



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 18TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO. 100045 OF 2018

BETWEEN:

1. MANAGING DIRECTOR,
KARNATAKA URBAN WATER SUPPLY
AND DRAINAGE BOARD,
JALABHAVAN NO.6, BTM LAYOUT,
BANNERGHATTA MAIN ROAD,
BENGALURU.
2. THE CHIEF ENGINEER (NORTH) KARNATAKA
KARNATAKA URBAN WATER SUPPLY
AND DRAINAGE BOARD,
D.C. COMPOUND, DHARWAD.
3. THE EXECUTIVE ENGINEER,
KARNATAKA URBAN WATER SUPPLY
AND DRAINAGE BOARD,
JALAMANDALI COMPOUND, DHARWAD.

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- APPELLANTS

(BY SRI DAYANAND M.BANDI, ADVOCATE)

AND:

1. [M.B. MULANI ENGINEERS AND CONTRACTORS,
REPRESENTED BY PROP.
MOHAMMAD BADASHA MULANI,
AGE: 71 YEARS, OCC: BUSINESS,



R/O: RIDHI ENCLAVE RAW HOUSE NO.9,
VIMANNAGAR LOGHAON, PUNE.]
SINCE DECEASED BY HIS LR'S

- 1(A) MRS. SHAMIM W/O MOHAMMED MULANI,
AGE: 65 YEARS, OCC: HOUSEHOLD.
- 1(B) AMIR S/O MOHAMMED MULANI,
AGE: 30 YEARS, OCC: PRIVATE SERVICE.

RESPONDENTS 1(A) AND 1(B) ARE
R/O: RIDHI ENCLAVE ROW HOUSE NO.9,
VIMAN NAGAR, LOAHGAON,
PUNE-411047.

2. THE DEPUTY COMMISSIONER,
D.C. COMPOUND, DHARWAD.

- RESPONDENTS

(BY SRI SANTOSH B.MALLIGAWAD, ADV. FOR R1(A) AND R1(B);
SMT.GIRIJA S.HIREMATH, HCGP FOR R2)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC, PRAYING TO, SET ASIDE THE JUDGMENT AND DECREE DATED 29.07.2017 PASSED IN O.S.NO.346/2006 PASSED BY THE COURT OF I ADDL. SENIOR CIVIL JUDGE AND CJM, DHARWAD AND CONSEQUENTLY TO DISMISS THE SUIT IN O.S.NO.346/2006 FILED BY THE PLAINTIFF, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 19.11.2024 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, T.G.SHIVASHANKARE GOWDA J., PRONOUNCED THE FOLLOWING:



CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

In this appeal, the defendants No.1 to 3 have challenged the judgment dated 29.07.2017 passed in O.S.No.346/2006 by the I Additional Senior Civil Judge and CJM, Dharwad in decreeing the suit of the plaintiff in granting damages of ₹20,00,000/- with interest at 6% per annum.

2. The parties will be referred to as per their status before the Trial Court for the sake of convenience.

3. Brief facts of the plaintiff's case as pleaded is that, plaintiff is a contractor, defendants offered bid to carry out several types of works including supply of materials and supply of water to the Karwar and Ankola town. The contract is named as a package No.2101. It is a combined water supply scheme with project cost ₹6,62,92,550.27. The plaintiff is the successful bidder of the tender. On 28.01.2004, the work order was issued to the plaintiff, the



time of the work including monsoon period was 15 months. Officials of the plaintiff signed the contract document in the first week of February 2004. Soon after the plaintiff shifted all men and material to the spot. The plaintiff requested the defendants to give out lineout and site work plan and also requested them to obtain permission to execute the work with various authorities. Plaintiff was informed, defendants were awaiting response from the CMC, Karwar, will intimate on receipt of communication and allow the plaintiff to carry out the work. The plaintiff received mobilization fund of ₹66,29,255/- on 06.05.2004 by offering the bank guarantee to the defendants. When the plaintiff commenced the work, Forest Department and Konkan Railways raised objection, which made the plaintiff to stop the work. Plaintiff is also confronted with steep rise in contract price on account of materials and labour charges. The plaintiff wrote letters to the defendants on 23.10.2004, 19.12.2004 and 28.12.2004 explaining the practical problems faced by him from the hands of Konkan Railway, KPTCL, Forest Department, SEA



BIRD Naval Authority and requested the defendants to resolve the issue.

