

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

% Judgment Reserved on: February 15, 2011  
Judgment Pronounced on: February 23, 2011

+ **CS(OS) No. 2448/2000**

**M/S. S.N.NANDY & CO.**

**.....Plaintiff**

**- versus -**

**M/S. NICCO CORPORATION LTD.**

**.....Defendant**

**Advocates who appeared in this case:**

|                    |                                                                                    |
|--------------------|------------------------------------------------------------------------------------|
| For the Plaintiff: | Mr. S.D.Singh, Ms. Bharti Tyagi, Mr. Rahul Kumar Singh, Ms. Megha Bansiwala, Advs. |
| For the Defendant: | Mr. Rahul Gupta, Mr. Pinaki Addy and Ms. Ira Gupta, Adv.                           |

**CORAM:-**

**HON'BLE MR JUSTICE V.K. JAIN**

- |                                                                          |     |
|--------------------------------------------------------------------------|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not?                                | Yes |
| 3. Whether the judgment should be reported in Digest?                    | Yes |

**V.K. JAIN, J**

1. This is a suit for recovery of Rs.92,20,562/-. The defendant-company, which was awarded the work for Biological Oxidation Plant for Coal Chemical Effluents at Rourkela Steel Plant (hereinafter referred to as "RSP), assigned the civil work for the aforesaid plant to the plaintiff for a lump sum amount of Rs.2,87,30,000/- vide Letter of

Intent (hereinafter referred to as LOI) dated 15<sup>th</sup> October, 1992. The scope of work as also the commercial terms for its execution were annexed to the LOI. It is alleged that in a meeting held in the last week of February, 1993, among the plaintiff, defendant and the officials of RSP, some major changes were made in the nature of civil work which was assigned to the plaintiff and those changes involved extra work and extra price implications. Some other extra works were later entrusted to the plaintiff for execution. The plaintiff submitted a claim of Rs.32 lakhs to the defendant for the extra work executed by it, which was later on corrected and changed to Rs.42,04,500/-. It is alleged that a sum of Rs.5 lakhs was paid by the defendant to the plaintiff in February, 1994, which was adjusted towards payment for the extra works. The amount payable by the defendant to the plaintiff towards payment of the extra work is alleged to have accumulated to Rs.57,18,500/-. The plaintiff has claimed an amount of Rs.43,51,217/- as principal sum from the defendant along with interest on that amount at the rate of 24 % per annum, amounting to Rs.48,69,345/- - till 31<sup>st</sup> March, 2000.

2. The defendant has contested the suit. It has taken a

preliminary objection that a full and final payment of Rs.9,36,900/- was made to the plaintiff on 29.8.1997 and having accepted that amount, the plaintiff cannot claim any further amount under the contract in question. The other preliminary objection taken by the defendant is that the suit is barred by limitation having been filed on 26.9.2000. On merits, it has been alleged that the defendant has cleared all the liabilities which were due to the plaintiff under contract in question. It is also alleged that extra work claimed by the plaintiff was already covered in the scope of price breakup given by it on 15.3.1993 which was subsequently amended on 19.3.1993.

The defendant has denied for entrusting extra work to the plaintiff and having assured payment for the alleged extra work. It is claimed that the plaintiff, on his own did the alleged extra work and got the same approved from RSP because he was fully aware that under the contract he was required to do that work.

3. The following issues were framed on the pleadings of the parties:-

1. Whether plaint has been signed and verified and suit instituted by a duly

authorized person on behalf of the plaintiff?

2. Whether plaintiff executed extra work not covered by the letter dated 15<sup>th</sup> October 1992? If answer is in affirmative, of what amount?

3. Whether plaintiff is entitled to interest? If so, on which amount, at what rate and for which period?

4. Whether amount of Rs.9,36,900/- was received by the plaintiff by way of full and final payment as alleged in para No.1 of the preliminary objection of written statement?

5. Whether suit is barred by time?

6. Whether this Court has no territorial jurisdiction to try the suit?

7. Relief.

#### **Issue No.6**

4. During arguments, the learned counsel for the defendant stated that he was not pressing this issue. Accordingly, this issue is stuck off.

#### **Issue No.1**

5. Mr. S.N.Nandy is the proprietor of S.N.Nandy & Co. and the plaint has been signed and verified by him. Institution of suit, and signing and verification of pleadings by the proprietor of a partnership concern is perfectly legal and valid. In fact, Mr.S.N.Nandy & Co. is only a trade name adopted by him and the suit ought to have been filed by Mr

S.N. Nandy as its proprietor. The issue is decided against the plaintiff and in favour of the defendant.

**Issue No.2**

6. The plaintiff has examined himself as PW-1 whereas the defendant has examined one witness Mr. Kartick Kumar Chatterjee as DW-1.

7. In his affidavit by way of evidence, the plaintiff has stated that in the last week of February, 1993, a meeting was organized between him, the defendant and the department of RSP and certain major changes in the scope of civil work were made by RSP and accepted by the defendant. He accordingly wrote letter dated 2.3.1993 to the defendant giving details of the extra works as well as the price implication. He claimed to have sent another communication dated 17.6.1993 to the defendant in this regard and has stated that the defendant had permitted him to proceed with the work including extra and additional work with promise and assurance that payment would be made in due course. He has further stated that in the meetings held on 3.1.1994 and 6.1.1994, the defendant acknowledged the extra works done by the plaintiff and also accepted his entitlement for payment. He accordingly sent a

communication dated 7.1.1994 to the defendant in this regard. He claimed that the defendant made promises and assurances to clear his dues but failed to do so. According to him, in the joint meeting held on 11.3.1994 and 12.3.1994, the issue with regard to extra work was discussed and the defendant promised to scrutinize the claim and make payment against the same. Similar promise, according to him, was made when he visited the office of the defendant on 29.6.1994 and 14.7.1994. He has stated that on 10.11.1994, Deputy Managing Director of the defendant company came to Delhi and the issue about payment of extra work was discussed and a promise was made to make payment. He further stated that a sum of Rs.5 lakhs was received by him towards extra work on 15.02.1994. He maintained that the extra work was executed at the site with the consent and due information to the defendant and on their assurance to make payment.

He further stated that the defendant sent a cheque of Rs.9,36,900/- being last 5% of the original contract value and the payment towards extra work remained payable to him. He has proved the comparative statement Ex.PW-1/51 prepared by him. Ex.PW-1/52, according to him are details

of change in scope of work.

8. In rebuttal, Mr. Kartick Kumar Chatterjee who was examined as DW-1 has stated that the plaintiff was entrusted the work of design, construction and maintenance of civil work in the Biological Oxidation Plant for coal chemical effluents of RSP on turnkey basis, for a total lump sum price of Rs.2,87,30,000/- as per the terms and conditions stipulated in the LOI dated 15.10.1992. The LOI, according to him, did not contemplate any extra work with extra price implication nor did it contain any price variation clause. He has also proved the letter dated 15.3.1993 written by the plaintiff giving detailed item-wise price-wise breakup and has stated that complete full and final payment under the contract and LOI was made to the plaintiff vide receipt dated 29.8.1997. According to him, nothing is left due to the plaintiff. He maintained that the plaintiff never executed any extra item or extra work.

