



2026:DHC:8719



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 24th July, 2026

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CNR No. DLHC010519712019

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RFA 90/2020, CM APPL. 4663/2020, CM APPL. 8284/2020, CM APPL. 4838/2021, CM APPL. 14537/2025 and CM APPL. 19619/2026.

M/S AMBIENCE DEVELOPERS & INFRASTRUCTURE PVT. LTD.

L-4, Green Park Extension,

New Delhi-110016

Through its Managing Director

....Appellant

Through: Mr. P K Agrawal, Mr. Akshay
Chitkara, Ms. Sanjoli Gupta,
Advocates.

versus

1. **SHRI SANJAY RUSTAGI**

Prop. M/s Rustagi Contracts
103, Gupta Arcade
5, Local Shopping Centre
Mayur Vihar, Phase 1 Extn.
Delhi-110091

....Respondent No.1

2. **SHRI RAJ SINGH GEHLOT**

S/o Late Shri Nihal Singh Gehlot,
L-4, Green Park Extension
New Delhi-110016.

...Respondent No.2

3. **SHRI DAYANAND SINGH GEHLOT**

L-4, Green Park Extension
New Delhi-110016.

...Respondent No.3

Through:

Signature Not Verified

Signed By: ANIL
KUMAR BHATT
Signing Date: 09.10.2026
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RFA 90/2020

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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the *Defendant No.1/Appellant, M/s Ambience Developers & Infrastructure Private Limited*, against the Judgment and decree dated 30.08.2019, whereby the Suit No. 205624/2016 of the Plaintiff/Respondent, Sanjay Rustogi for *Recovery of Rs.34,68,994.86/- along with pendent lite and future interest @ 18% per annum, has been decreed in the sum of Rs.24,90,143.90 along with interest @12% per annum w.e.f. 25.11.2006 till its actual realisation.*
2. **The facts in brief** are that the Plaintiff is a sole proprietor of M/s Rustagi Contracts, engaged in the business of dry cladding and allied stone work. The Defendant No. 1, through its Directors, Defendant Nos. 2 and 3, had invited offers for dry cladding, column cladding, wet cladding, coping work and silicone grouting, to be carried out at the Multiplex and Platinum Block and Hotel Block of its premises, commonly known as Ambience Mall situated at NH-8 Highway, Gurgaon.
3. The Plaintiff submitted his offer for the aforesaid works *vide* Letter dated 18.03.2006, which was accepted, and **the Defendant No. 1 placed the Work Order vide Letter dated 23.03.2006.**
4. Under the **Work Order**, the payment was agreed to be released by the Defendants in the following manner:



- i) 80% of the payment to be released fortnightly, one measured RA bill and one assessed bill alternately.
- ii) 10% to be released on completion of a complete facade.
- iii) Balance 10% to be released on handing over of the entire cladding work.

5. To commence the work, the Plaintiff, vide Letter dated 13.05.2006, demanded a mobilization advance of Rs. 2,50,000/- to purchase and install an electric chain pulley block (1 No.), a manual chain pulley block (1 No.), a table Cutting Machine (2 Nos.) and other portable tools. The Defendant No. 1 released an amount of Rs.1, 50,000/- as a mobilisation advance, which was agreed to be adjusted in five equal instalments of Rs.30, 000/- each, against the Plaintiff's future running bills.

6. The work commenced, and the Plaintiff submitted his **Running bills**, as under:-

S.No.	Bill Dated	Amount of the Bill & Amount payable (Billed Amount - Deduction = Net Amount Payable)	Amount paid (Rs.)	Shortfall (Rs.)
1.	01.06.2006	Rs.1,59,423.09- 30,000 =Rs.1,29,423.09/-	1,34,698.00/-	-
2.	30.06.2006	Rs.6,63,605.80- 30,000 = Rs. 6,33,605.80/-	Rs.4,65,159/-	1,68,446.80/-



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7. Thereafter, the Plaintiff was instructed to raise separate bills for the Hotel Block and for Multiplex and Platinum Block. The separate running bills respectively for Multiplex and Platinum Block and Hotel Block, were raised separately, as under:-