3.1 The plaintiff also paid huge premium against the risk of labour and blasting machineries. The plaintiff requested the defendants to prepare the running bills for excavation work to the tune of ₹30,00,000/-. The defendants did not respond to it. When the contract was finalized, it had completed the work to the tune of ₹75,00,000/- and he had also suffered loss of ₹10,00,000/- due to idling of machineries brought to the work site. The plaintiff could not go on with the work in time as land acquisition issues were also not cleared by the defendants. Clause No.2 of Item No.(19.1) of the tender agreement was violated by the defendants. The tunnel work at Mudga Ghat, Karwar was objected by the Forest Department. Because of the act of the defendants, plaintiff could not complete the work and requested the defendants to appoint an Arbitrator to resolve the differences.

3.2 The plaintiff invested ₹50,00,000/- by mortgaging all the assets and borrowing money to complete



the project work. Due to non-co-operation by the defendants, he could not do the project in time and therefore he filed a writ petition before the Hon'ble High Court of Karnataka in W.P.No.13399/2005. After filing of the writ petition, defendants responded positively. Hence he withdrew the writ petition. Because of non-clearance of the obstacles, non providing the lineout and site work details, the plaintiff sustained huge loss and which is estimated at ₹1,60,88,000/-. Hence, he filed the suit.

4. Per contra, the defendant No.3 filed the written statement denying all the allegations made against the defendants. It is their case that the first defendant offered bid to carry out KUDCEM combined project of water supply to Karwar and Ankola town. Entrustment of the said work to the plaintiff is admitted. The plaintiff was paid a mobilization amount of ₹66,29,255/- to use the said amount for equipments, capital goods and installation expenses to carry out the civil contract work. Instead of carrying out the work, the plaintiff involved in unnecessary correspondence with the defendants and authorities. On 23.10.2004 itself SEA BIRD



authorities issued the NOC to go ahead with the work, but the plaintiff did not comply with the security and other requirements of SEA BIRD. Konkan Railway objected for tunnel at Mudga Ghat, the defendants proposed lower invert level pipeline and asked the plaintiff to lay 711 mm dia MS pipe across instead of tunnel.

4.1 To resolve the issues on 07.10.2004, a meeting was held in the Office of the Chief Engineer, Dharwad where the plaintiff was assisted and requested to complete the work in time. The plaintiff started the work very late, towards the work carried out by the plaintiff, a sum of ₹74,96,448/- was released to the plaintiff. Out of mobilization amount of ₹66,29,555/-, a sum of ₹46,34,118/- only recovered from the plaintiff and he is require to remit back the balance. On 28.08.2004, notice was issued to the plaintiff remanding Clause 43.1 and 43.2 of the tender and asking the plaintiff to complete the work in time. Instead the plaintiff has not carried out the work; he has committed the breach of tender.



4.2 Request letter dated 19.03.2005 of plaintiff was discussed in the meetings on considering the progress of work carried out by the plaintiff. It was resolved to close the contract with the plaintiff as per Clause 52.3 of Section 2 of the general conditions of the contract of agreement, contract was terminated with effect from 28.04.2005. The defendants have not committed any breach of any clause of the contract rather the defendants helped the plaintiff to complete the contract work in time. Due to adamant nature of the plaintiff, he could not complete the work and committed breach of contract. There is no cause of action for the suit; plaintiff has no locus standi to file the present suit. It is the defendants who suffered pecuniary loss as they are required to arrange for alternate to complete the project and sought for dismissal of the suit.

