.2016. The defendant further made payment of Rupees Three Lakhs on 02.04.2016 after receipt of the invoice.

9. As per para 14 of the plaint, after completion of the work on 15.04.2016, the finished project site was handed over to defendant and an invoice of Rs 8,49,951/-was raised, out of which an amount of Rs 97,116/- was towards VAT and Service Tax. In this way, total amount of Rs.19,02,856/- become due and payable by the defendant to the plaintiff.

10. It is averred in para 15 of the plaint, that after receipt of invoice dated 15.04.2016, the defendant made payments to the plaintiff from time to time cumulative being Rs. Twelve Lakhs against the total outstanding amount of Rs.19,02,856/-. Vide email dated 10.09.2016, ledger account of invoices raised by the plaintiff and payments made by the defendant till that date in respect of works executed by the plaintiff at the project site, was shared by plaintiff with the defendant. An amount of Rupees Five Lakhs out of the total balance of Rupees Twelve Lakhs were paid by the defendant after receipt of the aforesaid email dated 10.09.2016.

11. As per para 17 of the plaint, the defendant made a last payment of Rupees One Lakh on 17.10.2017. But thereafter he kept procrastinating the balance payment of Rs.7,02,856/-. Plaintiff sent an email and demand notice on 10.03.2018 to defendant. But vide email dated 10.03.2018, the defendant refused to make the payment.

12. Accordingly in the plaint, the plaintiff prayed for passing a decree for recovery of an amount of Rs.07,02,856/- in favour of the plaintiff and against the defendant along with Interest w.e.f 17.10.2017 till the date of recovery at the rate of 24 per cent per annum.

Written Statement and Counter Claim

13. The defendant not only filed a written statement but also a counter-claim in which he admitted that he had entered into an agreement with the plaintiff for execution of work at the project site on 19.12.2015 for a sum of Rs.20,50,153/-. In written statement he admitted para 5 of plaint to be correct. The common averments of written statements and counter claim are that the total agreed due amount was Rs.20,50,153/-, but defendant had paid to the plaintiff a sum of Rs.23,10,000/-, and hence claims to be entitled to recover the excess amount of Rs.2,59,847/-. It is also averred that the plaintiff left the office project site without completing the work and handed over the possession of the office project site to the defendant. In reply to the para 13 of the plaint, the defendant stated in written statement that he never gave any consent for the extra work. He denied rest of the averments of plaint. It is further stated that as per the agreement, the plaintiff was required to provide services for one year but failed to honour the terms and conditions of the agreement. Consequently, the defendant incurred expenses of Rs.1,90,500/- towards maintenance of the work and suffered loss. Therefore in counter claim he prayed for recovery of Rs.4,50,347/- from the plaintiff along with interest and costs.

Replication and Written Statement to Counter Claim

14. The plaintiff averred in replication as well as in written statement to counterclaim that the defendant is attempting to misrepresent the facts by asserting that his liability is limited to Rs.20,50,153/- as stipulated in the Agreement executed between the parties. However, this assertion is untenable in view of the fact that the defendant continued to make payments even after plaintiff raised two invoices amounting to Rs.30,02,856/- dated 31.03.2016 and 18.04.2016 respectively.

15. Furthermore, despite the issuance of the second invoice, the defendant made an additional payment of approximately Rs.12,00,000/-, thereby indicating his acknowledgment of the outstanding dues. It is averred by plaintiff that the defendant did not raise any objection or dispute regarding the said invoices at any point in time.

Issues

16. From the pleadings of the parties, the following issues were framed by the Trial Court:

1. *Whether the present suit is barred under law and is not maintainable as alleged in preliminary objection and written statement? OPD*
2. *Whether the suit has been filed without any cause of action? OPD*
3. *Whether the plaintiff is entitled for suit amount as claimed for? OPP*
4. *Whether the plaintiff is entitled for interest, if so, on what amount and on what rate? OPP*
5. *Relief, if any.*

Plaintiff's Evidence

17. The plaintiff examined Sh. Nitish Kukreja, its Managing Director as PW1 who proved his affidavit of evidence as Ex. PW1/A. He affirmed the averments made in the plaint and proved the following documents:

1. Ex. PW1/1 is the Certificate of Incorporation of the plaintiff company.

2. Ex. PW1/2 is the Board Resolution dated 12.12.2018 authorizing Mr Nitish Kukreja S/o Mukesh Kumar to file this suit etc.