For Multiplex and Platinum Block

S.No.	Running Bill Dated	Amount of the Bill & Amount Payable (Billed-Deduction =Net Billed)	Amount paid (Rs.)	Shortfall (Rs.)
3.	29.07.2006	Rs.8,05,992.82- 30,000 = 7,75,992.82/-	3,78,314/-	3,97,678.82/-
4.	25.08.2006	Rs.5,96,584- 30,000 = 5,66,584.00/-	3,46,716.00/-	2,19,868.00/-
5.	12.10.2006	Rs.8,91,713.69- 30,000 = 8,61,713.69	Nil	8,61,713.69/-
6.	26.10.2006	Rs.5,68,357.10	Nil	Nil
7.	19.11.2006	Rs.5,08,567.40	Nil	Nil
Gross Total – Rs. 42,36,643.90/-				
Amount received- Rs. 17,46,500/-				

**Hotel Block**

S.No.	Running Bill Dated	Amount of the Bill & Amount payable	Amount paid (Rs.)	Shortfall (Rs.)
3.	29.07.2006	Rs.1,73,152.90	1,10,527/-	62,625/-
4.	Nil	Nil	Nil	Nil
5.	12.10.2006	Rs.3,06,850.20	Nil	Nil
6.	26.10.2006	Rs.2,964/-	Nil	Nil
7.	19.11.2006	Rs.24,066.76	Nil	Nil
Gross Total – Rs. 5,07,033.96/-				
Amount Received: Rs. 3,28,183/-				

8. The Plaintiff further stated that since Diwali was round the corner, the Plaintiff requested the Defendants to release the labour payment, directly to the labour, *which the Defendants paid in the sum of Rs.2,71,613/- to the labour on 21.10.2006, on behalf of the Plaintiff.*

9. **The Plaintiff asserted that he finally completed the work on 17.11.2006. The total amount due from the Defendants, was Rs.26,68,994.86/-.**

10. The Plaintiff sought the release of the amount against the stone work of Rs.1,54,784.20 (Hotel Block) and Rs.19,81,576.50 (Platinum and Multiplex Block), *vide* Fax dated 06.11.2006. The Defendants, however, declined the said Demand *through* Reply fax dated 07.11.2006, alleging that the Plaintiff had abandoned the work and the site.



11. The Plaintiff again sent a fax message on 09.11.2006, to which the Defendants responded by a letter. Similarly, another fax message dated 22.11.2006 was sent by the Plaintiff seeking release of the dues. He also sent a bill of Rs.24,90,143.96 on 25.11.2006, but did not receive the balance amount. The Plaintiff again sent a letter dated 28.12.2006 in similar terms, which also remained unanswered.

12. The Plaintiff also asserted that the Defendants had unauthorisedly and illegally prevented the Plaintiff from removing his machinery, equipment, tools, etc., which were worth Rs.6, 00,000/-.

13. ***Aggrieved by the non-payment of its outstanding dues, the Plaintiff instituted the present Suit for Recovery of Rs.30, 95,449.05 along with the pendente lite and future interest @18% p.a.***

14. The Defendants, in their **Written Statement**, raised a *preliminary objection* that Defendant Nos. 2 and 3, being merely Directors of Defendant No.1, had been wrongly impleaded, and that no cause of action was disclosed against them personally.

15. On merits, it was admitted that the Plaintiff was awarded a Contract *vide* letter dated 23.03.2006 for a total quantum of approximately 1,50,000 sq. ft., to be completed within three months, i.e., by 22.06.2006, and also admitted the payment schedule, i.e. 80% of the payment was to be released by the Defendants to the Plaintiff fortnightly, on submission of the running/assessed bill; 10% was to be released on completion of the façade; while the remaining balance 10% was to be released, on handing over of the completed work.



16. It was further asserted that there was no provision for making advance payments, but because of the considerable pressure put by the Plaintiff on the Defendants, the Defendants had paid Rs.1, 50,000/- as an advance to the Plaintiff, to be adjusted in the future bills.

17. The Defendants claimed that the Plaintiff failed to complete the project within the stipulated time, i.e. 22.06.2006, and continued to further delay the work, on one pretext or the other. *The Plaintiff worked till August, 2006 and thereafter, abandoned the project, not even making the payment to the labour and other staff.*

18. It was claimed that the payments had already been made in excess of the work done by the Plaintiff. Even after the adjustment of 20%, to be paid on completion of the Project, *a sum of Rs.2, 32,579/- has been paid in excess to the Plaintiff.*

19. The Defendants further denied that the Running Bills were submitted by the Plaintiff or that the payments were being made based on the measurements carried out by the staff of the Defendants, in the presence of the Plaintiff. It was claimed that the Plaintiff failed to complete the work.