5. On considering the pleadings of the parties, the Trial Court framed following 18 issues throwing the burden on the plaintiff to prove the Issue Nos.1, 3, 4, 5, 6, 7, 8 against the defendants and Issue Nos.2, 9, 10, 11, 12, 13, 15 and 17 as follows;



1. *Whether the plaintiff proves that he is entitled for the damages as claimed in the plaint with interest from the defendants on account of negligence delay latches on the part of defendants?*
2. *Whether the defendants prove that the suit is bad for non compliance of Sec. 80 of CPC?*
3. *Whether the plaintiff proves that he is successful bidder of water supply project of Ankola and work order issued on 28.1.2004?*
4. *Whether the plaintiff proves that there was objection by the Forest Department and Konkan Railways?*
5. *Whether the plaintiff proves that there was delay in handing over site by the defendants?*
6. *Whether the plaintiff proves that he has made all preparation to commence the work?*
7. *Whether the plaintiff proves that he has completed the work of Rs.75 lakhs and suffered loss Rs.10 lakhs because of idling of machineries?*
8. *Whether the plaintiff proves that defendant No.1 to 3 violated the terms of contract?*
9. *Whether the defendants proves that there is delay on the part of the plaintiff to starting work as such he is at fault?*
10. *Whether the defendants prove that they were justified by issuing notice on 21.5.2005 to renew the Bank guarantee by plaintiff?*
11. *Whether the defendants prove that plaintiff has failed to submit program chart by plaintiff and as such after discussion the contract was terminated on 24.8.2005?*



12. *Whether the defendants proves that the plaintiff was negligent in completing the work contended in para No.9?*
13. *Whether is the defendants proves that because of non completion of work by the plaintiff they were under loss of Rs.93.55 lakhs as contended?*
14. *Whether is there any cause of action to file the suit?*
15. *Whether the defendants prove that this court has no jurisdiction to try the suit?*
16. *Whether the court fee paid is proper?*
17. *Whether the defendants are entitled for compensatory costs of Rs.25,000/- as claimed?*
18. *What order of decree?*

6. On behalf of the plaintiff, two witnesses were examined PWs.1 and 2 and got marked 77 documents as Exs.P1 to P77. On behalf of the defendants, three witnesses were examined as DWs.1 to 3 and got marked 57 documents as Exs.D1 to 57.

7. The Trial Court after hearing both the parties and considering the materials on record answered Issue Nos.1, 2, 6, 7, 8, 11, 12 partly in affirmative; Issue Nos.3, 4, 5, 14, 16 in the affirmative; Issue Nos.9, 13, 15, 17 in the negative, Issue No.10 was dropped as does not survive for



consideration and while answering Issue No.18 decreed the suit of the plaintiff to the extent of granting damages in a sum of ₹20,00,000/- with interest at 6% per annum.

8. Aggrieved by the same, the defendants No.1 to 3 have filed this appeal on following grounds:

8.1 Notice under Section 57 of the Karnataka Urban Water Supply and Drainage Board Act, 1973 (for short, Act') is mandatory before filing of the suit, no such notice was issued by the plaintiff. Hence the suit is bad. The Trial Court has not recorded any finding how the plaintiff has suffered the damages. The Trial Court has not asserted cause of damage and fund and not made any quantification, but blanketly awarded damages of ₹20,00,000/-. Mere breach of some contract is not enough unless plaintiff showed actual damages. The value of the contract is ₹6,62,92,550/- for 11 item of work, 8 items were ready as required under the contract. The plaintiff did not submit work programme chart consisting of item of work, time of commencement of work, conclusion of work and men, material and machinery involved in the work. The plaintiff is reluctant to commence



the work in 8 sites which are ready. He has unnecessarily involved in correspondence with Engineers, though it was promised to resolve. The time for completion of the tender work is 15 months wherein the plaintiff is required to complete $1/6^{\text{th}}$ of the work within $1/4^{\text{th}}$ time half of the work in one of the time, but the plaintiff completed only 11% of work in total period of 15 months. If the plaintiff had completed the work on time, defendants would have increased their revenue of ₹13.36 lakhs per month. Because of the act of the plaintiff, the defendants suffered loss of revenue apart from ₹25.47 lakhs for retendering of the work. The Trial Court did not consider this aspect. In the site not ready there is no need for the plaintiff to keep men and machinery and contention of the plaintiff is without any substance. The plaintiff never engaged men and material in the ready site. The defendants have paid ₹66,29,255/- mobilization fund to the plaintiff to encourage him to fund and also another sum of ₹20,98,898/- by clearing the bill to encourage and expedite the work. The plaintiff did not utilize the same and it is not considered by the Trial Court. Trial



Court failed to consider that the defendants have paid more money than what the plaintiff is entitled. As per Clause 34 of Section 2 of the tender clause, plaintiff was given enhanced rate and time extension but it was not utilized and therefore there is no fault on the part of the defendants. The plaintiff denied to work and asked to conclude the contract and at his request the defendants have terminated the contract. The plaintiff violated the terms of the tender, he has not suffered any damage and directing the defendants to pay ₹20,00,000/- towards damages is illegal and calls for interference.