3. Ex. PW1/3 is a copy of the Agreement dated 19.12.2015 between the parties.

4. Ex. PW1/4 is an email dated 30.01.2016 containing as an attachment a cost estimate for remedial measures and installation of a central HVAC system in this.

5. Ex. PW1/5 is an email dated 03.02.2016 sent by plaintiff to defendant containing as an attachment the revised cost estimate for remedial measures and installation of a central HVAC system.

6. Ex. PW1/6 is the Invoice dated 31.03.2016 for an amount of Rs.21,52,905/-.

7. Ex. PW1/7 is the Invoice dated 15.04.2016 for an amount of Rs.8,49,951/-.

8. Ex. PW1/8 is an email dated 10.09.2016 containing two attachments comprising the ledger accounts showing the payment by the defendant in respect of invoices raised and payments

received for the periods from 01.04.2015 to 31.03.2016 and from 01.04.2016 to 22.09.2016.

9. Ex. PW1/9 is an email dated 10.03.2018 sent by the plaintiff to the defendant regarding the demand of outstanding amount.

10. Ex. PW1/10 is the demand notice dated 10.03.2018 issued by the plaintiff to the defendant for recovery of outstanding amount.

11. Ex. PW1/11 is a reply email dated 10.03.2018 sent by the defendant in response to the plaintiff's email Ex. PW1/9.

12. Ex. PW1/12 is the Certificate under Section 65B of the Indian Evidence Act in support of print outs of aforesaid Exhibits.

13. Ex. PW1/13 titled Schedule A is the site plan of the project site.

14. Ex. PW1/14 titled Schedule B is the ledger account of the extra work done.

18. Briefly stated PW1 testified in evidence affidavit that he issued Invoice (Ex. PW 1/6) dated 31.03.2016, for Rs.21,52,905/-, included VAT and Service Tax and that after receipt of the invoice, defendant paid the plaintiff a sum of Rs. 3,00,000/- on 02.04.2016. PW1 further testified that the entire work at the project site including the extra works, were successfully completed by the plaintiff and handed over to the defendant on 15.04.2016 and that the plaintiff issued Invoice (Ex. PW 1/7) dated 15.04.2016, for Rs.8,49,951/-, including VAT and Service Tax. It is further testified that defendant made part payments from time to time till 17.10.2017. Plaintiff raised a demand for outstanding amount vide email

dated 10.03.2018 but defendant refused to make payment vide his reply through email dated 10.03.2018.

19. In cross-examination dated 06.10.2021, PW1 denied the suggestion that the defendant had not given any verbal approval for extra work. PW1 denied that the defendant had made an excess payment of Rs.2,59,847/- to the plaintiff. He testified that the final possession of the finished project site after complete execution of the work was given to the defendant on 15.04.2016. He denied that the plaintiff had handed over the project site to the defendant without completing the work. PW1 however, stated that he had no knowledge as to whether the defendant had got maintenance done from outside agency at the project site and had to incur a sum of Rs.2,00,000/- for the same. PW1 denied that the plaintiff is liable to return any excess amount of Rs.2,59,847/- to the defendant. PW1 denied that the defendant is not liable to pay amounts sought by the plaintiff in suit.

Defendant's Evidence

20. The defendant Sh. Ajay Kumar, sole proprietor of M/s. Aditya Enterprises led his evidence by way of affidavit (Ex. DW1/A) in which he testified that in the year 2015, the defendant awarded civil work to the plaintiff for carrying out alteration in the interiors of his office project site and an agreement dated 19.12.2015 was executed between them, vide which the plaintiff company agreed to charge a sum of Rs.20,50,153/-. In para 15 of affidavit of evidence, DW1 testified that he had paid a total sum of Rs.23,10,000/-, which exceeded the agreed contract amount. The account ledger was proved as Ex. DW1/1.

21. In para 18 of evidence affidavit, DW1 stated that the work was executed by the plaintiff within one year but the air conditioner system was not working properly and all the glass doors were misaligned from their location and therefore from time to time, he requested the plaintiff company to replace and repair the same but no heed was paid by the plaintiff. Therefore, the defendant had to call some other agency for doing the needful and he had to incur an expense of Rs.1,90,500/-. The defendant stated that he had already paid Rs.2,59,847/- in excess of the agreed contractual amount and therefore he was shocked to receive an email dated 10.03.2018 (inadvertently mentioned as 10.05.2018), in which the plaintiff claimed a sum of Rs.7,02,856/-.

