



2026:DHC:7960



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 31st August, 2026

Pronounced on: 17th September, 2026

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CNR No: DLHC010403722026

+ RFA 912/2026, CM APPL.58024/2026

M/S HI-TECH GEOSYNTHETICS PVT. LTD.

OFFICE: B-282, UGF, Palam Extension,
Sector-7, Dwarka, New Delhi.

.....Appellant

Through: Mr. Harsh Yadav, Advocate.

versus

M/S SHUBH CONSTRUCTION CO.

OFFICE: Sarai Manihar, Sumerpur, Unnao, U.P.

Also at:

H. No.D-5, Priyadarshini Nagar,
Behind Bhavya Nursing Home, Unnao, U.P.

Through Proprietor, Mr. Virendra V. Singh

.....Respondent

Through: None.

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 read with Order XLI of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) has been filed on behalf of the Plaintiff/Appellant, M/s Hi-Tech Geosynthetics Private Limited, against the Judgment and Decree dated 20.02.2026, whereby its ***Suit for recovery of Rs.7,58,118/- along with pendente lite and future interest @ 24% per annum, has been dismissed.***



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2. The Appellant/Plaintiff had instituted the *Suit bearing CS DJ ADJ No.604/2012 (New No.515604/2012)*, initially under Order XXXVII CPC, seeking recovery of Rs.7,58,118/- along with *pendente lite* and future interest @ 24% per annum. The Suit was subsequently treated as an ordinary Suit, *vide* Order dated 15.03.2011.

3. The ***facts in brief***, are that the Plaintiff is a Private Limited Company engaged in providing geosynthetic solutions and construction of Reinforced Earth Walls (*hereinafter referred to as "RE Walls"*). The Defendant is a proprietorship Firm owned by Mr. Virendra V. Singh and it engaged the Plaintiff for the execution of RE Wall work for road-flyover at Bilhar-Sareni Road, forming part of a project of the Public Works Department, Uttar Pradesh, *vide* Work Order No. Subh Unnao/09/231 dated 05.05.2009.

4. Under the Work Order, the work was to be completed within 40 days from the date of receipt of the confirmation of Work Order. However, according to the Plaintiff, the ***completion of the work was delayed on account of the following defaults attributable to the Defendant:***

- a) ***The site clearance could not be provided for about 150 days on account of submergence of the site in canal water and non-availability of de-watering equipment;***
- b) ***The Defendant attempted to engage other Agencies to procure friction ties from the black market, which was objected to by the Plaintiff vide Letter dated 15.06.2009;***
- c) ***The requisite machinery and equipment were not made available between 27.10.2009 and 27.12.2009 i.e. 2 months, resulting in the labour of the Plaintiff remaining idle during the said period;***



- d) *The Defendant failed to provide labour for the works falling within its scope, including construction of corner columns, laying and compaction of filter media and spreading of soil over the friction ties, which were consequently undertaken by the labour of the Plaintiff, thereby slowing the progress of the work.*
- e) *the Defendant did not provide the requisite inverted drainage filter, in order to save labour and material costs, thereby causing a wrongful saving of Rs.2,50,000/- at the expense of PWD, U.P. and compromising the safety of the RE Wall structure on account of improper drainage; and*
- f) *The Defendant was required to provide the requisite road permit/Form-38 for transportation of material and equipment, as per Clause 13 of the Work Order. The Plaintiff stated that it was subsequently found that the Defendant was not registered with the U.P. Tax Authorities and was not paying VAT/WCT, on account of which the Plaintiff incurred a penalty of Rs.70,000/- and other transportation, loading and unloading charges, aggregating to Rs.95,000/-.*
5. The Plaintiff asserted that it had successfully completed the work falling within its scope, albeit with delay attributable solely to the Defendant. The Defendant, however, withheld the outstanding payment on the ground that the Plaintiff had failed to furnish the requisite *Performance Guarantee*. As per the Plaintiff, the Performance Guarantee could be furnished only upon rectification of the defective work, successful completion of the bridge, and final inspection of the civil works as a whole; since the RE Wall constituted only a part of the overall bridge work.



Therefore, the Performance Guarantee could not have been furnished at that stage, as the overall work had not yet been completed and was subject to final inspection.

6. The Plaintiff further asserted that the Defendant was aware that the RE Wall was liable to be damaged if the subsequent works, including construction of the road, friction slabs, and crash barriers, were not completed before the onset of the rainy season. In this regard, the Plaintiff had addressed a Letter dated 24.03.2010 to Mr. A.P. Singh, Assistant Engineer, PWD, U.P., a copy of which was also forwarded to the Defendant.