9. Ex.PW-1/4 is the offer made by the plaintiff to the defendant company for civil work of BOD plant at RSP.

Paras 2 and 3 of the letter read as under:-

*“We have gone through the entire scope of civil work and specifications furnished to us along with the enquiry. Our lumpsum*

*offer for entire civil work is based on M/s. NCL's scope of work, specifications and layout, and Flow diagram drawings sent to us.*

*Our total lumpsum price consideration for the above job shall be Rs.275 lacks (Rupees two hundred seventy five lacs only) includes design, execution and supervision. Our lumpsum price also includes cost of all materials and manpower required for the job. The price implication of WCT is not considered, by us."*

10. Ex.PW-1/5 is the letter of the plaintiff dated 6.8.1992 whereby, he submitted lump sum price quotation for Earthen Sludge lagoon for a covered area of 800 sqm. and providing one metre wide pavement. A sum of Rs.2,55,000/- was quoted for the sludge lagoon and Rs.3,35,000/- was quoted for the pavement. Ex.PW-1/6 is the letter dated 15.10.1992 whereby the work for the design, engineering, drawing, construction and maintenance of all the civil works in the Biological Oxidation Plant for coal chemicals effluents etc. at RSP was awarded to the plaintiff for a lump sum price of Rs.2,87,30,000/-. The scope of work covered by the letter and major chemical terms and conditions were also enclosed to this letter. The scope of work as defined in the annexure to this document

reads as under:-

**“SCOPE OF WORKS**

*The scope of work of this LOI covers the Design. Engineering preparation of Arrangement and Detailed Drawings, obtaining approval from RSP, construction in accordance with the approved drawings, Specifications and Instructions of RSP/NCL and maintenance of all the Civil-Works involved in the Biological Oxidation Plant for Coal Chemical Effluents at RSP.*

*The list of items of Civil-Works involved in the above project is shown in the enclosed Annexure No.1.”*

Annexure-I gave detailed breakup of the scope of work awarded to the plaintiff.

11. It would thus be noticed that though the initial offer made by the plaintiff was for Rs.2,75,00,000/-, the work was awarded to him for Rs.2,87,30,000/- which is Rs.12,30,000/- more than the quotation given by him and the difference between the price and the price at which the work was awarded is more than the amount of Rs.5,90,000/- which the plaintiff had claimed for extra items/earthen sludge lagoon and bituminous pavement, vide letter Ex.PW-1/5. This becomes important since contention of the learned counsel for the defendant was that

value of the work was enhanced in order to pay for the extra work involved in the execution of contract.

12. Ex.DW-1/P-1 is the letter of the plaintiff dated 15.3.1993 whereby he sent detailed price breakup for the civil work awarded to him. This breakup was sent by the plaintiff in order to facilitate progressive payment to him during the execution of the work. A perusal of the annexure to this letter would show that the plaintiff had divided the amount of Rs.2,87,30,000/- into various heads and sub-heads. This break up is important as no item-wise value was given either in the quotation of the plaintiff or in the LOI issued to him by the defendant. It is not open to the plaintiff to say that the items mentioned in this break up were not included in the scope of work awarded to him, nor can he claim any amount higher than the amount assessed by him for each item mentioned in this document.

13. Admittedly, the work was awarded to the plaintiff on turnkey basis and a composite amount of Rs.2,87,30,000/- was to be paid to him for the whole of the work. Unless the plaintiff is able to show that the work claimed by him as extra work was beyond the scope of the composite work awarded to him on turnkey basis, he will not be entitled to

any extra payment. Since the break-up submitted by the plaintiff as annexure to his letter Exhibit DW1/P1 was based on the awarded amount, which was higher than the amount initially awarded by him, he can claim payment only for that work, which was not included in the break up sent by him to the defendant. Of course, he would be entitled to payment of the work, which was not included in the break-up given by him to the defendant as well as for the quantity which exceeded the quantity indicated in the break-up, provided he is able to make out either a contractual obligation or a statutory obligation on the part of the defendant to pay to him for that extra work/extra quantity.

14. The case of the plaintiff is that the extra works were executed by him on the instructions of the defendant. The case of the defendant, however, is that no extra work was entrusted by it to the plaintiff and the works claimed as extra work were included within the scope of the work awarded to the plaintiff.

15. In his cross-examination, the plaintiff has admitted that no prior permission was taken before executing the extra works. The next question which then comes up is as

to whether the defendant had impliedly consented to pay for the works. Exhibit PW1/9 is the letter sent by the plaintiff to the defendant on 2<sup>nd</sup> March, 1993, referring to the discussions held with various departments of RSP and stating therein that the defendant had agreed for some major changes/incorporations in the scope of civil work having substantial extra price implication on the agreed lump sum value. The details of the additional work with extra price implications were annexed as Annexure A to this letter. The items mentioned and included in Annexure A to this letter were sludge drying beds in place of sludge lagoons, treated effluent sump for increased capacity, screed concrete in channels and plaster with WPC in all RCC tank floors, providing anti-forming system, providing fencing around MCC/Transformer rooms with gates and bituminous pavement, providing additional aprons around RCC tanks and pathways as approach to units and two coats of Epoxy Paint inside Equalization tanks. Out of these items, screed concrete in channels and plaster with WPC in all RCC tank floors, anti-foaming system, fencing around MCC/Transformer rooms and pathways as approach to units and two coats of Epoxy Paint inside Equalization

tanks have not been shown either in Exhibit PW1/51 or in Exhibit PW1/128, which indicates that either these works were not actually executed or were treated to be within the scope of the awarded work and that is why the plaintiff has not claimed any payment from the defendant for these works. Exhibit PW1/12 is the letter of the plaintiff dated 17<sup>th</sup> June, 1993, informing the defendant that the works mentioned in the letter would be treated as extra works and payment for them shall have to be made separately to him over and above the agreed lump sum value. The two items mentioned in this letter were dry pump house attached with the sump size of 5.00 M X 5.00 M and providing necessary support foundation and walkway platform suitable for installation of Cooling Tower Device on the top of the sump. However, neither of these items has been claimed in Exhibit PW1/51 or PW1/128. Vide letter dated 7<sup>th</sup> January, 1994, which is exhibit PW1/17, the plaintiff sought outstanding payment along with finalization of extra work, which were claimed to be worth Rs.32 lakhs. Vide letter dated 25<sup>th</sup> July, 1994, which is exhibit PW1/21, the plaintiff again sought payment for the extra claim raised by him. Vide letter dated 30<sup>th</sup> September, 1994, which is exhibit PW1/26,

the plaintiff again requested the defendant for finalization of his extra claims, which he had submitted on 31<sup>st</sup> December, 1993. This request was reiterated vide fax message dated 9<sup>th</sup> November, 1994, which is exhibit PW1/27, fax message dated 29<sup>th</sup> November, 1994, which is exhibit PW1/29 and fax letter dated 12<sup>th</sup> December, 1994, which is exhibit PW1/33.