22. In para 21 of evidence affidavit, DW1 testified that the defendant in response to the email dated 10.03.2018 informed the plaintiff that there was no outstanding amount payable to the plaintiff and rather, it was the plaintiff who has failed to complete the work assigned to him by virtue of agreement dated 19.12.2015. Further in para 22, it was stated by DW1 that he had requested the plaintiff to replace or to change the furniture and other material like air conditioner, main gate, glass door etc. but still plaintiff did not do the needful.

23. In cross-examination on behalf of the plaintiff, DW1 admitted that invoices (Ex. PW1/6 and Ex. PW1/7) were received by him through courier. In cross-examination dated 21.05.2022, DW1 admitted that as per agreement dated 19.12.2015 (Ex. PW1/3) initially was for installing of five

split air-conditioners at the cost of Rs.40,000/- each. DW1 also admitted that thereafter the centralized HVAC system was installed after mutual discussion between the defendant and the plaintiff and with his consent. DW1 admitted that the water proofing work in project site was carried out around the time of commencement of execution of works by the plaintiff. However, he denied that the plaintiff had executed extra work at the project site as stated in Schedule B of the plaint (Ex. PW1/4). He denied that all work was executed to his satisfaction and therefore he continued to pay due amounts to plaintiff after receipt of two invoices (Ex. PW1/6 and Ex. PW1/7) for a period of one and a half year.

Impugned Judgement on Issues no. 3

24. After hearing arguments, issues no. 1 and no. 2 were decided by Trial Court in favour of plaintiff and there is no challenge to said findings by defendant (respondent herein) in this appeal. As issue no. 3 was decided against the plaintiff, it is necessary to reproduce the relevant portion of the impugned judgment as under:

> *"15. Now, let us take up the issue of tax. As per plaintiff, it is defendant who is to pay the tax.*
> *It is nowhere mentioned in the admitted agreement Ex. PW1/3 that the VAT and Service Tax was to be paid by the defendant. The agreement is accompanied by estimate I summary in which there is no heading of the tax. The agreement is further accompanied by payment schedule annexure B as per which the payment was to be made by defendant. That document also does not suggest that VAT and Service Tax were payable by the defendant. If it was defendant who were to pay the tax, the same would have definitely been mentioned in any of the above documents. Moreover, it is mentioned in clause no. 14 of the agreement that if there was any increase in cost due to variation in tax, cess, duty or surcharge, the defendant would pay the difference. That clause itself suggests that it was plaintiff who was to pay the tax but if there was any increase in the tax, the deficiency was to be met by the defendant. So, it is held that the*

plaintiff is not entitled to any amount under the head of VAT and Service Tax.

16. Now, let us take up the issue of additional cost of Rs.4,17,000/-.

It is correct that it is mentioned in admitted agreement Ex. PW1/3 that if any additional work was done by the plaintiff, the defendant would have to pay the same. But the plaintiff did not file any agreement with the defendant or examine any person in whose presence the defendant would have given consent, for execution of additional work of Rs.4,17,000/-. Had plaintiff done that kind of extra work, it would have definitely sent estimate I bill of the same in advance to the defendant as was done in the case of HVAC System and Water Proofing vide Ex. PW1/4. So, the plaintiff is not entitled to a single penny under the head of additional work.

17. The last point to be considered is regarding installation of HVAC System and Water Proofing.

The defendant admitted in cross-examination as DW-1 that as per original document Ex. PW1/3, initially the plaintiff was install 05 Split AC's at the cost of Rs.40,000/- per AC. He further admitted it correct that the Centralized HVAC Sy tern was installed after mutual discussion between him and the plaintiff and with his consent. He next admitted it correct that Water Proofing work was done by the plaintiff with his consent and after discussing the matter with him. So, the evidence of defendant itself shows that the work like installation of HVAC System and Water Proofing were not in the original agreement and that both were agreed upon later pursuant to which the same was executed by the plaintiff.