7. The Plaintiff raised its Final Invoice on 17.03.2010 and, as per the revised reconciliation/Statement of Account, claimed the balance contractual consideration of Rs.4,28,800/-, along with Rs.1,74,318/- towards supply of anchor pins, Rs.60,000/- towards idle labour and Rs.95,000/- towards expenses allegedly incurred on account of non-provision of Form-38. ***Accordingly, a sum of Rs.7,58,118/- was claimed as outstanding and payable by the Defendant.***

8. The Plaintiff thereafter sent various demand Letters dated 17.03.2010 and 21.04.2010, along with the Statement of Account, seeking payment of the outstanding amount; however, the Defendant neither made the payment nor replied to the said communications. The Plaintiff consequently issued a Legal Notice dated 25.05.2010, but to no avail.

9. ***Aggrieved by the non-payment of its outstanding dues, the Plaintiff instituted the present Suit for recovery of Rs.7,58,118/- along with pendente lite and future interest @ 24% per annum.***

10. The summons of the Suit were issued to the Defendant. Since the Defendant could not be served through the ordinary process, service was



effected through publication in the newspaper “*Rashtriya Sahara*”. However, none appeared on behalf of **the Defendant and it was proceeded ex parte, vide Order dated 06.03.2012.**

11. The Plaintiff thereafter, led its *ex parte* evidence and **the Suit was decreed in its favour, vide Judgment dated 24.08.2013.**

12. The Defendant subsequently filed an *Application under Order IX Rule 13 CPC on 26.02.2015* seeking setting aside of the *ex parte* Judgment and Decree, which was allowed *vide Order dated 16.07.2018.*

13. Consequently, **the ex parte Judgment and Decree were set aside and the Suit proceeded for adjudication on merits, upon the Defendant filing its Written Statement.**

14. The Defendants in its *Written Statement*, raised preliminary objections that the Suit was devoid of merit; amounted to an abuse of the process of law and was based on *ex-facie* suppression and concealment of material facts. It was asserted that the Plaintiff had not disclosed the correct factual position and had manipulated the facts, to raise an untenable claim.

15. The Defendant further asserted that the Plaintiff had inflated the Bills and raised incorrect Invoices which had never been supplied to the Defendant. It was also contended that no cause of action had arisen in Delhi, since the entire work had been executed in Uttar Pradesh; the Work Order had been issued from there and the advance payment had also been made there; consequently, *the Courts at Delhi lacked territorial jurisdiction.*

16. It was further pleaded that the Suit had not been properly valued for the purposes of Court Fee and jurisdiction. The Suit was founded on false and concocted facts, and was therefore, liable to be dismissed.



17. **On merits**, the Defendant stated that it was engaged in civil construction/contractor and execution of Government Projects and had successfully undertaken several such works. The Plaintiff was also stated to be engaged in the construction business.

18. The Defendant admitted execution of the Work Order dated 05.05.2009 with the Plaintiff, for construction of the RE Walls for the approach of the bridge at Bilhar-Sareni Road, under a Project of PWD, U.P. It was, however, asserted that the Plaintiff failed to perform its contractual obligations and left the work incomplete, compelling the Defendant to engage other vendors to complete the remaining work.

19. The Defendant asserted that an excess amount had already been paid to the Plaintiff and that the Suit had been instituted to avoid refund, thereof. It was claimed that the total Project value was Rs.14,28,800/- and that a sum of Rs.10,00,000/- had been paid to the Plaintiff, in advance. The Work was required to be completed within 40 days; however, the Plaintiff failed to complete the same within the stipulated period.

20. It was further stated that despite repeated reminders, the Plaintiff failed to ensure timely supply of *friction ties*, which fell within its contractual scope, resulting in the Defendant's machinery, including the vibratory roller, lifting crane, JCB and hydraulic tipper, remaining idle and causing financial loss.

21. The Defendant explained that the respective contractual obligations of the parties were defined in the Work Order, as under:

“Obligations of M/s Hi tech Geosynthetics Pvt Ltd.:

➤ *Providing entire geosynthetics for reinforced soil structure i.e. friction ties and no woven geotextile.*



- Providing accessories of panels used in reinforced soil structure i.e. connecting hooks.
- Providing labor services for casting, erection and reinforcement in panel, casting and erection of panels, and laying of friction ties.
- Providing moulds for casting fortress panels on returnable basis.
- The total work shall be completed within 40 days of this work order.
- Providing consultancy services for-
 - a) Designs and drawings of reinforced soil structures.
 - b) Approval of the Designs and drawings of reinforced soil structures.
 - c) Providing method statement.
 - d) Periodic site supervision.
 - e) **Providing corporate performance guarantee after satisfactory completion of the work.**
- If any material arranged by Shubh Co., the amount of the same will be reduced accordingly.
- The work shall be executed as per the quality standards of UPPWD and as per the direction of engineer in charge. Any work not found as per the standards will not be paid for it until and unless rectified.