16. A payment of Rs.5 lakhs was made by the defendant to the plaintiff vide cheque No.251361 dated 15<sup>th</sup> February, 1994 drawn on Hong Kong Bank. Vide letter dated 30<sup>th</sup> May, 1995, which is Exhibit PW1/D-2, the defendant claimed that this payment was to be adjusted against further R/A bills commencing from 10<sup>th</sup> R/A bill onwards but inadvertently that was not done. The plaintiff immediately replied to this letter vide his response dated 2<sup>nd</sup> June, 1995, which is Exhibit PW1/35 and claimed that the payment of Rs.5 lakhs was made as advance against extra work carried out by him and had been released after he had submitted his claim of Rs.41 lakhs towards extra work. He maintained that this amount could be adjusted against payment of extra work. There was no response from the defendant to this letter, which leads to the inference that

this payment was made towards extra work. Vide letter dated 5<sup>th</sup> August, 1997, which is Exhibit PW1/44, the plaintiff sought payment for the extra work executed by him. Vide fax message dated 18<sup>th</sup> July, 1996, which is Exhibit PW1/38, the plaintiff again sought payment for the extra work. Vide letter dated 17<sup>th</sup> June, 1997, which is Exhibit PW1/43, the plaintiff demanded a sum of Rs.51,34,500/- from the defendant towards price of extra work after deducting a sum of Rs.5 lakhs already received by him as advance towards these extra works. The above referred correspondence clearly indicates that some extra works were executed by the plaintiff to the knowledge of the defendant. Had the defendant not given an implied consent to any extra work, it would have adequately responded to the letters of the plaintiff and would not have paid Rs 5 lakhs to the plaintiff towards payment of extra works. Silence on the part of the defendant, despite repeated correspondence and claims from the plaintiff for the extra works alleged to have been executed by him gives an indication of an implied consent for some payment for the extra works by him.

17. Assuming, however, that the extra works claimed by

the plaintiff were not authorized by the defendant and, therefore, the defendant is under no contractual obligation to pay for those works, the plaintiff is entitled to get reasonable payment for these works in view of the provisions contained in Section 70 of the Contract Act, 1872, which reads as under:-

**“70. Obligation of person enjoying benefit of non-gratuitous act.—** *Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”*

18. A bare perusal of the above referred Section would show that three conditions need to be fulfilled before benefit of this provision can be invoked by a person. The first condition is that the claimant should either lawfully do something for another person or deliver something to him. The second condition is that while doing or delivering something, the claimant must not be acting gratuitously and thirdly, the person for whom something is done or to whom something is delivered must enjoy the thing done for or delivered to him as the case may be.

Invocation of Section 70 of the Contract Act was disputed by learned counsel for the defendant on the ground that the plaintiff has not pleaded essential requirement of the Section. In support of his contention that pleading ingredients of Section 70 is a pre-condition for its invocation, the learned counsel for the defendant has referred to ***Kotah Match Factory Kotah v. State of Rajasthan, AIR 1970 Rajasthan 118, Hansraj Gupta & Co. v. Union of India, AIR 1973 SC 2724, Union of India v. Sita Ram Jaiswal, AIR 1977 SC 329*** and ***Devi Sahai Palliwal v. Union of India and another, AIR 1977 SC 2082***.

19. In ***Kotah Match Factory (supra)***, the Rajasthan High Court noted that the plaintiff did not raise the plea for compensation under Section 70 of the Contract Act nor was any issue framed, nor were the parties given an opportunity to lead any evidence on the point. It was found that the case of the appellant before the Court was based upon an agreement. It was held that since the parties had not gone on trial on the question of compensation under Section 70 of the Contract Act, if the benefit of the aforesaid provision is allowed at this stage, it would amount to taking the

opposite party by surprise. In **Hansraj Gupta & Co.(supra)**, the Supreme Court was of the view that the conditions for the applicability of the Section 70 must at least be set out in the pleadings and proved. In **Sita Ram Jaiswal (supra)**, the Supreme Court, inter alia, observed as under:-

*“6. The three ingredients to support the cause of action under Section 70 of the Indian Contract Act are these: First, the goods to be delivered lawfully or anything has to be done for another person lawfully. Second, the thing done or the goods delivered is so done or delivered “not intending to do so gratuitously.” Third, the person to whom the goods are delivered “enjoys the benefit thereof.” It is only when the three ingredients are pleaded in the plaint that a cause of action is constituted under Section 70 of the Indian Contract Act. If any plaintiff pleads the three ingredients and proves the three features the defendant is then bound to make compensation in respect of or to restore the things so done or delivered.”*

In **Devi Sahai Palliwal (supra)**, the Supreme Court found that there was no allegation in the plaint to support any pleading in proceeding under Section 70 of the Indian Contract Act. Relying upon its earlier decision in **Sitaram**

**Jaiswal** (supra), it was held that in the absence of proper pleadings under Section 70 of the Indian Contract Act, the plaint should not be entertained.

20. The learned counsel for the plaintiff on the other hand has referred to **State of West Bengal v. M/s B.K. Mondal and Sons**, AIR 1962 SC 779, **V.R. Subramanyam v. B. Thayappa and others**, 3 SCR 663 and **Food Corporation of India & Others v. Vikas Majdoor Kamdas Sahkari Mandli Ltd.**, 2007 (13) Scale 126. In the case of **B.K. Mondal and Sons** (supra), the Supreme Court, after reiterating the three conditions, which need to be satisfied before invoking Section 70 of the Contract Act, was of the view that when these conditions are satisfied, Section 70 imposes upon the person for whom something is done or to whom something is delivered, the liability to make compensation in respect of or restore the thing done for or delivered to him. During the course of the judgment, the Court, inter alia, observed as under:-

*“14.....If a person delivers something to another it would be open to the latter person to refuse to accept the thing or to return it; in that case S. 70 would not come into operation. Similarly, if a person does something for another it would be open to the latter person not to accept*

*what has been done by the former; in that case again S. 70 would not apply. In other words, the person said to be made liable under S. 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under S. 70 arises. Taking the facts in the case before us, after the respondent constructed the warehouse, for instance, it was open to the appellant to refuse to accept the said warehouse and to have the benefit of it. It could have called upon the respondent to demolish the said warehouse and take away the materials used by it in constructing it; but, if the appellant accepted the said warehouse and used it and enjoyed its benefit then different considerations come into play and S. 70 can be invoked. Section 70 occurs in Chapter V which deals with certain relations resembling those created by contract. In other words, this chapter does not deal with the rights or liabilities accruing from the contract. It deals with the rights and liabilities accruing from relations which resemble those created by contract.....Therefore, in cases falling under S. 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract nor ask for damages for the breach of the contract for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. All that Section 70 provides is that if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus, where a claim for*

*compensation is made by one person against another under S. 70, it is not on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was done by the party for another and the said work so done has been voluntarily accepted by the other party. That broadly stated is the effect of the conditions prescribed by S. 70.”*

21. In **V.R. Subramanyam (supra)**, the Court reiterated the settled proposition of law that if a party of a contract rendered service to other not intending to do so gratuitously and another person had obtained some benefit, the former is entitled to compensation for the value of the services rendered by him. It was further held that even if a person has failed to prove an express agreement in this regard, the Court may still award him compensation under Section 70 of the Contract Act and such a decree for compensation would be under the statute and not under a contract.