The expenses under those head are corroborated by mail and attachment Ex. PW1/4 dated 30.01.2016. It is pertinent to mention that while doing the work, the plaintiff came to know that there was pilferage of water from DJB pipeline due to two walls of the bathroom had been admitted. For repairing the wall and installation of HVAC System, the plaintiff sent estimate in the form of attachment to the defendant. It is very crystal clearly mentioned in the attachment that the proposed work was in variation to order no. i.e. in variation to the work finding place in 01iginal agreement Ex. PW1/3. It is mentioned in the estimate that repair work of the wall was to cost Rs.1,31,894/- and cost of the AC was Rs.3,07,553/-. But the price of 05 Split AC's totalling to Rs.1,90,000/-, which was agreed in the original agreement, was deducted from the revised estimate due to which the total cost of both items was Rs.2,49,447/-.

It has been admitted by DW-1, that the said work has been executed by the plaintiff. So, the plaintiff is entitled to Rs.2,49,44 7/- in addition to the cost of Rs.20,50,135/- as per original agreement. In this, way the defendant was to pay Rs.20,50,135/- + Rs.2,49,447/- totalling to Rs.22,99,582/-. It is the admitted case of the parties that defendant has

already paid Rs.23 Lakhs to the plaintiff. Hence, the plaintiff is not entitled to recover a single penny from the defendant. It· is also held that the defendant did not pay any excess amount to the plaintiff.
The defendant did not place on record any document or examine any witness which may show that maintenance of the executed work was to be done by the plaintiff for 01 year which it could not. Due to that reason, it is held that the defendant is not entitled to any amount as maintenance expenses from the plaintiff.
18. In view of the above discussion, this issue is decided against the plaintiff."

25. Thus, the Trial Court rejected the Tax component of the impugned invoices i.e. (Ex. PW1/6 and Ex. PW1/7) which comes out to be Rs.3,43,107/- on the ground that in the agreement (Ex. PW1/3), it is nowhere mentioned that tax was to be paid by the defendant. The Trial Court read Clause 14 of the Agreement to imply that only where there is increase in tax, the deficiency was liable to borne by the defendant otherwise the tax would be paid by the plaintiff.

26. The Trial Court held that the total price of the work done is Rs.20,50,135/- as per agreement (Ex. PW 1/3). The Trial Court opined that there is no evidence that defendant has given his consent for extra work of Rs.4,17,000/-. Trial Court further observed that had plaintiff done that kind of extra work, it would have sent estimate bill of extra works to defendant in advance as done in case of system of HVAC and Water Proofing. Hence held that plaintiff is not entitled for any money under head of extra works.

27. However, the Trial Court accepted the plaintiff's plea in respect of Water Proofing and installation of HVAC system total cost of which was Rs.2,49,447/-, which was adjusted by Trial Court against payment of Rs. three lakhs, which, as per defendant, was paid in excess. Accordingly claim

of plaintiff was rejected. Consequent thereto, issue no. 4 in relation to interest was also declined and the suit was dismissed.

28. On counter claim of the defendant, Trial Court opined that defendant could not prove his case and accordingly same was also dismissed. This dismissal of counter claim has not been challenged by defendant during arguments on this appeal.

Submissions of the Parties in Appeal

29. Ld. Counsel for appellant-plaintiff has assailed the impugned judgment on the grounds that the amount of Rs.20,50,153/- mentioned in the agreement dated 19.12.2015 (Ex. PW1/3) is only an estimate and not the final bill. It is submitted that the respondent-defendant admitted receipt of two invoices (Ex. PW1/6 and Ex. PW1/7) in his cross examination and that the defendant made further payments after receipt of the said invoices. In this way defendant admitted the correctness of invoices raised by the plaintiff. The appellant further assailed the impugned judgment on the question of taxes, submitting that the estimate of Rs.20,50,153/- was excluding the applicable taxes and specific averment was made in regard of this by the plaintiff in the plaint in Para 5. Learned Counsel for appellant-plaintiff has drawn attention of the Court to written statement in which respondent-defendant has admitted the contents of Para 5 of the plaint. It is submitted that despite admission by defendant, Trial Court has taken contrary view.

30. It was further argued that the Trial Court failed to appreciate that even if it is presumed that no estimate bill of extra work was proved to be sent to respondent-defendant, the conduct of the defendant post receipt of two invoices was clearly indicative of his acceptance and acknowledgment of extra work executed as well as of correctness of invoices. Thus, it is argued by the Ld. Counsel for the appellant that the invoices (Ex. PW1/6 and Ex. PW1/7) dated 31.03.2016 and 15.04.2016 were not disputed till sending of the email by the appellant dated 10.03.2018. Learned counsel of appellant-plaintiff submitted that total work done was of Rs.30,02,856/- (including taxes) and respondent paid only an amount of Rs.23,00,000/-. Therefore, it is submitted that the appellant is entitled to the balance amount of Rs.7,02,856/- along with agreed interest @ 24 percent per annum with costs.