9. We have heard the argument of Sri Dayanand M.Bandi, learned counsel for the defendants, Sri Santosh B.Malligawad, learned counsel for plaintiff/respondents No.1(a) and (b) and Smt.Girija S.Hiremath, learned HCGP for defendant/respondent No.2.

10. It is argued on behalf of the appellants that in order to implement the combined water supply for Karwar and Ankola town, the plaintiff was the successful bidder for a sum of ₹6,62,92,550.27. Work order was issued to him on



28.01.2004 with a condition that he shall complete the work within 15 months including the monsoon period. 11 sites were handed over to the plaintiff to execute the work. Out of the same, some problems arose in 3 sites and the plaintiff was asked to work in the remaining 8 sites. But the plaintiff did not commence any work and he was insisting the appellants to handover all the 11 sites at a time otherwise he will not commence the work. He has done certain work in certain sites to an extent of ₹75,00,000/- only. Since the plaintiff himself requested for determination of the contract, the contract was terminated with effect from 24.08.2005.

10.1 The plaintiff has claimed quantified damages for more than ₹1.6 crores, but he has not placed any evidence in proof of quantification. Instead of completing the contract work in time, the plaintiff was embarking the officers of the defendants by writing number of letters contrary to the terms and conditions of the tender. The notices were suitably replied by the appellants. Since 3 sites were not handed over to the plaintiff where there is an issue, plaintiff has not arranged men and material and thereby he has not suffered



any loss. In respect of 8 sites, he has not completed the work that too work completed is only to the extent of ₹75,00,000/- which has been paid. Several notices as well as show-cause notice also issued to the plaintiff. The only stand of the plaintiff is that he will complete the work only after all the sites are made available to him.

10.2 Ex.P76 is the document indicating the grant summary of the work. The issue is only in respect of Site Nos.1, 8 and 9. Inspite of Item No.2 to 7, 10 and 11 are ready, the plaintiff did not carry out any work at all. It is the plaintiff who caused loss to the appellant as the appellant could have generated the additional income of ₹13.36 lakhs and for the act of the plaintiff in terminating the tender work, the defendants were forced to complete the remaining work and thereby revenue loss to a tune ₹25.47 lakhs for the retendering. For the work turned out by the plaintiff, out of ₹75,00,000/-, ₹74,96,448/- was released. Out of advance payment of ₹66,29,555/- only ₹46,34,118/- was recovered which was paid towards mobilization amount. The plaintiff who is due for several lakhs of money to the defendants, the



Trial Court without appreciating all these aspects erroneously made a global assessment of ₹20,00,000/- without any reasoning and hence it calls for interference.

11. Per contra, learned counsel for the plaintiff has contended that inspite of sites are not being ready, the defendants have called for the tenders. Clause 19 of the tender contemplates handing over of sites, if not it shall be considered a compensation event. Thereby Item No.19(a) and (b) of Clause 2 of the tender has been violated by the defendants. Soonafter receipt of the work order, the plaintiff arranged men and material, and machinery in all the sites. The plaintiff was asked to stop work in certain sites which are not ready and several objections have been raised by the Konkan Railways, Sea Bird Authorities and KPTCL Authorities. Due to which the men and machineries were kept idle, the plaintiff was made to pay the salary of watchmen, site engineers, drivers, he was also made to pay interest on the money borrowed from the banks, he was forced to furnish the bank guarantee. Income tax authorities assessed the profit of ₹80,00,000/- which being 12% on the



tender cost. The materials supplied to the Honnali Pump station itself amount of ₹38,85,000/-. Evidence is placed in proof of all these aspects. The cross-examination of the engineers on behalf of defendants elicited that the plaintiff issued the work order without site being not ready. Therefore the plaintiff suffered liquidated damages which the defendants are bound to compensate. The Trial Court has rightly appreciated the evidence and quantified the liquidated damages of ₹20,00,000/- though it ought to have decreed the suit for ₹1.6 crores and he supported the impugned judgment.