20. The Defendants further denied that the Running Bills dated 29.07.2006, 25.08.2006; 12.10.2006 and 26.10.2006 were ever submitted by the Plaintiff. *The suit was, accordingly, sought to be dismissed, as being devoid of merit.*

21. The Plaintiff, ***in the Replication***, reaffirmed the averments made in the Plaint and denied the allegations made in the Written Statement

22. On the basis of the pleadings of the parties, the ***following issues*** were framed on 06.05.2009:



- (i) *Whether defendants 2 and 3 are necessary or proper parties? OPP*
- (ii) *Whether the plaintiff abandoned the project as alleged in the written statement? OPD*
- (iii) *Whether the plaintiff is entitled to an order of return of all machinery and equipment or in the alternative a decree of recovery in a sum of Rs. 6 lakhs being the cost of the articles? OPP*
- (iv) *Whether the plaintiff is entitled to recover an amount of Rs.30,95,449.05? OPP*
- (v) *Relief*

23. In support of his case, the Plaintiff examined himself as **PW-1**, who tendered evidence by way of Affidavit and proved the Letter of Award dated 23.03.2006 as Ex.PW1/2, the running bills as Ex.PW1/4 to Ex.PW1/11, the fax correspondence as Ex.PW1/12 to Ex.PW1/16, the list of machinery as Ex.PW1/17, the TDS certificate dated 30.04.2007 as Ex.PW1/18, the weekly site reports as Ex.PW1/22 (Colly.), and the ledger accounts and cheque copies as Ex.PW1/26 to Ex.PW1/29.

24. **DW-1, Mr. Dayanand Singh Gehlot**, Director of the Defendant Company, tendered his evidence by way of Affidavit, Ex.DW-1/A.

25. **DW-2, Mr. Raj Singh Gehlot**, proved the Statement of Account/ledger of the Defendant No.1, Ex.DW-2/1.

26. The learned **Additional District Judge**, Delhi, on appreciation of the evidence led by the parties, observed that Defendant Nos.2 and 3 were



neither necessary nor proper parties, as the Plaintiff had failed to prove the same.

27. It was further observed that the Final Bill had been raised on 25.11.2006, even though the payments were continued to be made till mid-October, 2006. In fact, the payment to the labour was made on 21.10.2006, *which reflects that the work had not been abandoned in August, 2006, as was asserted by the Defendant.*

28. It was further stated that the TDS Certificate, **Ex.PW-1/18**, was issued by the sister concern of the Defendants, in the sum of Rs.30,44,272/-, in favour of the Plaintiff on 30.04.2007, which further belies the claim of the Defendants that the work was abandoned in August, 2006.

29. The learned Additional District Judge further noted that the Plaintiff had contended that he had worked only for the Defendant No. 1 and never for M/s Ambience Projects & Infrastructure Ltd. and that the TDS Certificate, though issued by the latter, pertained to the work executed for Defendant No.1 in the present Project. The explanation of the Defendants that the Certificate had been issued merely for Income Tax purposes and could not be treated as any admission of the liability was also considered.

30. However, it was held that the issuance of the Certificate as late as 30.04.2007, i.e. nearly eight months after the alleged abandonment of the work in August, 2006, could neither be belittled nor explained away on that ground. The Certificate itself showed that the Defendants did not dispute their liability towards the Plaintiff, and no justification was offered for non-payment despite such liability having been impliedly and expressly admitted.