22. In **Food Corporation of India (supra)**, the Supreme Court, inter alia, observed as under:-

*“12.....A person who does work or who supplies goods under a contract, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the goods supplied. If the work is outside the contract, the terms of the contract can have no application; and the contractor is entitled*

*to be paid a reasonable price for such work as was done by him.*

*13. If a party to a contract has done additional construction for another not intending to do it gratuitously and such other has obtained benefit, the former is entitled to compensation for the additional work not covered by the contract. If an oral agreement is pleaded, which is not proved, he will be entitled to compensation under Section 70. Payment under this section can also be claimed for work done beyond the terms of the contract, when the benefit of the work has been availed of by the defendant.”*

23. In the case before this Court, though the plaintiff has not specifically pleaded the provisions of Section 70 of the Contract Act, nor has any issue been framed by the Court on its applicability, he has pleaded all the ingredients necessary for invocation of the aforesaid statutory provision. In the plaint, the plaintiff has repeatedly alleged execution of extra work for the defendant. In fact, his entire claim in the suit is based on the extra works alleged to have been executed by him for the defendant. In para 7 of the plaint, he alleged that since changes in the scope of work involved extra work and extra price implications, the letter dated 2<sup>nd</sup> March, 1993 was written by him giving details of additional work and price implication. In para 9 of the plaint, he

alleged that in his letter dated 17<sup>th</sup> June, 1993, he had clearly pointed out about the payment of extra work over and above the value of the contract. Thus, the plaintiff has made it quite clear in the plaint that the extra works were not executed gratuitously and that the defendant was obliged to make payment for those works. In para 19 of the plaint, it is alleged that the extra work executed by him was duly accepted by the defendant. In para 21, he again alleged that all the works executed by him were accepted by the parties. In para 27 of the plaint, the plaintiff reiterated that the extra work was duly executed by him and accepted by the defendant. The plaintiff has, thus, pleaded all the necessary ingredients of Section 70 of the Contract Act by claiming that (i) he had executed extra works for the defendant; (2) extra works executed by him were accepted by the defendant and (3) he had not executed extra work gratuitously. The defendant could have refused to accept the extra works/extra quantities executed by the plaintiff. In that event, it would not have been liable to pay for them. But, the defendant failed to do so and accepted these works. Therefore, even if it is presumed that the defendant had not consented to pay for the extra work by the plaintiff, it is

obliged in law to compensate him for the extra works, which were accepted by it, without any protest and without claiming that the plaintiff will not be paid for those works.

24. Ex.PW-1/51 is the comparative charge filed by the plaintiff showing change in scope of work in various units.

The charts reads as under:-

**“BOD PLANT AT RSP, ROURKELA**  
**CHANGE OF SCOPE IN VARIOUS UNITS**

| Sl.No. | Units                                     | Original Scope     | Revised Scope         | Difference                |
|--------|-------------------------------------------|--------------------|-----------------------|---------------------------|
| 1      | Pump House-I                              | 128 m <sup>2</sup> | 86.45 m <sup>2</sup>  | (-)41.55 m <sup>2</sup>   |
| 2      | Pump House-II                             | 192 m <sup>2</sup> | 90.00 m <sup>2</sup>  | (-) 102.00 m <sup>2</sup> |
| 3.     | Office-cum-Lab                            | 300 m <sup>2</sup> | 330.77 m <sup>2</sup> | (+) 30.77 m <sup>2</sup>  |
| 4.     | DAF Building                              | Nil                | 255.79 m <sup>2</sup> | (+) 255.79 m <sup>2</sup> |
| 5.     | MCC Building                              | Nil                | 200.16 m <sup>2</sup> | (+) 200.16 m <sup>2</sup> |
|        |                                           |                    |                       | 343.17 m <sup>2</sup>     |
| 6.     | Treated Effluent Sump                     | 40 m <sup>3</sup>  | 100 m <sup>3</sup>    | (+) 60 m <sup>2</sup>     |
| 7.     | Sludge Lagoon/Drying Bed                  | 800 m <sup>2</sup> | 1080 m <sup>2</sup>   | (+) 280 m <sup>2</sup>    |
| 8.     | Influent Sump                             | Nil                | 35 m <sup>3</sup>     | (+) 35 m <sup>2</sup>     |
| 9.     | Pump House at Common Catch Pit            |                    | Nil 33 m <sup>2</sup> | (+)Nil 33 m <sup>2</sup>  |
| 10.    | Cooling Tower Basin Over Common Catch Pit | Nil                | 30.67 m <sup>2</sup>  | 31 m <sup>2</sup>         |

**Pump House I & II**

25. A perusal of the above-referred chart would show that as far as item No.1 and 2 viz. Pump House-I and Pump

House-II are concerned, there was reduction in the quantity of the work, for which credit has to be given to the defendant.

As per Ex.PW-1/51, the quantity of Pump House-I as per the original scope of work is 128 sq.mt. but, on revision the quantity was reduced to 86.45 sq.mt. Since the plaintiff is claiming payment for the extra work as well as extra quantity executed by him, he is required to give adjustment to the defendant for the lesser quantity executed by him. A perusal of Ex.DW-1/P1 would show that the plaintiff had quoted Rs.4 Lacs for Pump House-I. If the value of 128 sq.mt was Rs.4 Lacs, the value of 41.55 sq. mt. which is the difference between the original quantity and the revised quantity comes to Rs.129843/-. The plaintiff is required to give adjustment of this amount to the plaintiff on account of reduction in the quantity of the work for Pump House-I.

The plaintiff had assessed the value of Pump House-II at Rs.3,50,000/- for 192 m<sup>2</sup> in Ex.DW-1/P1. If the value of 192 sq.mt. was Rs.3,50,000/-, the value of difference between the original quantity and the revised quantity of 102 sq.mt. comes to Rs.185937/-. The plaintiff is required

to give adjustment for this amount to the defendant.