12. We have given our anxious consideration to the arguments addressed by both sides and perused material on record including the oral evidence of PW1 and 2 and DW1 to 3 and exhibits.

13. The points that arise for our consideration are:

- i. Whether the plaintiff proves that he had sustained liquidated damages of ₹1,60,87,980/-?



- ii. Whether the Trial Court has committed error or illegality in awarding global liquidated damages of ₹20,00,000/-?

Regarding Point No.(i)

14. There is no dispute regarding the contract awarded to the plaintiff. The plaintiff is a successful bidder for execution of combined water supply scheme to Karwar and Ankola Town in the name of Contract Package No.2101. ₹7,36,66,470/- was the money put to the tender for site No.1 to 11. The plaintiff being the successful bidder submitted bill of quantity under Section 6 of the tender document which is available in Ex.P76 in volume No.2. The plaintiff quoted a sum of ₹6,62,92,550.27 as against the tender amount and work order was issued to him by the defendants on 28.01.2004. On perusal of the tender document and also the admission of both the parties, the plaintiff is required to complete the work in all the 11 sites within 15 months including the monsoon period.

15. The evidence on record cull out that there are issues in 3 sites only and 8 sites were ready for execution. Instead of commencing the work in the sites which are



ready, the plaintiff embarked on by writing several letters to the officers of the defendants indicating there are several issues at the site and asking them to handover all the 11 sites together so that he can execute the work. The defendants made several request to the plaintiff to complete the work in the site where there are no disputes.

16. Ultimately the plaintiff did complete certain work in some sites which he himself admits to an extent of ₹75,00,000/-. Both parties admit that a sum of ₹66,29,255/- had been paid to the plaintiff as mobilization funds. Even a sum of ₹20,98,898/- was paid to the plaintiff excess of the quoted money to encourage him to complete the work in time. Evidence on record also shows that payment of ₹74,96,448/- was made to the plaintiff. Out of mobilization amount of ₹66,29,255/-, a sum of ₹46,34,118/- was recovered from the plaintiff.

17. The officers of the defendants have admitted in the cross-examination that there were problems in certain sites which at their instance, the work was stopped. For this season, the plaintiff is making claim that he suffered loss as



he could not complete the tender work, the officers of the defendants claimed that plaintiff could have completed 80% of the tender work as there was no issues, the only issues were to the extent of 20%, but inspite of all these disputes, there was an interaction between both the parties with several meetings which did not materialize and ultimately the contract came to be terminated with effect from 24.08.2005 driving the plaintiff to Court.

18. In view of the allegation and the counter allegations, the two important documents for consideration are Ex.P25, the tender document and Ex.P76, the bill of quantities. Ex.P75 is submitted by the plaintiff to the defendants. Bidding document that is in the form of bill of quantity in Ex.P76 is signed by both the plaintiff and the defendant No.2.

19. In the plaint liquidated damages defined as follows:

Sl. No.		In Rs.	In Rs.
1	12% Profit as per assessment considered by income tax authority on contract price since we could not		80,00,000/-



	undertake any work during the last 2 years as on whole investment locked under his work		
2	Commission charges for Bank guarantee as per statement of bank for the period ending.		5,88,456/-
3	Commission charges for bank as per statement of bank for period ending 17/04/2006 as extended as per request of board.		5,88,465/-
4	Interest charges on cash credit for the period of 18 months @ 1/6/2004		
	a) Parshwanath Co-operative Bank of @ 15% p.a.	2,25,000/-	
	b) United western Bank Limited @10% the cash credit need to raise to keep the business on work as board has withheld our payment to the tune of Rs.25 Lakhs.	1,50,000/-	
	Total	3,75,000/-	3,75,000/-
5	Idle charges for machinery employed for tunnel excavation proclaim machine with tow driver at Rs.13,500/- Dumper two No with 4 driver at 2000/-		
	a) For the period from 30/01/04 to 15/02/04	2,63,500/-	
	b) For the period of 08/12/05	4,65,500/-	
	Total	7,29,000/-	7,29,000/-
6	Over head expenses for traveling, lodging, boarding etc., as per audit report upto date ending 08/2005 is		6,00,000/-
7	Insurance charges as per tender		23,500/-