Obligations of M/s. Shubh Construction Co.:

- To Provide:
 - Material like concrete, steel (Panel reinforcement, binding wire, anchoring pins).



- *Lifting and compacting equipment.*
 - *Drainage and backfill material, PVC pipe for drainage.*
 - *Paste for sticking geotextile.*
 - *Shuttering and leveling pad.*
 - *Temporary wedges.*
 - *Demoulding oil, and curing arrangement etc.*
 - *Provision for quality control lab and testing facilities for concrete*
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- *Supply, placement and compaction of specified back fill material and filter material*
 - *All excavations, bed preparations, and ground improvement.*
 - *All survey works, alignment, shuttering for leveling pad and bed concrete including periodic checks.*
 - *Site accessibility and safe storage space.*
 - *Site office of firm is near to the point of operation.*
 - *Provision for lifting equipment and labor for loading and unloading.*
 - *Provision for transportation with operator.*
 - *Providing corner column.*
 - *Provision for labor accommodation and drinking water.*
 - *Electricity for equipments.*
 - *Road permit for transportation materials.”*



22. The Defendant denied the allegations of breach attributed to it by the Plaintiff and asserted that the obligations alleged to have remained unfulfilled did not form part of the contractual terms agreed between the parties.

23. It was also asserted that the grounds raised by the Plaintiff in this regard, were false and contrary to the terms of the Work Order, and that the breach was, in fact, attributable to the Plaintiff.

24. The Defendant claimed the manifest failures on the part of the Plaintiff as under:

- *They have not supplied the Geosynthetics, as agreed in Work Order;*
- *Plaintiffs have not provided the friction ties and anchor pins, which Defendant caused to be done from local blacksmith;*
- *The labor was not supplied by the Plaintiffs as agreed in the Work Order for casting, erection and reinforcement laying, casting of leveling pad, laying reinforcement in panel, casting and erection on panels, and laying of friction ties;*
- *The Work shall be completed as per the quality and technical standards of the UPPWD;*
- *Total work was not completed within stipulated 40 days of time even after deducting the legitimate delay;*
- *Providing Corporate Performance Guarantee after satisfactory completion of work as agreed by them; and*
- *The machinery of the Defendant lay idle due to non-supply of material and labor and unnecessarily the Defendant suffered heavy financial losses.*



25. The Defendant further asserted that the obligation to supply friction ties rested upon the Plaintiff and, therefore, there was no occasion for the Defendant to procure the same from any other Agency or from the black market.

26. It was stated that a sum of Rs.10,00,000/- had already been paid to the Plaintiff and that, owing to the Plaintiff's failure to complete the work, *the Defendant was compelled to engage other vendors for completion of the remaining work*. The allegations made by the Plaintiff in this regard, were false, baseless and defamatory.

27. The Defendant also denied the allegation that it had failed to provide the requisite road clearance/permit for transportation of material and equipment and that it had deliberately slowed down the Project. It was further denied that it had cheated and caused a loss of Rs.2,50,000/- to PWD, U.P. by failing to provide the '*inverted drainage filter*'.

28. It was asserted that the delay in completion of the Project was attributable to the Plaintiff's own defaults and that the allegations of cheating and deliberate delay, were false and had been made only to malign the Defendant.

29. It was further alleged that, on account of the Plaintiff's failure to supply the requisite material and labour within time, the machinery of the Defendant remained idle for a considerable period, causing financial loss to the Defendant. It was, therefore, asserted that the Plaintiff was not entitled to claim any compensation on this account.

30. Furthermore, furnishing of the *Corporate Performance Guarantee* was an essential contractual obligation of the Plaintiff, upon satisfactory completion of the work. Since the Plaintiff failed to furnish the same,



despite having received Rs.10,00,000/- from the Defendant, it was alleged that the Plaintiff had failed to complete its contractual obligations and had no entitlement to the amount claimed in the Suit. ***The Suit was, accordingly, sought to be dismissed.***

31. The Plaintiff in the ***Replication*** re-affirmed the assertions made in the Plaint and denied the allegations made in the Written Statement.

32. On the basis of the pleadings of the parties, the ***following Issues were framed:***

“(1) Whether the suit of plaintiff is not maintainable being without cause of action and owing to lack of territorial jurisdiction, as alleged? OPP

(ii) Whether plaintiff is entitled to the amount claimed in suit ? OPP

(iii) If the answer to aforesaid issue is in affirmative, whether the plaintiff is entitled to interest thereupon, if so, at what rate and for which period? OPP

(iv) Relief.”