31. It was thus concluded that the work was not abandoned in August, 2006, ***and it was established that the Defendants had the liability to pay the Suit amount of Rs.24,90,143.90/- as claimed in the final bill dated 25.11.2006.***

32. The Plaintiff's claim for recovery of Rs.6,00,000/-, towards the cost of his machinery which he claimed he was not permitted to remove, was held to be improbable in the absence of any proof to show that any such machinery was moved to the site, its valuation, or the fact that the Defendant prevented the Plaintiff from removing the same. **The claim for Rs.6,00,000/-was dismissed.**

33. ***Accordingly, the Suit of the Plaintiff was decreed in the sum of Rs.24, 90,143.90 along with pendente lite and future interest @12% p.a.***

34. ***Aggrieved by the said Judgment and decree dated 30.08.2019, the Defendants/Appellant has preferred the present Regular First Appeal.***

35. The ***grounds of challenge*** are that the error has been committed in not deciding the actual bill amounts *viz-a-vis* the measurements and applicable rates and amounts paid by the Appellant, without independently verifying the measurements and rates, as per the Letter of Award. It was further stated that even on the Appellant's own computation, a sum of Rs.18,57,027/- stood paid against the final bill of Rs.42,36,643.90/-, leaving a balance of only Rs.23,79,616/-, and not Rs.24,90,143.90/- as decreed.

36. It was further averred that it has not been considered that, as per the Contract, only 80% of the payment was to be released by the Appellant on submission of the running/ assessed bills, while 10% was to be released on



completion and 10% on handing over of the completed work, which was required to be completed within three months, i.e. 22.06.2006.

37. It was further asserted that the Appellant had made the payment of labour to the Plaintiff, on 21.10.2006. It has not been considered that, in fact, the liability to pay the labour was that of the Plaintiff and no payment was required to be made by the Appellant to the labour, which was done since the Plaintiff had abandoned the work.

38. Furthermore, it has not been considered that the bill dated 30.06.2006, after the measurements, was corrected to Rs.6,26,538/- and 80% of the amount being Rs.5,01,230/-, was to be paid, but after making adjustment of Rs.30,000/-, towards mobilisation advance, Rs.4,65,159/-, was duly paid to the Plaintiff.

39. Further, it was contended that it has not been appreciated that the Plaintiff was paid 100% based on actual measurements taken at site, after the second running bill. According to the Appellant, he had succumbed to the demands of the Plaintiff, as he threatened to abandon the project in case the full payment was not made.

40. It is contended that the Plaintiff had abandoned the work in August, 2006, and it was with great persuasion that he carried out some work in September, 2006, but he did not do any work after October, 2006. Therefore, the abandonment of work by the Plaintiff itself is evident from the fact that the labour had to be paid by the Appellant. No payment, *in fact*, has been made to the Plaintiff after 08.08.2006. The evidence as led by the parties has not been appreciated correctly.



41. Further, it has been erroneously held that the Appellant admitted his liability of Rs.30, 44,272/- in the TDS Certificate dated 30.04.2007. The liability cannot be fastened on the Defendants purely based on the TDS Certificate. Even according to this Certificate, the total amount was payable for the financial year 2006-2007, out of which, as per the case of the Plaintiff himself, an amount of Rs.18,57,027/- had already been received, leaving a balance of Rs.11,87,245/- only.

42. ***It is, therefore, prayed that the impugned Judgment and decree be set aside.***

43. The Appellant, as well as the Respondents, had submitted their respective written arguments, which are essentially on the same lines as their pleadings and the grounds of challenge.

Submissions heard and the record perused.

44. Admittedly, the Work Order dated 23.03.2006 had been awarded to the Plaintiff/Respondent for carrying out the dry cladding, column cladding, wet cladding, coping and silicone grouting work, at the Multiplex & Platinum Block and the Hotel Block of Ambience Mall, NH-8, Gurgaon.

45. The payments thereunder, were to be released to the extent of 80% of the running bills, while the 10% balance had to be paid on completion of the work and the remaining balance of 10% was to be given on the handing over of the completed work to the Plaintiff/Respondents.

46. It is also not in dispute that the Plaintiff raised six running bills and thereafter, the final bill dated 19.11.2006, for the Multiplex/Platinum Block, and the Hotel Block, which reflected total amounts of Rs.42,36,643.90/- for the Multiplex/Platinum Block and Rs.5,07,033.96/- for the Hotel Block.



Admittedly, Rs. 17, 46,500 and Rs.3,28,183.00/-, have been paid for the Multiplex/platinum block and Hotel Block, respectively.