	condition		
8	Blasting permission expenses		30,000/-
9	Advance for blasting sub contractor for tunnel work		75,000/-
10	Purchase of vehicle No.MH 01 7385		1,50,000/-
11	Payment of driver for two vehicles two number		
	1) MH 10 2038 and 2) MH01/M7385 i.e., Rs.8000/- pm for 18 months		1,44,000/-
12	Site permanent staff payment 2 watchman Two supervisors at Rs.15,000/- pm for 15 months		2,25,000/-
13	Engineer at site-2 no at Rs.15,000/- pm for 15 months		2,25,000/-
14	Design of new file unit		50,000/-
15	New sales tax number expenses		20,000/-
16	Soil testing charges GSR and Filter		30,000/-
17	Govt stamp duty for mortgages of property for Bank guarantee and charges for valuation of property		1,00,000/-
18	Payment of work of road to Binaga a sum site		3,00,000/-
19	Binaga pumping work cancelled advance paid Against supply order for motor two numbers soft starter, and transformer, panel board, switch valve etc at 15% of cost of item as per tender		1,50,000/-



20	Honnali pump work		
	a) material ready for inspection		
	I) LT Panel	95,000/-	
	II) NT panel	12,90,000/-	
	III) Switch valve	14,00,000/-	
	b) extra items approved by CE but rates not yet finalized.		
	I) out going panel at already supplied	2,50,000/-	
	II) capacitor panel (ready for inspection)	8,50,000/-	
	Total	38,85,000/-	38,85,000/-
	Total		1,62,88,421/-

20. In order to prove these aspects, burden is upon plaintiff to establish how he is entitled to claim a sum of ₹1,60,88,000/-. If we consider the judgment of the Trial Court in decreeing the suit against the defendants to the extent of ₹20,00,000/-, the plaintiff has not challenged the said finding and he satisfied a sum of ₹20,00,000/- and thereby he gave up his claim to the extent of ₹1,40,88,000/-. In view of this, we have carefully scrutinized the evidence of the plaintiff.

21. The testimony of plaintiff points out that as per the tender, he is required to commence the work from



January 2004, but he submitted the work programme on 05.02.2004 and his work programme was not accepted by defendant No.3. He admits that he executed the work to the tune of ₹75,00,000/- in the place where land was available to construct the powerhouse, and same was completed. Since no land was available in other sites remaining work was not executed. However, the defendants paid ₹20,98,898/- to expedite the work, but he could not complete the work because of the non-availability of the site. According to him as per Ex.P76, in Site No.1, 8, 9 and 10 for the reason of the objection raised by the Forest Department and Konkan Railways, he could not able to complete the work. During the course of cross-examination, he has clearly admitted that he did not understand as to who was at fault for keeping the machineries idling in the site. He does not dispute the mobilization money paid, excess amount paid and the work of ₹75,00,000/- that he has carried out.

22. PW2-Nitin is the work engineer of the plaintiff. According to him, the plaintiff has suffered loss of ₹90,000/- towards shifting of the men and machineries, 30 labours



were paid ₹150/- per day during idling charges which amount to ₹4,65,000/- and ₹2,63,500/-. Except this, he didn't point out what are the other damages that the plaintiff had sustained. His cross-examination has brought out that the ground reality at the site No.1 to 11 was very well known to site engineers, who were responsible for execution of the work. But evidence of site engineers is not available on record. When a question was put to him that inspite of objections raised by the Forest Department and Konkan Railways, plaintiff could have completed work to a tune of ₹2 crore, he did not deny the same but he says the plaintiff has completed work to a tune of ₹1 crore, contra plaintiff himself admits that it was ₹75,00,000/-. The testimony of PW2 clearly point out that there is a scope for the plaintiff to do more work at least for minimum of ₹2 crore, but he did only an extent of ₹75,00,000/-.