33. In support of its case, the Plaintiff examined, **PW-1, Sh. Vipin Kumar Tyagi, its Managing Director**, who tendered his Affidavit of evidence and proved the Certificate of Incorporation as Ex.PW1/1, Board Resolution as Ex.PW1/2, Work Order dated 05.05.2009 as Ex.PW1/3, correspondence as Ex.PW1/4, Ex.PW1/5, Ex.PW1/8 and Ex.PW1/11, Daily Progress Reports as Ex.PW1/17 (Colly), etc.

34. The Defendant on the other hand examined **DW-1, Sh. Virendra V. Singh, its Proprietor**, who tendered his Affidavit of evidence as Ex.DW1/1 and relied upon the Letter dated 31.12.2010 addressed to M/s Kolon International Corporation as Ex.DW1/2.



35. The **learned District Judge**, *vide* the impugned Judgment, decided the objection to *territorial jurisdiction* in favour of the Plaintiff, observing that the Work Order and correspondence had been addressed to the Plaintiff at Delhi; and the Invoices had been raised from its Delhi office. A part of the cause of action had, therefore, *arisen within the territorial jurisdiction of the Court*.

36. *On the merits of the claim*, however, it was held that the Plaintiff had failed to prove due performance of its contractual obligations. The learned District Judge observed that though the work was required to be completed within 40 days, PW-1 admitted that it had taken about one year. The Plaintiff had also failed to substantiate its plea that the delay was attributable to the Defendant on account of non-availability of site, machinery or other alleged defaults.

37. It was further observed that the *Corporate Performance Guarantee had admittedly not been furnished and that PW-1 himself acknowledged that the Project had not been satisfactorily completed*.

38. The learned District Judge further held that the Plaintiff had failed to satisfactorily prove the extent and value of the work allegedly executed. The Measurement Book had not been produced; the DPRs (*Daily Progress Reports*) Ex.PW1/17 were neither countersigned by the Defendant nor authenticated by any PWD official, and the employee stated to have maintained the DPRs, had not been examined. The Court also found that the correspondence/Notices relied upon by the Plaintiff, had not been proved to have been duly served upon the Defendant.



39. Consequently, the **learned District Judge** held that the Plaintiff had failed to establish its entitlement to the amount claimed and, accordingly, **dismissed the Suit, vide the impugned Judgment dated 20.02.2026.**

40. *Aggrieved by the said Judgment and Decree dated 20.02.2026, the Plaintiff/Appellant has preferred the **present Regular First Appeal.***

41. The **grounds of challenge** are that the learned District Judge has misread the Work Order dated 05.05.2009 and wrongly attributed to the Appellant/Plaintiff certain contractual obligations which, according to the Appellant, expressly fell within the scope of the Respondent/Defendant.

42. It is further asserted that non-furnishing of the Corporate Performance Guarantee, has erroneously been treated as indicative of non-completion of the work, while ignoring the consistent case of the Plaintiff that the specialized RE Wall work falling within its scope, had been completed and that the Performance Guarantee had been withheld on account of the Defendant's failure to complete or rectify the Works falling within its own scope, including the *filter media and drainage arrangements*.

43. It is contended that a hyper-technical approach, has been adopted in rejecting the Daily Progress Reports (DPRs) merely because the white copies did not bear the signatures of the Defendant or the PWD Officials. According to the Appellant, the DPRs were internal site records maintained during the course of execution of the work and there was no contractual requirement for their authentication by PWD Officials. The coloured carbon copies had been countersigned by the Defendant's representative and handed over to the Defendant, who failed to produce the corresponding records.



44. The Plaintiff has further contended that the Defendant failed to produce any corresponding site record or other contemporaneous material, to rebut the evidence led by the Plaintiff. It is asserted that the material testimony of PW-1 with regard to the scope and completion of the specialized RE Wall work, the outstanding balance and the basis of the Invoices and Debit Notes remained unrebutted, in the absence of cross-examination on these material aspects and were not accorded due weight.

45. Furthermore, the contemporaneous correspondence dated 15.06.2009, 17.03.2010 and 21.04.2010, along with the Invoices, Reconciliation Statement and Legal Notice, consistently recorded and quantified the outstanding claim of Rs.7,58,118/-, but the same were not properly appreciated by the learned District Judge while considering the Plaintiff's entitlement, solely on the account of Plaintiff's failure to produce *Performance Guarantee*.

46. The findings with regard to the delay and defaults attributable to the parties, have also been challenged. It is asserted that the material relating to non-availability of site clearance, machinery and labour, failure to provide filter media and non-provision of Form-38, was not properly appreciated.

47. It is further contended that the Defendant failed to produce any record of the alleged substitute contractor, site record or Statement of Account, to rebut the Plaintiff's case; yet no adverse inference was drawn on account of such non-production.

48. The Plaintiff/Appellant has also relied upon the admissions made by DW-1 in his cross-examination, including execution of the Work Order dated 05.05.2009 and payment of Rs.10,00,000/- to the Plaintiff. It is asserted that DW-1 did not produce the Statement of Account of the



Defendant Firm, any bill evidencing the alleged purchase of *anchor pins* from a blacksmith, or any documentary proof regarding installation of the *drainage filter media*, the alleged deduction made by PWD, U.P., or completion of the leftover work through any other Agency.

49. It is thus, contended that the defence of the Defendant remained largely uncorroborated and that the evidence led by the parties, has not been appreciated in its proper perspective. The finding that the Plaintiff had failed to prove its claim is consequently, asserted to be based on an erroneous appreciation of the evidence on record.

50. It is, therefore, prayed that the impugned Judgment and Decree dated 20.02.2026 be set aside and the Suit of the Plaintiff be decreed for a sum of Rs.7,58,118/- along with *pendente lite* and future interest @ 24% per annum.

Submissions heard and record perused.

51. Admittedly, the Work Order dated 05.05.2009 was awarded to the Plaintiff/Appellant for execution of the RE Wall work, which was required to be completed ***within 40 days from the date of receipt of the Work Order.***

52. The respective scope of work of the parties was delineated therein as under:

“ *Your Scope* ” (Appellant):

- a. *Providing entire geosynthetics for reinforced soil structure i.e. friction ties and non-woven geotextile;*
- b. *Providing accessories for panels;*
- c. *Providing labour services for casting of levelling pad, panel casting, erection of panels, laying of friction ties;*
- d. *Providing patented moulds on returnable basis;*



e. *Providing design, drawings, method statement, periodic supervision and corporate performance guarantee after satisfactory completion.*

“Our Scope” (Respondent):

- a. *Material like concrete, steel panel reinforcement, binding wire, **anchoring pins**, all steel required for completion of RE wall;*
- b. ***Drainage and backfill material**, P.V.C. pipe for drainage, adhesive paste, shuttering, curing arrangement;*
- c. *Provision of quality control testing, **supply, placement and compaction of specified backfill and filter material**;*
- d. *All excavation, ground improvement, survey, machinery, labour, corner columns, Form-38 Road permits and electricity etc.”*

53. The total RE Wall area, as per the drawings, was 752 sq. m. and the agreed rate was Rs.1,900/- per sq. m., thereby making the total contract value Rs.14,28,800/-, payable on a pro-rata basis. ***Admittedly, a sum of Rs.10,00,000/- in three tranches, had been paid by the Respondent/Defendant to the Appellant/Plaintiff.***

54. The ***first aspect*** that emerges from the evidence on record, is that the Work was admittedly not completed within the stipulated period of 40 days. According to the Plaintiff, the work falling within its scope was ultimately completed, albeit after considerable delay, and the final Bill was raised on 17.03.2010. The Plaintiff has attributed the delay to various acts and omissions on the part of the Defendant, which, according to it, impeded the progress and timely completion of the work.



55. The question which, therefore, arises for consideration is whether the delay in execution of the work was attributable solely to the Plaintiff, or whether the Defendant had also contributed thereto, by failing to discharge the obligations falling within its contractual scope.

56. The learned District Judge did not accept Plaintiff's explanation on the ground that there was no material or document to substantiate his assertions. Moreover, it rejected the Plaintiff's explanation that the delay was attributable to the Defendant on account of non-availability of the site for about 150 days, *observing that no independent material had been produced to substantiate the said assertion.*

57. It was further noticed that the Letter dated 15.06.2009, Ex.PW1/4, whereby the Plaintiff objected to the Defendant allegedly attempting to procure friction ties from black market, did not make any reference to the site not being handed-over or having remained unavailable for the said period to the Plaintiff.

58. *However, the aforesaid reasoning of the learned District Judge for rejecting the Plaintiff's explanation regarding the delay is **not tenable** for the simple reason that, although the Defendant had attributed the delay to the non-availability of friction ties, which fell within the scope of the Plaintiff's obligations, **however the evidence on record, shows that the parties continued with the execution of the Work Order, even beyond the stipulated period of 40 days.***

59. There is no material to show that the Defendant treated the expiry of the stipulated period of 40 days, as terminating the contractual arrangement or called upon the Plaintiff to discontinue the work on that account. Rather, the evidence on record, reflects that the Plaintiff continued to work and raise



Bills and correspond with the Defendant, and that the Defendant, continued to deal with the Plaintiff in relation to the execution of the Work. No objection has been raised by the Respondent regarding the non-completion of the work, within the stipulated period of 40 days.

60. *Therefore, the mere failure to complete the work within 40 days, was not treated as bringing the contractual arrangement to an end.* The delay in completion of the Work, therefore, has to be examined in the context of the respective obligations of, and defaults attributed to, both parties and whether the Plaintiff is entitled to the Suit amount.

61. The Plaintiff, in his testimony, explained that the delay occurred as the *Defendant/Respondent was unable to provide site clearance for about 150 days on account of submergence of the site with canal water.*

62. As already discussed above, even though there may have been delay in handing over the site, but that is not the ground significant as neither was the time the essence of the Contract, nor was it repudiated on this account.

63. It was further asserted that the Defendant attempted to alter the nature of the contract from a turnkey contract, to a part contract and approached other Agencies for procurement of friction ties from the black market. Certain employees of M/s Dinesh Chandra R. Agrawal Infracon Pvt. Ltd. had assured the Defendant that *Koloties* could be procured from the NHAI Stores of PBA-Atlanta JV, at the Lucknow Bypass. The Plaintiff cautioned the Defendant that the said material belonged to the Central Government and it is illegal to take this material without a proper Invoice from NHAI. Moreover, it was informed that prolonged exposure of such material to sunlight, could result in ultraviolet degradation and that its use without



proper testing, could compromise the structural integrity of the RE Wall and may lead to failure of structure.

64. However, the Respondent may have explored the possibility of procuring friction ties (Koloties) from other sources, though the supply of *friction ties*, admittedly fell within the scope of the Appellant. However, there is no material to show that any such procurement was actually effected in breach of the Work Order or that the same, in any manner, impeded or delayed the execution/completion of the work by the Appellant.

65. The Plaintiff further asserted that the Defendant failed to provide the requisite machinery and equipment from 27.10.2009 to 27.12.2009, on account of which its labour remained idle during the said period. It was also claimed that the Defendant failed to execute certain Works falling within its contractual scope, *including the construction of corner columns, laying and compaction of filter media and spreading of soil over the friction ties, which were consequently undertaken by the Plaintiff's labour*, thereby slowing down the progress of the work. These allegations also find mention in the Plaintiff's Letter dated 21.04.2010, Ex.PW1/11.

66. However, no independent site record, or PWD evidence or any other corroborative material has been produced to establish that the machinery remained unavailable for the entire period alleged, or that the delay in execution was, *in fact, occasioned by the aforesaid defaults of the Defendant*. The only material relied upon in this regard is the Plaintiff's Letter dated 21.04.2010, Ex.PW1/11, which undoubtedly records its grievance in this regard; however, being a unilateral communication emanating from the Plaintiff itself, it cannot establish either the alleged



default on the part of the Defendant or its causal connection with the delay in execution of the work, in the absence of any supporting material.

67. The Plaintiff has also asserted that the Defendant, in order to save labour and material costs, had failed to provide the inverted drainage filter and had thereby caused a wrongful saving of Rs.2,50,000/- and cheated PWD, U.P. It was further alleged that omission of the drainage filter compromised the safety of the reinforced soil wall structure and exposed it to the risk of failure on account of improper drainage thus endangering the public property and the life of the persons using this bridge.

68. However, apart from the aforesaid assertions of the Plaintiff, there is no independent or corroborative material on record, such as any technical, site, or PWD record, to establish either the alleged omission of the inverted drainage filter, the quantified saving of Rs.2,50,000/-, or the alleged structural risk arising therefrom.

69. Likewise, the Plaintiff claimed that, in terms of Clause 13 of the Work Order, the Defendant was required to provide the Road Permit/Form-38 for transportation of material and equipment. But later on, it was revealed that the Defendant Firm was not registered with the U.P. Tax Authorities and was neither paying VAT nor WCT, on account of which the Plaintiff incurred a penalty of Rs.70,000/- and other transportation loading and unloading charges, aggregating to Rs.95,000/-, which were liable to be reimbursed by the Defendant.

70. ***Pertinently, PW-1 admitted in his cross-examination that no written communication had been addressed to the Defendant seeking the road permit/Form-38 and that the same had only been asked verbally and telephonically.*** Again, there is no independent document or cogent evidence



to establish that the same was actually sought and withheld by the Defendant or that the Plaintiff consequently incurred the amount of Rs.95,000/- as claimed.

71. *The Plaintiff's case rests entirely on vague and unsubstantiated oral assertions.* Despite having made these assertions, the Plaintiff has failed to place on record a single contemporaneous document or other corroborative material, in support thereof. *Such bald assertions, in the absence of any supporting material and particularly where the alleged facts were capable of documentary verification, cannot by themselves constitute sufficient evidence to establish the Plaintiff's case.*

72. PW-1, Mr. Vipin Kumar Tyagi, admitted in his cross-examination that no Complaint had been made to the PWD Authorities, since the Plaintiff was not the original allottee of the work and it was the Defendant alone who was contractually dealing with the PWD. He further stated that he merely had oral interactions with the PWD Officials.

73. PW-1 further stated that, despite the allegation that the Defendant had cheated PWD, U.P., no formal Complaint in this regard was ever made. He volunteered that during a joint visit to the site with the PWD Officials and representatives of the Defendant, the alleged non-provision of the drainage filter, had been physically pointed out to them. *However, no PWD Official or other person stated to have been present during such inspection has been examined, nor has any contemporaneous record of the alleged inspection, been produced.*

74. PW-1 further stated that, since the project was a Government project, any material to be utilised in Project Site, which was coming from outside the State, had to be given by the Defendant and it fell within the scope of the



Defendant. However, admittedly, again no Complaint of any kind was ever made to the PWD Authorities in this regard and no assistance /help was sought from them.

75. The Defendant had asserted that the Plaintiff failed to complete the work in terms of the Work Order dated 05.05.2009 and that the balance *work had to be got executed through another agency*. However, DW-1, Mr. Virendra V. Singh, admitted in his cross-examination that he did not remember the name of the Agency through which the alleged incomplete work was got executed. Moreover, he admitted that no documents of any kind were submitted, in this regard.

76. This circumstance, however, cannot enure to the benefit of the Plaintiff, which was independently required to prove the extent of the work executed by it and its entitlement to the amount claimed.

77. The Plaintiff further claimed that the Defendant had failed to install the *inverted drainage filter media in the RE Wall*, in accordance with the applicable specifications, thereby saving labour and material costs of approximately Rs.2,50,000/- and compromising the safety of the RE Wall. DW-1, on the other hand, asserted that the *drainage filter* had been duly installed and that it was on this basis that the Bills of the Defendant, had been cleared by PWD, U.P.

78. Significantly, DW-1 admitted that no documentary material was produced by him to establish installation of the drainage filter media. Likewise, the Plaintiff also failed to produce any material to substantiate its assertion that omission of the drainage filter had resulted in a saving of approximately Rs.2,50,000/- to the Defendant. The onus was on the Plaintiff to prove non-installation of drainage filter, but no cogent evidence has been



produced, except bald assertions. On the other hand, the defendant has asserted that because it had done the needful, its bills were cleared by PWD, which is a significant factor.

79. The Plaintiff further claimed that the Work falling within its scope had been completed, though after considerable delay which, according to it, was attributable to the Defendant. It was asserted that the balance payment was thereafter, withheld by the Defendant on account of a frivolous plea of non-furnishing of the Performance Guarantee.

80. The requirement of furnishing a Corporate Performance Guarantee after satisfactory completion of the work, however, expressly formed part of the Plaintiff's obligations under the Work Order dated 05.05.2009. The Plaintiff sought to explain the non-furnishing of the Performance Guarantee by asserting that the same could be issued only after rectification of the defective work falling within the Defendant's scope and upon satisfactory completion of the bridge and final inspection of the overall civil work. According to the Plaintiff, since the RE Wall formed part of the larger bridge project, the Performance Guarantee could not be issued until the work as a whole, had been satisfactorily completed.

81. In support of the aforesaid explanation, the Plaintiff relied upon its correspondence wherein it had expressed apprehension that the RE Wall could be affected if the subsequent works, including construction of the road, friction slabs and crash barriers, were not completed before the rainy season. A Letter dated 24.03.2010 addressed to Mr. A.P. Singh, A.E., PWD, U.P., with a copy to the Defendant, wherein concerns regarding completion and quality of the work, were raised. It was thus, the case of the Plaintiff that it could not be compelled to furnish the Performance Guarantee while the



deficiencies alleged by it, remained unrectified. They cannot be blackmailed into giving Performance Guarantee by executing poor quality work or withholding the rightful dues.

82. Though assertions were made by the Plaintiff regarding poor quality and defective work on the part of the Defendant, on account of which the Performance Guarantee could not be furnished, nothing has come on record to substantiate the same. The allegations are largely based upon the Plaintiff's own assertions and letters with no corresponding material to support these assertions.

83. DW-1, in his cross-examination, admitted that installation of the drainage filter in the RE Wall fell within the scope of the Defendant. He further admitted that the anchor pins were required to be supplied by the Defendant under the Work Order dated 05.05.2009, though their installation formed part of the work to be executed by the Plaintiff.

84. It is thus, evident from the Work Order dated 05.05.2009, as well as the testimony of DW-1, that the provision of the drainage filter fell within the scope of the Defendant. However, merely because the said obligation rested upon the Defendant, would not establish the Plaintiff's allegation that the drainage filter had, in fact, not been provided. As already noticed, no independent technical, site or PWD record has been produced by the Plaintiff, to prove the alleged omission.

85. Therefore, what emerges from the testimony of the parties is that though the work was required to be completed within 40 days, it admittedly took almost a year to complete. It is also undisputed that the Plaintiff did not furnish the Performance Guarantee, which formed part of its obligations under the Work Order. However, the delay by itself is not determinative,



there being no material to show that the Defendant terminated the Work Order or treated the delay as putting an end to the contractual arrangement.

86. *The material question is whether the Plaintiff has been able to establish the extent of the work actually executed by it and its consequent entitlement to the amount claimed.* In this regard, PW-1 admitted that the work executed at the site was recorded in the Measurement Book, which has admittedly not been produced on record.

87. PW-1 specifically deposed that the measurements reflected in the Daily Progress Reports (DPRs) formed the basis for ascertaining their work executed at the site. He also explained that, after completion of the work, the Measurement Book, challans and DPRs were moved along with the moulds, to another project site and were not brought back to Delhi. According to him, the DPR booklets were subsequently traced at Meerut, U.P., lying inside the steel moulds and covered with dirt.

88. Significantly, the DPRs were produced subsequently by the Plaintiff and were tendered in evidence as Ex.PW1/17 (Colly.). In his cross-examination, PW-1 admitted that the original white DPR leaves placed on record, did not bear the countersignatures of the Defendant. He volunteered that only the coloured carbon copies, had been countersigned by the Defendant's representative, of which one copy had been handed over to the Defendant and the other had been filed in the Contempt proceedings.

89. He further admitted that the DPRs did not bear the signatures of any PWD Official or Engineer deputed at the site. Admittedly, there was no document to show that PWD Officers authenticated the work performed by them, at the site. PW-1 also admitted that the DPRs had been maintained by



the Plaintiff's employee, Sh. Sushil Pandey, who was also not examined as a witness.

90. The learned District Judge observed that the original DPRs produced by the Plaintiff did not bear the countersignatures of the Defendant and that only the coloured carbon copies were stated to have been countersigned. It was further noted that the DPRs were relied upon by the Plaintiff to establish the extent of the work executed at the site, under the Work Order dated 05.05.2009, Ex.PW1/3. However, the DPRs produced on record, on which the Plaintiff based his case were neither countersigned by the Defendant nor authenticated by any PWD Official. *The learned District Judge, therefore, declined to place reliance upon the DPRs for proving the extent of the work executed by the Plaintiff.*

91. In these circumstances, the belatedly produced DPRs, could not, by themselves, constitute reliable proof of the extent and quantity of the work allegedly executed by the Plaintiff. The learned District Judge, therefore, rightly declined to place reliance upon the same for establishing the Plaintiff's monetary claim.

92. To conclude, though the Work Order dated 05.05.2009, Ex.PW1/3, contemplated completion of the work within 40 days, the work admittedly took almost one year to complete. The Plaintiff also admittedly failed to furnish the Performance Guarantee, with PW-1 himself stating that though the project had been physically completed, it had not been satisfactorily completed in accordance with the prescribed requirements. Further, the DPRs produced by the Plaintiff did not reliably establish the extent of the work executed, for the reasons already discussed hereinabove.



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93. Furthermore, it may be noted that the value of the work was calculated at Rs.14,28,800/-, out of which a sum of Rs.10,00,000/- had admittedly been paid to the Plaintiff. The Plaintiff thereafter, asserted that an amount of Rs.7,58,118/- remained due and payable by the Defendant. However, there are no corresponding documents, bills or invoices, which proved and reliably corroborated the assertion of the balance amount of Rs.7,58,118/-, as the work done by the Plaintiff.

94. Though, the Plaintiff may have done the work, as has emerged from the evidence of the parties, but the onus was on the Plaintiff to establish through cogent bills, his assertion of having spent Rs.7,58,118/- over and above Rs.10,00,000/-, that he had received in advance.

95. In view of the aforesaid discussion, the evidence led by the Plaintiff was insufficient to establish its entitlement to the suit amount. The Suit was, therefore, rightly dismissed by the learned District Judge *vide* Judgment and Decree dated 20.02.2026.

96. The Appeal is consequently devoid of merit and is hereby dismissed.

97. Pending Applications, if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

SEPTEMBER 17, 2026/R