**DAF Building**

26. As regards item No.4 DAF Building in chart Ex. PW1/51, the case of the plaintiff as indicated in the Chart is that this item was not included in the scope of work awarded to him. However, a perusal of the Annexure to plaintiff's letter Ex.DW-1/P-1 would show that DAF Unit was shown as item No.5 whereas DAF Dosing Pump House was shown as item No. 15 and the plaintiff had assessed value of DAF Unit at Rs.50,000/- and that of DAF Dosing Pump House at Rs.7 lakhs. There is no evidence on record to indicate that DAF Building was different from DAF unit and DAF Dosing Pump House. Nowhere has it been alleged in the plaint that DAF Building was a work different from DAF Unit and DAF Dosing Pump. In fact, the plaintiff has not specified any alleged extra item in the plaint. As a result, the defendant had no opportunity to rebut the case of plaintiff in respect of each item claimed to be extra item. In his affidavit, the plaintiff did not say that DAF Building was different from DAF Unit and DAF Housing Pump. No other evidence was led by him to prove that these are

different items. Since the defendant had claimed that all the works executed by plaintiff were included in the scope of LOI, it was incumbent upon the plaintiff to prove that this was a work different from the works included in Ex DW-1/P1. In fact, there is no evidence during trial to even prove that any such work was actually executed by the plaintiff.

27. It was contended by the learned counsel for the plaintiff that since there is no cross-examination of the plaintiff in this regard, it is not open to the defendant to dispute the execution of the extra works or to say that these works were not extra works. In support of his contention, he has relied upon the decision of this Court in **Uttam Kumar vs. State** 2010(3) JCC 1946 and the decision of Punjab High Court in **Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. and Anr.** AIR 1950 Punjab 440. In the case of **Uttam Kumar** (supra), which was a criminal appeal against conviction, it was found that no question was put to the police officer as to why he took six police men along with him. Observing, that without questioning a witness on a point of controversy and eliciting a response, no argument can be built on said controversy by hinging the controversy on surmises and conjectures, this Court felt that had the

witness been asked, an answer would have come and then there could have been some scope for a debate. It was also found that another witness Vibhor was not cross-examined with respect to the essential portion of his testimony, which had virtually gone unrebutted. This Court, then, referred to the observations made by Punjab High Court in **Chuni Lal Dwarka Nath** (supra) that a party should put to each of his opponent witness so much of his case as concerns that particular witness and if no such questions are put, the Court presumes that the witness account has been accepted. However, these judgments are of no help to the plaintiff for the simple reasons that in his affidavit by way of evidence, the plaintiff did not even depose with respect to execution of the alleged extra works. He did not say that DAF building was different from DAF Unit and DAF Dosing Pump House which were shown as Item No. 5 and 15 respectively in Ex.DW-1/P1. Had the plaintiff stated that he had constructed DAF Building and that work was different from DAF Unit and DAF Dosing Pump House, only then failure of the defendant to cross-examine him in this regard could have proved detrimental to the defendant and could have accrued to the benefit of the plaintiff. The case of the

defendant has all along been that all the alleged extra work was within the scope of the work awarded to the plaintiff.

Moreover, during the course of arguments, I gave an opportunity to the learned counsel for the plaintiff to satisfy me, from the drawings, if available on record that DAF Building was different from DAF Unit and DAF Dosing Pump House shown in Ex.DW-1/P1. No such attempt was, however, made. Hence, DAF Building cannot be considered to be an extra item and the plaintiff is not entitled to any extra amount for this work.

### **MCC BUILDING**

28. Item No.4 shown in chart Ex.PW-1/51 is MCC Building. A perusal of the annexure to plaintiff's letter Ex.DW-1/P-1 would show that MCC-cum-transformer room was shown as item No.18 in this document and the plaintiff had assessed the value of this work at Rs.8 lakhs. Again, there is no material on record to indicate that MCC Building was different from MCC-transformer room. Also, there is no evidence produced during trial, to prove execution of this work. The plaintiff did not say about execution of this work in his affidavit. He did not claim that MCC Building was different from MCC Transformer Room. No attempt was

made to satisfy me, from drawings, etc. that these were two separate works. Consequently, this work cannot be treated as extra item and the plaintiff is not entitled to any amount from the defendant towards payment of this work.

**OFFICE CUM LAB**

29. As regards office-cum-lab which is item No.3 in the Chart Ex.PW-1/51, according to the plaintiff there has been increase in the scope of work since the quantity had increased from 300 sq.m. to 330.77 sq.m., the increase being 30.77 sqm. The plaintiff had assessed the value of office-cum-lab building at Rs.11 lakhs in the annexure to his letter Ex.DW-1/P-1. If the cost of 300 sqm. was Rs.11 lakhs, the cost of the extra quantity measuring 30.77 quantity would come to about Rs.1,10,000/-. The plaintiff therefore cannot claim more than Rs.1,10,000/- for this extra work. Though in his affidavit, the plaintiff did not specifically say that the quantity of this item had increased from 300 m<sup>2</sup> to 330.77m<sup>2</sup>, I do not propose to deny the payment, since during the course of arguments before me, the contention of the learned counsel for the defendant was that the plaintiff can claim for extra quantity, only as per value assessed in Ex.DW-1/P1. This was not his contention

that in fact the quantity did not exceed 300 m<sup>2</sup>.

### **TREATED EFFLUENT SUMP**

30. As regards Treated Effluent Sump which is item No. 6 in the Chart Ex.PW-1/51, the quantity according to the plaintiff had increased from 40 cubic metre to 100 cubic metre, the increase being 60 cubic metre. The plaintiff has in annexure to letter Ex.DW-1/P-1 assessed the value for Treated Effluent Sump at Rs.2 lakhs. If this was the value for 40 cubic metre, he is entitled to only Rs.3 lakhs towards payment of the extra quantity. Though in his affidavit by way of evidence, the plaintiff did not refer to execution of extra quantity of this item, I am granting this payment to him, as the contention before me was that he cannot claim at a value higher than estimated by him, and this was not the contention that there was no excess quantity of this item.

### **SLUDGE LAGOON/DRYING BED**

31. Item No.7 shown in the Chart Ex.PW-1/51 is sludge lagoon/Drying Bed. The quantity is alleged to have increased from 800 sqm. to 1080 sqm. the increase being 280 sqm. The case of the plaintiff is that he had given value of Rs.2,50,000/- for 800 sqm. for sludge lagoon whereas he

has constructed sludge lagoon/ sludge drying bed measuring 1080 sqm., price of which comes to Rs.17,28,000/-. The first question which comes up for consideration in this regard is whether sludge lagoon/sludge drying bed is different from the sludge lagoon shown in Ex.DW-1/P-1 and if so, whether the plaintiff is entitled to any extra payment for this item. The heading of item No.14 in the annexure to letter Ex.DW-1/P-1 is sludge lagoon/drying bed. Same is the heading given in the comparative chart. The plaintiff, therefore, cannot say that the work executed by him was different from the work for which break up was given by him. By quoting Rs.3 lakhs for sludge lagoon/drying beds, the plaintiff clearly indicated that there were alternative works and valued this work at Rs.3 lakhs irrespective of whether it was to be sludge lagoon or drying bed.