31. Learned counsel for respondent has supported the impugned judgment on all the issues. Regarding admission of para 5 of the plaint in respect of taxes, learned counsel for respondent submitted that it was inadvertent admission in written statement. On the point of invoices, it is argued that the respondent had been raising objections orally to the defective work done by the plaintiff and this fact has been duly mentioned by the respondent in his email dated 10.03.2018 that respondent called appellant so many times for change of furniture and other material like air conditioner, main gate and rectify the misaligned glass doors. It is further argued that in this email it was also mentioned that electric work was also not completed by the appellant. Further, it is argued that Rs. 3,00,000/- had

been paid by the respondent in excess to the appellant against the settled agreed amount in agreement dated 19.12.2015.

32. It is further argued by learned counsel for respondent-defendant that the extra work was done by the appellant-plaintiff without consent and permission of respondent-defendant and this fact has been mentioned by him in his email dated 10.03.2018 sent to appellant-plaintiff in reply to the demand notice of the same dated i.e. 10.03.2018.

33. Accordingly, it is argued that there is no infirmity in the impugned judgment and therefore, it is prayed that the appeal should be dismissed. It is necessary to mention here that respondent-defendant has not challenged the findings of Trial Court on the issue of pricing of water proofing and installation of HVAC and also the findings on his counter claim during arguments on appeal. Trial Court has ruled on these aspects in favour of appellant. These submissions are now being taken up issue wise.

Issue No. 3

34. It is not in dispute that appellant-plaintiff started the work at the project site pursuant to an agreement dated 19.12.2015 Ex. PW1/3, in which the cost of the entire work was fixed at Rs.20,50,153/-. The plea of respondent- defendant is that he is not liable to pay any amount more than agreed amount and actually by mistake he had paid Rs.3,00,000/- more than the agreed amount. On the other hand, the argument of the appellant-plaintiff is that it is only an initial estimate and since additional work like renovating the leaking walls, installation of HVAC system instead of five air conditioners and extra work as specified in Annexure –B (Ex. PW1/14)

to the plaint, exceeded the cost initially agreed as per agreement Ex. PW1/3, the appellant-plaintiff raised final invoices which are Ex. PW1/6 and Ex. PW1/7 against the excess work done plus taxes. In short the argument of appellant-plaintiff is that the agreement contains only an estimated price whereas the two invoices depict the total work actually done and its cost.

35. The aforesaid arguments are required to be seen in light of pleadings and evidence led by the parties.

36. As per plaint, written statement as well as evidence led by the parties, it is not in dispute that in agreement dated 19.12.2015, the cost of total work was mentioned as Rs.20,50,153/-. It is also an admitted fact that when work started, seepage in walls was found and with the consent of defendant the extra work was done by the plaintiff. It is also admitted that initially five air conditioners were to be installed but thereafter parties agreed for installation of HVAC at the project site instead of five split air conditioners. Therefore, these works and price thereof are not in dispute. This is the reason that the Trial Court ruled against appellant-plaintiff only on two points while discussing issue no.3.

37. First point is in respect of extra work which is specified in Annexure-B (Ex. PW1/14) of the plaint which amounts to Rs.4,17,000/- as per invoice Ex. PW1/7. In his email dated 10.03.2018 (Ex. PW1/11), respondent-defendant has stated that appellant-plaintiff executed the extra work of Rs.4,12,812/- without asking and permission of respondent-

defendant. It is necessary to mention here that appellant-plaintiff has priced the value of extra works at Rs.4,17,000/- in invoice Ex. PW1/7. In cross-examination, this cost of extra work has not been assailed. Further, respondent-defendant has not brought on record any evidence that value of extra work was Rs.4,12,812/-. Therefore, the value of extra work i.e. Rs.4,17,000/- as mentioned in invoice Ex. PW1/7 has to be accepted.

38. On issue of additional cost of Rs.4,17,000/-, the Trial Court opined that for doing extra work, no agreement like (Ex. PW1/3) was proved and the plaintiff should have sent the estimate bill of the same in advance to the defendant as it was done in case of HVAC system and water proofing. As already stated, this amount of Rs.4,17,000/- has been charged by the plaintiff in the invoice dated 15.04.2016 (Ex. PW1/7). It must be kept in mind that large number of works and commercial transactions are done on oral instructions. If this extra work of Rs.4,17,000/- was not ordered by the defendant, there is no explanation as to why he did not raise objection to this part of the bill. The defendant in his cross examination has denied execution of extra work by the plaintiff, though this statement is contradictory to his email dated 10.03.2018 (Ex.DW1/2). Relevant portion of defendant's reply to the plaintiff's email dated 10.03.2018 is referred as under:

> *As per your quotation for all work before starting you were given estimated maximum expenditure of Rs-20 Lakhs Including one year maintenance/warranty, but within one year we call you so many times for change our furniture another material like air condition, main gate, all glass door was loose from their location and other electrics work was pending but you never reply for these things, you are always ignoring these things, then we call from outside other worker for correction for these things, we also paid 4 to 5 lakhs to outside vendors for finishing*

the pending works which left by you, and you also include In Invoice extra work of Rs-412812 without asking and permission. and we were already paid you extra payment Rs-23,00,000 Instead of Rs-20,00,000. We already paid excess payment as per our estimated cost, so we are requesting to you please return our useless excess payment to you around Rs- 6 to 7 lakhs. Otherwise we will sue against you.
we are humble request to you please return our excess amount and close the matter urgent.

39. The contents of the above quoted email dated 10.03.2018 (Ex. PW1/11 and also Ex. DW 1/2) by the respondent-defendant in response to the email dated 10.03.2018 (Ex. PW 1/9) imply that the appellant-plaintiff included this amount for execution of extra work in the invoice without his permission. The respondent-defendant has not raised any objection to this invoice prior to sending this email. It is noteworthy that respondent-defendant has received the copies of ledger accounts through an email dated 10.09.2016 Ex. PW1/8, in which the aforesaid invoices have been referred to. In cross-examination of PW1, respondent-defendant has not disputed the testimony of PW1 having sent the said email to him. Respondent-defendant (DW1) in his cross-examination had also admitted that he has received the said invoices. There is no explanation as to why he did not intimate the appellant-plaintiff timely about the work being done without his consent. Rather, respondent-defendant kept on making payment to appellant-plaintiff from time to time even after raising of said invoices. Thus, whereas the respondent-defendant acknowledged in his email dated 10.03.2018 the fact that extra work was carried out on his office project site, he is unable to prove that it was done without his asking. At the cost of repetition, it is held that non raising of objection to the extra work for a considerable time after receiving the invoices and the ledger account on 10.09.2016 itself is enough to believe that the extra work was done with the

permission and consent of respondent-defendant. Therefore, the conclusion drawn by the Trial Court on the point of permission and consent of the respondent-defendant cannot be accepted even if the appellant-plaintiff did not prove the estimate bill for extra work.

40. Second point is as to who will pay the taxes mentioned in invoice Ex. PW1/6 and PW1/7. As per Ex. PW1/6, the VAT output @ 12.5 percent is Rs.1,90,691/- and Service Tax @ 14.5 percent is Rs.55,300/-. As per the invoice Ex. PW1/7, the VAT output @ 12.5 percent is Rs.75,284/- and Service Tax @ 14.5 percent is Rs.21,832/-.

41. The appellant-plaintiff specifically averred in para 5 of the plaint that the estimate for the work to be done as given in the agreement excluded taxes. Respondent-defendant in his written statement has admitted contents of para 5. This admission itself is sufficient to reach to a conclusion that applicable taxes were required to be paid by the respondent-defendant and not by the appellant-plaintiff.

42. Now the evidence on this issue should be looked into. In cross-examination, DW1 admitted that the invoices referred to by him in his email dated 10.03.2018 (Ex. DW1/2) are the invoices dated 31.03.2016 (Ex. PW1/6) and invoices dated 15.04.2016 (Ex. PW1/7) and the same were received by him through courier. Perusal of these invoices shows that not only the same specifically mention the works and their values but also VAT output and service tax. There is nothing on record to show that DW1 (i.e. the defendant) raised any objections to these invoices through any email or communication to appellant-plaintiff prior to 10.03.2018. Also, the

respondent-defendant did not object to the email dated 10.09.2016 (Ex. PW 1/8) wherein the plaintiff shared the ledger accounts of the defendant from 21.10.2015 to 31.03.2016 and for the period 01.04.2016 to 22.09.2016. These accounts clearly specify the amount paid by the respondent-defendant as well as the invoices issued to him by the appellant-plaintiff. It was only through email dated 10.03.2018 (Ex. DW1/2) that the defendant raised objections to these bills i.e. after about 1 ½ years that too only in respect of the quality of work done. Respondent-defendant has raised no objection ever even in email Ex. PW1/11 to the effect that taxes are liable to be paid by the appellant-plaintiff. In view of the admission and evidence as discussed above, it is clear that taxes were required to be paid by respondent-defendant and a different view cannot be taken simply on the ground of ambiguity in clause 14 of the agreement regarding the person liable to pay taxes.

43. To sum up, it is proved that extra work was done by the appellant-plaintiff with the consent of the respondent-defendant. It is also proved that the tax component of the invoice is the liability of the respondent-defendant. There is no other objection to the work done and the invoices Ex. PW1/6 and Ex. PW1/7, except the quality of work, which respondent-defendant could not prove. Consequently, the impugned judgment on issue no.3 to the extent of estimate bill and taxes is set aside and this issue is decided in favour of the appellant and against the respondent.

Issue no. 4 : Interest

44. In view of findings on issue No.3, the Trial Court decided this issue against the appellant-plaintiff. However, now issue no.3 is decided in

favour of the appellant-plaintiff. Hence, plaintiff is entitled for recovery of Rs.7,02,856/- as quantified in demand notice Ex. PW1/9 sent through email and physical demand notice Ex. PW1/10. Now it is to be seen as to what interest should be awarded on the said amount.

45. In the plaint, the plaintiff has claimed the interest @ 24 percent per annum under Clause 10 of the agreement on the outstanding amount of Rs.7,02,856/- w.e.f. 17.10.2017. He has calculated the interest from 17.10.2017 till 13.10.2020 i.e. date of institution of the plaint to be Rs.5,04,182/-. It is specified in para 18 of the plaint that daily rate at which interest accrues after 13.10.2020 is Rs.468.57 which plaintiff seeks as *pendente lite* and future interest till recovery. Thus whereas the principal amount is Rs.7,02,856/-, the interest till filing of the suit has been calculated at Rs.5,04,182/-. If the interest is calculated further from the date of filing of the suit till realization, the total interest amount would be highly excessive.

46. Here we would like to refer to a judgment of Supreme Court in ***Central Bank of India v. Ravindra and others***, (2002) 1 Supreme Court Cases 367. In this judgment, Constitution Bench of Supreme Court of India discussed in detail the scope of Section 34 CPC and discretionary power of court to award or not to award interest and if awarded, the rate of such interest *dehors* the contract between the parties. We would like to quote relevant portion of the judgment as under:

> *"(8) Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the*

principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner."

The aforesaid judgment of Supreme Court of India makes it is clear that the discretion in awarding or not awarding the interest as well as the rate of interest if awarded vests in the court even though the parties had agreed for a high rate of interest. This Court is of the opinion that allowing the contractually stipulated rate of interest at the rate of 24 percent per annum would render the payment of interest onerous for the respondent-defendant. We would like to refer to the demand letter/email dated 10.03.2018 sent by appellant-plaintiff to respondent-defendant, in which no demand of interest has been raised on the outstanding amount of Rs.7,02,856/- Thus this court is of the opinion that the agreed interest is not reasonable and same was also not demanded in the aforesaid notice. Therefore the claim of interest as detailed in para 18 of plaint prior to filing of the suit is declined. However, it would be appropriate to award reasonable *pendente lite* and future interest on the outstanding amount.

47. In our considered view, it would be appropriate that the rate of interest is reduced to 9 percent per annum calculated from the date of filing the suit till realisation.

48. Issue no.4 is decided accordingly in favour of plaintiff.

Issue no.5: Relief

49. As the impugned judgment on issue no.3 and 4 is set aside, the suit is decreed in favour of the appellant-plaintiff for a sum of Rs.7,02,856/- (Rupees seven lakhs two thousand eight hundred fifty six only) payable by respondent-defendant with interest at the rate of 9 percent per annum from the date of the filing of the suit till the date of realisation. Costs of the suit and appeal are also awarded to the appellant.

50. The appeal is allowed to the extent indicated above.

51. Decree sheet be drawn accordingly.

VINOD KUMAR, J

V. KAMESWAR RAO, J

AUGUST 20, 2025
VB