23. Adverting to the evidence of the defendants, DW1-Chittaranjan Nayak is the Assistant Engineer, whose testimony point out the complete fault on the part of the plaintiff in not submitting the work programme and not



commencing work in the month of January, 2004. Inspite of available chance for plaintiff to complete minimum of ₹2 crore work, he has turned out ₹75,00,000/-.

24. Only at Navagadde site, for construction of the water tank, there was objection from the Forest Department as the land was belonging to one Devappa Nayak. Acquisition was under process and hence the plaintiff was asked to stop the work in the said site, but in view of objection, it was delayed. According to him, objections raised by the Konkan Railways in other sites have been resolved. By that time, the tender time was ended. Hence, the plaintiff was not able to work in those sites. He has no document to show that 11 sites are ready and handed over to the plaintiff for work execution. His evidence demonstrates that there are issues in two sites where the plaintiff could not do any work, but his evidence clearly point out that in other sites, the plaintiff could have done more work, but he did not do so. The cross-examination of DW1 though suggests that the plaintiff has suffered liquidated damages as claimed in the plaint which infact have been denied by him. It is also denied that, the



plaintiff has not sustained any loss on account of supply of men and machinery and materials as payments have made against the supply of materials and machinery. According to him, it is the defendants who suffered loss to the tune of ₹3.57 crores and not the plaintiff.

25. DW2-Ajitkumar Chougale, the Assistant Engineer admits that the tunnel work at Binaga was stopped due to objection by the Konkan Railways. Wherever the site problems are there, the plaintiff has not brought any men and material. Plaintiff has made arrangements for blast work. It is the plaintiff who has not obtained the licence from Corporation, Municipality, Railways and KEB which are necessary for carrying out blast. He admits that some issue regarding Navagadde water tank on account of objection by the Forest Department. His evidence did not demonstrate any laches on the part of the defendants, but he explains that in two sites on account of objection from the Forest Department and Railways, the work was not executed.

26. DW3-N.Prasannamurthy is the Executive Engineer of the defendants whose evidence points out that the plaintiff



did not complete the work as per the terms of the tender and also the agreement. He has spoken about excess payment of ₹20,98,000/- and also admits the stoppage of work by the plaintiff at their instance due to objection raised by the Konkan Railways. At the request of the plaintiff, they terminated the tender on 24.08.2005. Though the liquidated damages as claimed is suggested nothing is elicited orders demonstrated as acceptable.

27. From the evidence on record, it is thus clear that the plaintiff was entrusted the tender work and he was required to complete the tender within 15 days. The plaintiff has paid mobilization amount, he was also paid excess amount to encourage early completion of the work. At Navagadde water take site and also at Binaga tunnel, objection from the Forest Department as well as the Konkan Railways which stopped the plaintiff from completing the work. If these two sites are excluded, the plaintiff could have completed the work in other nine sites.

28. Let us analyse the itemwise loss as claimed by the plaintiff. The plaintiff claims ₹80,00,000/- as 12% profit



as per the assessment of income tax authority. If the plaintiff had completed the tender work to a tune of ₹6,62,92,550.27, then the profit is estimated at ₹80,00,000/-. We notice from evidence of engineers there was a scope for the plaintiff to carry work out to a tune of ₹2 crore, but he completed only to an extent of ₹75,00,000/-. Therefore for a completed work of ₹75,00,000/-, the plaintiff cannot claim loss to an extent of ₹80,00,000/- and therefore such claim is not tenable.

28(a) Both the parties are bound by the tender terms, it contemplates payment only on completion of work, penalty for non-completion of work in time. Huge correspondence clearly point out some dispute only in 2 sites. Evidence speaks there was no men and machinery supplied to said sites. Then idling charges claimed by the plaintiff at ₹7,29,000/- cannot be sustained.

28(b) The plaintiff has paid commission to the bank a sum of ₹5,88,456/- and ₹5,88,465/- for obtaining the bank guarantee. There is no terms in the contract that the



defendants are liable to pay the said commission charges in favour of the plaintiff.