The plaintiff has not told the Court how drying beds are different from the sludge lagoons. More importantly, the work indicated in EX.DW-1/P-1 is not sludge lagoon but sludge lagoon/drying bed and same is the work alleged to have been executed by the plaintiff. Therefore, the plaintiff is entitled only to the extra quantity measuring 280 sqm.

Calculated at the value assessed by the plaintiff himself in Ex.DW-1/P-1, the price for the extra quantity measuring 280 sqm. would come to Rs.1,05,000/-. The plaintiff is entitled to recover only this much amount in respect of this extra quantity. Here also, though the plaintiff did not claim execution of extra quantity, in his affidavit by way of evidence, I am inclined to allow payment for extra quantity as this was not the contention before me that no extra quantity was executed.

#### **INFLUENT SUMP**

32. Item No.8 in chart Ex.PW-1/51 is Influent Sump which the plaintiff claims to be a new item. However a perusal of annexure to letter Ex.DW-1/P1 would show that influent sump was shown as items No.3 in this document and the plaintiff had assessed its value at Rs.1,00,000/-. There is neither any pleading nor evidence before the Court to show that more than one influent sump were constructed by the plaintiff. NO attempt was made to show from drawings etc. that the plaintiff had constructed an additional influent sump. Therefore he is not entitled to any amount towards this item.

### **PUMP HOUSE AT COMMON CATCH PIT**

33. Item No.9 in chart Ex.PW-1/51 is Pump House at Common Catch Pit. Though Common Catch Pit has been shown as item No.21 in annexure to letter Ex.DW1/P1, the breakup of this item does not indicate any Pump House. Therefore, if the plaintiff had constructed a Pump House at Common Catch Pit, it would be an extra item and the plaintiff would be entitled to payment for this item. During arguments, this was not the contention of the defendant that no pump house at common catch pit was constructed by the plaintiff. The plaintiff has claimed a sum of Rs.1,85,000/- for this extra item. No evidence has been led by the defendant to prove that the value of this extra item would be less than Rs.1,85,000/-. I, therefore, hold that the plaintiff is entitled to recover a sum of Rs.1,85,000/- from the defendant towards payment of this extra item.

### **COOLING TOWER BASIN OVER COMMON CATCH PIT**

34. Item No.10 shown in chart Ex.PW-1/51 is Cooling Tower Basin over Common Catch Pit, which is not included in the work indicated under item No.2, Common Catch Pit in annexure to letter Ex.DW1/P1. Again this was not the contention of the defendant that no Cooling Tower Basin

was constructed by the plaintiff over Common Catch Pit. The plaintiff, therefore, is entitled to payment towards this extra item. He has claimed a sum of Rs.1,20,000/- for this extra item. There is no evidence led by the defendant to show that the cost of this extra item was less than Rs.1,20,000/-. I, therefore, see no reason to disbelieve the un rebutted evidence of the plaintiff in this regard and also that he is entitled to recover a sum of Rs.1,20,000/- from the defendant towards payment of this extra item.

#### **APRON AROUND RCC TANK**

35. In his comparative statement Ex.PW-1/128, the plaintiff has also claimed Rs.80,000/- towards payment for Apron around the RCC Tank. A perusal of annexure to letter Ex.DW-1/P1 would show that the plaintiff was to construct Equalization Tank-TO1B, Aeration Tank-I T05 and Aeration Tank-II T07. Apron has been shown as one of the sub items of Equalization Tank-TO1A. The plaintiff had assessed its value at Rs.50,000/-. Aprons are also shown as a part of Equalization Tank-TO1B and its value has been assessed at Rs.50,000/- Aprons has also been included in the work shown under the heading Aeration Tank-I and the

plaintiff has assessed its value at Rs.92,000/- for the aprons/finishing. Aprons/finishing has also been shown under Aeration Tank-II against item No.10 and the plaintiff has assessed its value at Rs.1,68,000/-. The plaintiff has not told the Court how the Apron around the RCC Tank shown by him at item No.21 in Ex.PW-1/128 is an extra item when examined in the light of the fact that he has already included aprons while giving detailed breakup of Equalization Tank-TO1B, Aeration Tank-I T05 and Aeration Tank-II T07. No evidence has been led by the plaintiff to show how many aprons he was to construct in terms of the LOI and how many were actually constructed by him. No attempt was made to satisfy me from the drawings that the any additional apron was constructed by the plaintiff. He has, therefore, failed to prove that aprons around the RCC Tank were extra items. I, therefore, hold that the plaintiff is not entitled to any payment for Apron around the RCC Tank.

**BOUNDARY WALL (EXTRA QUANTITY)**

36. At serial No.22 of Ex.PW-1/128, the plaintiff has claimed a sum of Rs.75,000/- towards excess quantity

measuring 25 RM of boundary wall. The chart indicates that the quantity as per the work order was 345 RM whereas the quantity as per the approved drawing was 370 RM. During arguments, there was no claim by the defendant that the actual quantity was not 370RM. A perusal of annexure to letter Ex.DW-1/P1 would show that the plaintiff had assessed the value of boundary wall, gates/guard room at Rs.5 Lacs. The breakup of this item would show that a sum of Rs.25,000/- was claimed towards design and drawing, Rs.50,000/- towards guard rooms and Rs.20,000/- towards gates. This would mean that the value of the boundary wall was Rs.4,05,000/- (Rs.5Lac – Rs.25,000/- – Rs.50,000/- – Rs.20,000/-). If the value of 345 RM is taken as Rs.4,05,000/- the value of the excess quantity measuring 25 RM would come to Rs.29,347/-. The plaintiff is entitled to recovery of this amount from the defendant towards excess quantity of boundary wall.

### **RECONSTRUCTION OF BOUNDARY WALL**

37. In Ex.PW-1/128, the plaintiff has claimed Rs.153217.50 towards reconstruction of boundary wall in terms of his letter dated 30<sup>th</sup> November 1994. A perusal of

Ex.PW-1/23, which is the letter written by the plaintiff to defendant on 27<sup>th</sup> August 1994 shows that there was some verbal discussion between the parties regarding reconstruction of boundary wall and Bio-Oxidation plant and the plaintiff quoted a price of Rs.1,55,000/- for this work. He also gave details of the price quoted by him for this item. A perusal of Ex.PW-1/25, which is the letter sent by the defendant to the plaintiff on 31<sup>st</sup> August 1994, shows that on receipt of the letter dated 27<sup>th</sup> August 1994, the defendant requested the plaintiff to start the reconstruction of boundary wall with immediate effect. This letter does not indicate that reconstruction of boundary wall was necessitated on account of some defect in the boundary wall earlier constructed by the plaintiff. Since the plaintiff quoted a sum of Rs.1,55,000/- for reconstruction of the boundary wall and the defendant asked him to go ahead with the work, the defendant is liable to pay for this work which has to be treated as an extra work. I, therefore, hold that the plaintiff is entitled to recover a sum of Rs.153217.50 from the defendant for reconstruction of the boundary wall.

38. Thus the plaintiff is entitled to recover a sum of Rs 1,10,000/- for the extra quantity of the work involved in office-cum-lab, Rs 3 lakhs for the extra quantity of the work involved in Treated Effluent Sump. Rs 1,05,000/- for the extra work involved in Sludge Lagoon/Drying Bed. Rs 1,85,000 for the Pump House at Common Catch Pit. Rs 1,20,000 for Cooling Tower Basin over Common Catch Pit. Rs 29,347/- for the extra quantity of boundary wall and Rs 1,53,217.50/- for reconstruction of boundary wall. He is entitled to give adjustment of Rs 1,29,843/-to the defendant towards revised quantity of the work involved in Pump House-I and Rs 1,85,937/- towards reduction in the quantity of work involved in Pump House-II. The balance amount payable to the plaintiff for the extra work thus comes to Rs 6,86,784.50/-

39. This is plaintiff's own case that he had received a sum of Rs.5 lakhs from the defendant as an advance towards the extra work executed by him. After deducting the aforesaid amount of Rs.5 lakhs from the amount of Rs 6,86,784.50/- found payable to the plaintiff. The balance principal sum payable to him comes to Rs 1,86,784.50. The issue is

decided accordingly.

**ISSUE NO.4**

40. Relying upon the receipt dated 27<sup>th</sup> August, 1997, which is exhibit PW-1/D1 the defendant has claimed that payment of Rs.9,36,900/- was accepted by the plaintiff in full and final settlement of all his claims and having done so, he is now estopped from claiming any further amount from it towards payment of the extra works. The receipt Exhibit PW1/D1 reads as under:-

**“RECEIPT”**

*Received with thanks the full and final payment of Rs.936900.00 (being last 5% of our contract value) vide cheque no.668151, dated: 28-08-97 drawn on Allahabad Bank, Calcutta against Civil Works of our original contract value of Rs.2,87,30,000.00*

*Date: 29-08-97* *for S.N. Nandy & Co.*  
*Sd/-*  
*(S.N. Nandy)*  
*Proprietor”*

41. This document, to my mind, contains an admission that the plaintiff had received Rs.9,36,900/- from the defendant towards full and final payment of the work to the extent it was covered under the LOI Exhibit PW1/6 dated 15<sup>th</sup> October, 1992. This document does not apply to the

claim of the plaintiff for the extra works executed by him to the extent those works were beyond the scope of the LOI dated 15<sup>th</sup> October, 1992. On receipt of this payment, the plaintiff had no claim left against the defendant with respect to those works, which were included in the scope of work awarded vide LOI dated 15.10.1992, but, it does not preclude the plaintiff from making claim for payment of extra works, which he executed for the defendant. While executing this receipt, the plaintiff did not say that he had no claim left against the defendant company with respect to civil work for Biological Oxidation Plant at R.S.P. Rourkela nor did he say that he had received payment for whole of the work executed by him at the above referred plant. The scope of the receipt was confined to the civil works, which were awarded to him vide LOI dated 15<sup>th</sup> October, 1992 and there is no justification for enlarging the scope of this document beyond what is evident from its plain and natural reading. Use of the expression “being last 5% of our contract value” and “contract value of Rs.2,87,30,000/-” in this receipt clearly indicates that what the plaintiff acknowledged was full and final payment of the contracted value and not the price of the extra works, which he had

executed for the defendant.

In ***Bharat Coking Coal Ltd. V. Annapurna Construction, (2003) 8 SCC 154***, the respondent before the Supreme Court had accepted the final bill. It was contended on behalf of the appellant that the respondent having accepted the final bill, a further claim by it was inadmissible. Rejecting the contention, it was held that acceptance of final bill would not mean that the respondent was not entitled to raise any claim since the respondent had not unequivocally stated that it would not raise any further claim. The Court was of the view that in the absence of such a declaration, the respondent cannot be held to be estopped or precluded from raising any claim.

In ***Pandit Construction Company v. Delhi Development Authority and another, 143 (2007) DLT 270***, the petitioner had made the endorsement 'accepted in full and final' on the final bill submitted to the DDA. The claim of the petitioner was rejected by the Arbitrator on the ground that the final bill had been accepted by the petitioner as full and final settlement. The petitioner, however, maintained that this was not full and final settlement of accounts. Accepting the contention of the

petitioner, this Court held that a settlement, to be binding, must be recorded in clear and unambiguous terms. The Court was of the view that the endorsement 'accepted in full and final' could also be read to mean that the amount received was in respect of full amount of the bill on which endorsement was made.

The issue is accordingly decided in favour of the plaintiff and against the defendant.

#### **ISSUE NO.5**

42. Admittedly, the defendant company had been making payment to the plaintiff from time to time. The documents filed by the plaintiff show that the payments used to be made by cheques. The following payments were made by the defendant to the plaintiff between 1994-1997 :-

| <b>Cheque No.</b> | <b>Date</b> | <b>Amount<br/>(Rs.)</b> |
|-------------------|-------------|-------------------------|
| 527145            | 18.01.1994  | 4,00,000/-              |
| 527175            | 27.01.2994  | 5,43,670/-              |
| 527338            | 04.02.1994  | 5,32,421/-              |
| 527431            | 18.02.1994  | 5,00,000/-              |
| 038274            | 15.03.1994  | 5,00,000/-              |
| 038339            | 23.03.1994  | 4,00,000/-              |
| 038628            | 20.04.1994  | 9,49,762/-              |
| 490273            | 27.05.1994  | 3,27,945/-              |
| 446810            | 04.08.1994  | 5,65,023/-              |

|        |            |             |
|--------|------------|-------------|
| 575449 | 13.10.1995 | 15,00,000/- |
| 575430 | 11.10.1995 | 3,00,000/-  |
| 575450 | 13.10.1995 | 3,20,162/-  |
| 212246 | 10.11.1995 | 2,54,749/-  |
| 212247 | 10.11.1995 | 4,00,000/-  |
| 650410 | 23.07.1996 | 83,659/-    |
| 668151 | 28.08.1997 | 9,36,500/-  |

43. Section 19 of the Limitation Act, to the extent it is relevant, provides that where payment on account of a debt is made before the expiration of the prescribed period, by the person liable to pay the debt or by his agent duly authorized in this behalf, a fresh period of limitation would be computed from the time when the payment was made. The last payment having been made by the defendant is on 28<sup>th</sup> August, 1997, a fresh period of limitation if computed from this date would expire on 28<sup>th</sup> August, 2000. The suit having been filed on 26<sup>th</sup> May, 2000 is, therefore, well within time. Though it was contended by the learned counsel for the defendant that the payment on 28<sup>th</sup> August, 1997 was made after the limitation prescribed for filing a suit of this nature had expired, that obviously is incorrect since payments by way of cheques were made by the defendant from time to time and at no occasion there was gap of three

or more years between the two payments. In this regard, it would be pertinent to note that though the extra works executed by the plaintiff were out of the scope of work contained in the LOI dated 15<sup>th</sup> October, 1992, the amount payable by the defendant to the plaintiff towards the civil work executed by him at Biological Oxidation Plant at R.S.P. Rourkela was one debt and though having two components, one for the works covered in the scope of LOI and the other for the works which were beyond the scope of LOI cannot be said that the payment for the work included in the scope of work awarded vide LOI dated 15<sup>th</sup> October, 1992 was one debt and payment for the extra work executed by the plaintiff was another debt. The project executed by the defendant for the plaintiff was one project, i.e., civil work at Biological Oxidation Plant at R.S.P. Rourkela and, therefore, payment for the entire quantity irrespective of whether for the work included within the scope of work indicated in the LOI or for the work beyond the scope of LOI, constituted one debt, which the defendant owed to the plaintiff. Therefore, even the payment was made by the defendant to the plaintiff towards price of the contractual work, which was included in the LOI it would extend the period of limitation also for

the extra work executed by the plaintiff while carrying out civil work at Biological Oxidation Plant at R.S.P. Rourkela. It would also be pertinent to note here that this is not the requirement of law that while making a payment, the debtor must make it towards part payment. Any payment, irrespective of, whether it is made as part payment or otherwise, would extend the period of limitation under Section 19 of the Limitation Act. In this regard I may refer to the decision of the Privy Council in **Rama Shah v. Lal Chand, AIR 1940 Privy Council 63** where the Court, inter alia, observed as under:-

*“In the Limitation Act, Section 19, which deals with acknowledgments, is not to be read as based upon the theory of implied promise: and it is difficult to see why Section 20, which deals with payments, should be regarded as based upon a theory of acknowledgment. The Indian Legislature may well have thought that a payment if made on account of the debt and evidenced by writing gave the creditor some excuse for further delay in suing, or was sufficient new proof of the original debt to make it safe to entertain an action upon it at a later date than would otherwise have been desirable. The words in Section 20 by which the matter must be judged are "where part of the principal of a debt is paid". As it is not prescribed by the Section that the payment should be intended by the debtor to go towards the principal debt at all, the words 'as such'*

*having no place in this part of the Section, it is not in their Lordships' view correct to require that the payment should have been made of part as part.”*

44. In support of his contention that the suit is barred by limitation, learned counsel for the defendant has referred to ***Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority, (1988) 2 SCC 338, Satender Kumar v. Municipal Corporation of Delhi and another, 168 (2010) DLT 15, and Hansa Vision Pvt. Ltd. V. Dabur (India) Limited & Ors, 168 (2010) DLT 562.***

45. In the case of ***Inder Singh Rekhi (supra)***, the Court was dealing with a petition under Section 20 of the Arbitration Act, 1940. During the course of judgment, the court observed that on completion of the work a right to get payment would normally arise but where the final bills have not been prepared, the cause of action would arise from the date when the assertion of the claim was made. It was further observed that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill has not finally prepared, the claim made by the claimant is the accrual of cause of action.

In the case of ***Satender Kumar (supra)***, this Court,

after referring to the decision of the Supreme Court in the case of ***Inder Singh Rekhi (supra)***, inter alia, held as under:-

*“16(iii) As regards contracts for execution of building work, Article 18 comes into play in that when no specific date for payment is fixed, limitation commences and the cause of action accrues for the purpose of limitation on the completion of work.*

*(iv) In its application, Article 18 will cause different dates for accrual of causes of action in building works when a time period is fixed for submitting of a bill by the contractor and to which there is no response to the owner. Where a final bill is submitted and liability under the same, even if, in part, is admitted or some payment is made then such actions extend limitation in terms of Section 18 of the Limitation Act.”*

In the case of ***Hansa Vision Pvt. Ltd. (supra)***, this Court, referring to Article 113 of the Limitation Act, 1963, observed that the period of limitation is 3 years to be computed from the date when right to sue accrues, wherever the aforesaid Article applies.

All these judgments tend to support the contention of the learned counsel for the defendant that in a suit for price of work executed by contractor, Article 18 of the Limitation Act would be the relevant Article, which provides a period of

limitation of 3 years from the date when the work is done, where no time has fixed for payment. They also support his contention that a party cannot postpone the accrual of cause of action by writing letters and reminders seeking payment from the other party and once the period of limitation starts running, mere sending reminders would not postpone the accrual of cause of action even if the defendant does not dispute his liability in this regard. However, the benefit of Section 19 of Limitation Act cannot be denied to the plaintiff even if Article 18 of the Limitation Act is applied to the case. The issue is decided against the defendant and in favour of the plaintiff.

### **ISSUE NO.3**

46. The plaintiff has claimed interest @ 18% per annum for the period from 31<sup>st</sup> December, 1993 to 31<sup>st</sup> March, 2000 on the amount of Rs.41,98,000/- and from 30<sup>th</sup> November, 1994 to 31<sup>st</sup> March, 2000 on the amount of Rs.1,53,217/- thereby making a total sum of Rs.48,69,345/- towards interest. The plaint does not disclose the basis on which interest has been claimed by the plaintiff. Admittedly, there is no agreement between the parties for payment of interest. No custom or usage of trade with respect to payment of

interest has either been pleaded or proved by the plaintiff. It is settled proposition of law that in a civil suit interest cannot be awarded as damages. However, interest can be awarded by the Court under the provisions of the Interest Act, 1978. Section 3 of the Interest Act, 1978, to the extent it is relevant, provides that in any proceedings for the recovery of any debt in which the claim of interest in respect of any debt is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt on a rate not exceeding the current rate of interest. If the proceedings relate to a debt, which is not payable by virtue of a written instrument at a certain time, interest can be awarded for the period from the date mentioned in this regard in a written notice given by the person entitled or making the claim to the person liable that interest will be claimed, till the date of institution of the proceedings. Vide his letter dated 18<sup>th</sup> July, 1996, the plaintiff informed the defendant that the losses incurred by him were being worked out in terms of interest and the same shall be intimated to it. The details of interest were then sent by the plaintiff to the defendant vide its letter dated 20<sup>th</sup> July, 1996, which is Exhibit PW1/39. He claimed interest @ 24% per annum. I,

therefore, feel that interest should be awarded to the plaintiff from 20<sup>th</sup> July, 1996 till the date of filing of this suit at the rate of 12% per annum. Calculating accordingly the amount of interest at the rate of 12% per annum on the principal amount of Rs.1,86,784.50/-, interest for the period from 20<sup>th</sup> July, 1996 to 26<sup>th</sup> May, 2000 comes to Rs.86,294.44p. The plaintiff is entitled to recover total amount of Rs.2,72,078.94p from the defendant.

### **ORDER**

For the reasons given in the preceding paragraphs, a decree for a sum of Rs.2,72,078.94p with proportionate costs and pendente lite and future interest at the rate of 12% per annum is passed in favour of the plaintiff and against the defendant.

Decree sheet be prepared accordingly.

**(V.K. JAIN)**  
**JUDGE**

**FEBRUARY 23, 2011**  
**bg/sn/AG/vkm'**