47. The *principal defence* of the Appellant is that the Plaintiff had abandoned the work in August, 2006.

48. It is significant that in the Written Statement itself, the Appellant has stated that although the Plaintiff had abandoned the work in August 2006, but he carried out some work in September 2006 after repeated requests. *Thus, even according to the Appellant's own pleadings, the Plaintiff continued to undertake work after the alleged date of abandonment.*

49. Moreover, the Appellant's own ***Statement of Account, Ex.DW-2/1***, reflects that the financial dealings between the parties continued till mid-October, 2006. Significantly, a sum of Rs.2, 41,613/- was paid directly to the Plaintiff's labour on 21.10.2006 towards Diwali bonus. Clearly, if the Work had been abandoned in August, 2006, there was no question of the presence of Plaintiff's labour on the site, even after one month of alleged abandonment. ***This was rightly held to be inconsistent with the Appellant's contention that the Plaintiff had abandoned the work in August, 2006.***

50. There is additionally *another aspect*, which assumes significance. No Site Engineer or any other person connected with the execution of the work, has been examined by the Defendants to establish that the work covered under the running bills, had not been carried out by the Plaintiff or that the Work was left, incomplete. There is no averment or evidence that if indeed, work was abandoned, from whom did the defendant get the Work completed. *Thus, the plea of abandonment in August, 2006 is not borne out*



from the evidence on record and is merely a self-serving bald assertion made by the Defendant/Appellant.

51. The **second aspect** that emerges relates to the bills raised by the Plaintiff and the work actually executed, which is relevant for determining the amount payable.

52. Once the Running Bills had been submitted and proved by the Plaintiff, it was for the Defendants to establish that the bills did not correspond to the work actually executed by the Plaintiff. *However, no specific discrepancy in the measurements, quantities or rates forming the basis of the bills has been pointed out.*

53. The bills, **Ex.PW-1/4 to Ex.PW-1/11**, are supported by the measurement records and weekly Site Reports, Ex.PW-1/22 (Colly.), while the payments made are reflected in the Statement of Account, Ex.DW-1/1.

54. The Defendants have relied upon the correction made in the Bill dated 30.06.2006, based on joint measurements. However, the correction of the said Bill only establishes the amount payable against that particular bill. It doesn't establish that the subsequent bills were also raised incorrectly or that the measurements forming the basis were incorrect.

55. The Appellant has further contended that, against the Final Bill of Rs.42,36,643.90/-, a sum of Rs.18,57,027/- had already been paid and, therefore, only Rs.23,79,616/- remained payable.

56. No material whatsoever has been placed on record to demonstrate any further correction in the subsequent bills, or to show that the amounts reflected therein were wrongly calculated. ***The correction in the bill dated***



30.06.2006, therefore, does not displace the subsequent bills or establish any error in the amount determined by the learned Trial Court.

57. However, the amount of Rs.18, 57,027/- comprises Rs.17,46,500/- paid against the Multiplex and Platinum Block and Rs.1,10,527/- paid towards the Hotel Block. The Final Bill of Rs.42,36,643.90/- relates to the Multiplex and Platinum Block. Therefore, the amount of Rs.1, 10,527/- paid towards the Hotel Block could not have been deducted from the said final bill. ***After deducting Rs.17, 46,500/- from Rs.42,36,643.90/-, the balance works out to Rs.24,90,143.90/-, which is the amount decreed by the learned Trial Court.***

58. The ***third aspect*** that emerges from the record is the TDS Certificate dated 30.04.2007, **Ex.PW-1/18**. The Certificate reflects an amount of Rs.30,44,272/- in respect of the Plaintiff, for the financial year 2006-07.

59. The Defendants have contended that the issuance of the TDS Certificate does not amount to an admission of the work executed by the Plaintiff, as the TDS was deducted for income-tax purposes.

60. However, the Certificate that has been duly proved admittedly reflects an amount of Rs.30, 44,272/- in respect of the Plaintiff for the relevant financial year, which further corroborates the liability of the Defendants towards payment to the Plaintiff under the Work Order. ***Thus, the liability of the Defendants towards the Plaintiff stands duly established from the material on record.***



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Conclusion:

61. *In view of the foregoing, the Suit of the Plaintiff/Respondent had been rightly decreed by the learned Additional District Judge vide Judgment dated 30.09.2019 for a sum of **Rs. 24,90,143.90 along with interest @12% per annum.***

62. **There is no merit in the Appeal, which is hereby dismissed.**

63. **The pending Applications, if any, stand disposed of accordingly.**

**(NEENA BANSAL KRISHNA)
JUDGE**

October 5, 2026/RS