28(c) The plaintiff claims that he has paid interest at ₹2,25,000/- at Parshwanath Co-operative Bank and also ₹1,50,000/- to the United Western Bank Limited. If the plaintiff wanted mobilization fund for completion of tender, he has to pay the interest on loan and it is not the duty on the part of the defendants to reimburse the same.

28(d) The plaintiff claims overhead charges of ₹6,00,000/-, insurance charge of ₹23,500/-, blasting permission charges ₹30,000/-, advance paid towards blasting work ₹75,000/-. These are the items which are part of the contract which are included in Ex.P76 and included in ₹75,00,000/- which the plaintiff cannot claim from the defendants.

28(e) The plaintiff claims that he has purchased the vehicle bearing No.MH-01/M-7385 for a sum of ₹1,50,000/-. This vehicle is nothing to do with the tender. Therefore, such a claim is not acceptable.



28(f) The plaintiff paid salary to two drivers at ₹1,44,000/-, two watchmen at site at ₹2,25,000/- and two site engineers at ₹2,25,000/-, in what way such payments bind the defendants is not forthcoming in the tender document. Such reimbursement is not permissible.

28(g) The plaintiff also claims design of new filter unit at ₹50,000/-, new sales tax number expenses ₹20,000/-, soil testing charges of ₹30,000/-, stamp duty for mortgage ₹1,00,000/-. These are all the expenses that the plaintiff has to incur and this has been loaded in the tender already. These are not the special components, the plaintiff is not permitted to make such claim.

28(h) The plaintiff makes claim of ₹3,00,000/- towards road work at Binaga site and also ₹1,50,000/- for supply of two motors. He has also claimed supply of LT panel at ₹95,000/-, NT panel at ₹12,90,000/-, switch valve at ₹14,00,000/- to Hannali pump work station and also outgoing panel at ₹2,50,000/- and capacitor panel at ₹8,50,000/-. No evidence is placed to explain execution of road work or supply of materials. Cross-examination of DW1



explains payments were cleared for those materials supplied by the plaintiff. We are not persuaded to accept these claims.

29. As deposed by DW1-Assistant Engineer that payments are made to the plaintiff for the supply of material and machinery. Such being so, we do not find any evidence that inspite of supply of these materials, the plaintiff was not paid any money. From the evidence on record, it is crystal clear that plaintiff received a sum of ₹74,96,448/- as against his bill of ₹75,00,000/-. We do not find any evidence to accept that the plaintiff has sustained loss to an extent of ₹1,60,87,980/-. We are persuaded to record that plaintiff has failed to establish that he has suffered liquidate damages as claimed by him. Accordingly, we answer Point No.(i).

Regarding Point No.(ii)

30. We have carefully perused the impugned judgment. The Trial Court has analyzed the evidence of both sides and came to the conclusion that the plaintiff has not placed any evidence that he has suffered liquidate damages of ₹1,60,87,980/-. But having regard to the claim of the



plaintiff that he has suffered loss of ₹10,00,000/- out of the tender contract work that he had carried to an extent of ₹75,00,000/-. The Trial Court has made a guesswork and assessed a sum of ₹20,00,000/- as the global compensation. The parties to the suit are bound by the pleadings and the evidence relied on. As we discussed above we do not find any reason that how the plaintiff is able to demonstrate that he has suffered liquidate damages when he has not placed any evidence in support of his claim. The finding recorded by the Trial Court that the plaintiff has suffered damages of ₹20,00,000/- and awarding said sum globally without any discussion is not proper and it is against to the facts pleaded and evidence let-in by the parties. Hence, the order of the Trial Court will not stand to its reason and called for our interference. Accordingly Point No.(ii) is answered.

31. In view of our finding on Points No.(i) and (ii) supra, the appeal merits consideration, in the result, the following:

ORDER

- i. Appeal is allowed;



- ii. Impugned judgment and decree passed in O.S.No.346/2006 by the I Addl. Senior Civil Judge and C.J.M., Dharwad is hereby set aside;
- iii. Suit of the plaintiff is dismissed;
- iv. Having regard to facts and circumstances of the case no order as to costs.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE