

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 19TH DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S G PANDIT

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

COMAP NO.100018/2021

C/W

COMAP NO.100019/2021

R

IN COMAP NO.100018/2021:
BETWEEN:

1. THE GOVERNMENT OF KARNATAKA,
R/BY ITS CHIEF SECRETARY,
VIDHAN SOUDHA, BENGALURU-560 001.
2. THE GOVERNMENT OF KARNATAKA,
R/BY ITS CHIEF SECRETARY,
DEPARTMENT OF PWD,
VIKAS SOUDHA, BENGALURU-560 001.
3. THE CHIEF ENGINEER (C & B) (NORTH)
PUBLIC WORKS, PORTS & ISLAND WATER
TRANSPORT DEPARTMENT, DHARWAD-580 001.
4. THE EXECUTIVE ENGINEER (C & B) (NORTH)
PUBLIC WORKS, PORTS & ISLAND WATER
TRANSPORT DEPARTMENT, KOPPAL DIVISION,
KOPPAL-583 231.

...APPELLANTS

(BY SRI MANU K., ADVOCATE)

SAROJA
HANGARAKI



Digitally signed by
SAROJA HANGARAKI
Location: HIGH
COURT OF
KARNATAKA
DHARWAD BENCH

AND:

M/S. B.V. REDDY & COMPANY
R/BY ITS MANAGING PARTNER,
B. VENKATA REDDY S/O LATE RAMI REDDY
HINDU, AGE. 45 YEARS, OCC. BUSINESS,
R/O H.NO.8-2-993-2/71,
ROAD NO.9, JUBLI-HILL, HYDERABAD-500 033.

...RESPONDENT

(BY SRI VIVEK SUBBA REDDY, SENIOR COUNSEL FOR
SRI KRISHNA MOHAN AND SRI A.M. MALIPATIL, ADVOCATES)

THIS COMMERCIAL APPEAL IS FILED UNDER SEC.13(1) OF THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURT ACT, 2015, PRAYING TO SET ASIDE THE JUDGMENT PASSED IN COM.O.S.NO.2/2020 DATED 20.02.2021 ON THE FILE OF PRINCIPAL DISTRICT JUDGE COURT AT KOPPAL AND THE ORDER PASSED IN CIVIL REVIEW PETITION NO.1/2021 BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE COURT AT KOPPAL DATED 08.07.2021 AND DISMISS THE SUIT AND ETC.

IN COMAP NO.100019/2024:

BETWEEN:

1. THE GOVERNMENT OF KARNATAKA,
R/BY ITS CHIEF SECRETARY,
VIDHAN SOUDHA, BENGALURU-560 001.
2. THE GOVERNMENT OF KARNATAKA,
R/BY ITS CHIEF SECRETARY,
DEPARTMENT OF PWD,
VIKAS SOUDHA, BENGALURU-560 001.
3. THE CHIEF ENGINEER (C & B) (NORTH)
PUBLIC WORKS, PORTS & ISLAND WATER
TRANSPORT DEPARTMENT, DHARWAD-580 001.

4. THE EXECUTIVE ENGINEER (C & B) (NORTH)
PUBLIC WORKS, PORTS & ISLAND WATER
TRANSPORT DEPARTMENT, KOPPAL DIVISION,
KOPPAL-583 132.

...APPELLANTS

(BY SRI MANU K., ADVOCATE)

AND:

M/S. B.V. REDDY & COMPANY,
R/BY ITS MANAGING PARTNER,
B. VENKATA REDDY S/O LATE RAMI REDDY,
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THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND
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PRINCIPAL DISTRICT JUDGE COURT AT KOPPAL AND THE ORDER
PASSED IN CIVIL REVIEW PETITION NO.1/2021 BY THE
PRINCIPAL DISTRICT AND SESSIONS JUDGE COURT AT KOPPAL
DATED 08.07.2021 AND ETC.

THESE COMMERCIAL APPEALS HAVING BEEN HEARD AND
RESERVED ON 25.11.2025 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, **GEETHA K.B. J.**,
DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

These appeals are filed by the defendants/appellants challenging the judgment and decree passed in Commercial O.S.No.2/2020 on the file of Principal District Judge, Koppal dated 20.02.2021 and order passed in Civil Review Petition No.1/2021 dated 08.07.2021 and also dismissal of Counter-Claim filed by defendants respectively.

2. As both appeals arise out of the same case, both appeals are clubbed together, arguments heard and common judgment is being delivered.

3. Parties would be referred with their ranks, as they were before the Trial Court for the sake of convenience and clarity.

4. Plaintiff has filed the suit before Trial Court praying for damages on several claims i.e., claim Nos.(A) to (M) totally amounting to ₹.7,00,05,930/- with interest at 18% per annum from the date of suit till date of payment; for Court costs and for such other reliefs.

5. The case of plaintiff in nutshell is that plaintiff is a Partnership Firm registered under the provisions of the Indian Partnership Act, 1932, represented by its Managing Partner, Mr.B.Venkata Reddy. The plaintiff was Class-I Contractor registered with Government of Karnataka. Defendant No.4 has called for tender for construction of Cable Stayed Bridge (balance portion) across the Tungabhadra River from Anegundi Village, Gangavathi taluk to Hampi, vide Tender Notification No.1431 dated 20.08.2007. In pursuance to which, the plaintiff has submitted his tender which was accepted, work order was issued and parties entered into Agreement No.167/12/2008 dated 15.12.2008 for a contract value of ₹.662.4 lakhs with stipulation to complete the work within 6 months from the date of agreement.

6. The nature of work involved is highly technical and requires expertise consultancy and the same is quite different from general engineering skills required for ordinary bridge work. There was no sufficient time for

plaintiff to acquire technical expertise and information with regard to the condition and strength of the existing cables prior to submission of bids. Since the plaintiff had only 18 days time to submit the tender documents, plaintiff had no time to get the expert advice to investigate and to know the condition of the existing cables of the existing bridge. It is surprising to note that defendants had no clue and methodology as to how to go with the execution of the work. It was a dis-jointed effort on the part of defendants without any proper planning to execute such a mind boggling work. Defendants did not furnish any methodology along with the bid documents to acquaint with the nature of the work to be done and also to proceed with the work.

7. Defendants have not investigated the condition and strength of the existing cables which were perhaps executed some years back, either prior to calling for bids or during finalisation of bids, though they took more than one year to finalise the bids.

8. However, the time stipulated for work was only six months which is impossible to complete because of the highly skilled and risky nature of work involved in the present case. Plaintiff had his own reservations but he had no other alternatives except to submit to the dictates of the defendants being a weaker party.

9. Plaintiff further contended that, defendant No. 4 directed the plaintiff to get the drawings and designs prepared by earlier Engineering Consultant-Sri Ramkumar Raju and Company and accordingly plaintiff has obtained designs and drawings of the structures and submitted to the defendants on 17.12.2008. The designs and drawings of staging were submitted to the Department on 27.12.2008. On 07.01.2009, plaintiff has submitted its physical and financial programme to defendant No.4. On 17.01.2009, TRFI consultant visited the worksite and saw the progress and reported to defendant No.4. The plaintiff has commenced the execution of work as stipulated in the agreement based on the original drawings approved by

defendants and also approved consultants of the Public Works Department i.e. TRFI and as per the physical programme and financial programme.

10. On 19.01.2009, plaintiff had completed the staging for entire balance length of 24 meters and fabrication of reinforcement on 6 meters length of span. On 21.01.2009, the deck slab of 6 meters was cast in presence of defendant No.4, the Assistant Executive Engineer and Assistant Engineer as per the physical programme. Unfortunately, the bridge was collapsed on 22.01.2009. Immediately a Task Force Committee was appointed by the Government of Karnataka to enquire and report the cause for mishap. On 24.01.2009, defendant No.4 attempted to make plaintiff as scapegoat by throwing entire blame on the plaintiff to escape their lapses since inception.

11. On 21.01.2009, the work was being executed in presence and supervision of the PWD Engineers. On 24.01.2009, once again defendant No.4 made attempts to make allegation against plaintiff by writing letter. In the

letter dated 29.01.2009, defendant No.4 has requested the plaintiff to submit the detailed technical designs and drawings and sequential technical construction methodology adopted by the plaintiff as desired by the Task Force Committee. Plaintiff has submitted a detailed sequence of events in his letter dated 03.03.2009. There are no lapses on the part of plaintiff and Department i.e., defendant No.4 is solely responsible for the mishap. Accordingly, plaintiff has submitted his claim letter dated 16.03.2009 to defendant No.4 and requested to pay the amount payable to him. But, defendant No.4 put blame on plaintiff by writing letter dated 22.04.2009. Plaintiff has given reply dated 10.06.2009. He has explained the details in sequence of events in his letter dated 14.08.2009. Further, he made a request to investigate the matter by an impartial team of expert Engineers. However, defendant No.4 rejected his prayer through its letter dated 26.02.2010. Plaintiff issued legal notice dated 26.02.2010 to defendants No.1 to 4 to pay ₹.10,43,70,000/- with interest at 18% per annum.

12. On 03.05.2010, defendant No.4 has given evasive reply and raised the Counter-Claim of ₹.5,95,25,000/-. Through letter dated 08.05.2010, defendant No.4 informed plaintiff that defendant No.4 is not responsible for the financial losses caused to the plaintiff. In the meanwhile, some of the persons who have supplied machines to the plaintiff have requested to refer the matter to Arbitration and plaintiff also referred the matter to Arbitration. One Sri Y.Rama Krishan, Senior Advocate was appointed as Arbitrator and he passed awards on 13.04.2011 in respect of several claims made by plaintiff in this case. Plaintiff further made letter correspondence with defendant No.4 by reducing his claim to ₹.7,00,05,930/- in view of awards being passed by the learned Arbitrator. Hence, plaintiff has raised the dispute before defendant No.3, who is authorized to settle the dispute within 90 days. Hence, plaintiff has made claims in claim Nos.(A) to (M) from the defendants under different heads totally amounting to ₹.7,00,05,930/-. Their claims are as follows:

- A. Reimbursement of loss of cost of the Ajax concrete machine ₹. 32,00,000/-.
- B. Reimbursement of rent for two cranes(40 tons capacity) engaged for 1½ months ₹. 54,00,000/-.
- C. Reimbursement of loss of cost of two generators of 220 KV capacity ₹. 16,00,000/-.
- D. Reimbursement of loss of two girders built up with 4 Nos. of ISMB and secondary ISMB and other items(rate included cost of steel grids, fabrication, centering, shuttering and transport charges) ₹.1,08,000/-.
- E. Reimbursement of loss of costs of HYSD Steel bars placed in position for 24 meter length of Deck slab including fabrication and centering charges ₹.53,97,875/-.
- F. Reimbursement of loss of cost of concreted portion of Deck Lab)6M length including material labolur charges, collapsed and submerged in the river) ₹.15,39,268/-.
- G. Reimbursement of loss of welding machine for ₹. 16,00,000/-.

H. Reimbursement of loss of HT cables(TATA), HDPE Pipes & Grouting Pump(1) including expansion joints ₹.88,58,790/-

I. Reimbursement of loss of cost of cables, stressing and distressing with hydraulic jacks and pumps(4) 4 Nos. of lifting jacks, 4 Nos. of trolleys amounting to ₹. 26,00,000/-.

J. Reimbursement of loss of rent for 4 tippers for 1 ½ month amounting to ₹. 7,20,000/-.

K. Reimbursement of loss of profit at 15% per annum amounting to ₹. 1,03,50,000/-.

L. Reimbursement of loss towards overhead charges at 25% ₹. 1,72,50,000/-

M. Reimbursement of EMD paid at the time of agreement ₹. 6,90,000/-.

13. The plaintiff initially filed Original Suit No.6/2012 before Senior Civil Judge, Gangavathi for appropriate reliefs.

14. After service of summons, defendant No.4 filed his written statement, wherein he admitted the tender

notification issued by defendant No.4, acceptance of tender of plaintiff and issuance of work order dated 15.12.2008 to plaintiff for an amount of ₹.662.4 lakhs. It also admitted about collapse of bridge on 22.01.2009. Defendant No.4 also contended that the tender of plaintiff was accepted and agreement was executed between plaintiff and defendant No.4 on Turn-Key basis on 15.12.2008 for construction of 24 meters long balance bridge from Anegundi to Hampi.

15. The contention of defendant No.4 is that as the agreement is Turn-Key agreement, plaintiff has to get proper designs, technical know-how and methodology in executing the construction work in compliance with special conditions mentioned in the tender corrigendum dated 16.10.2007. He further contended that only after examining the spot and satisfying itself about the strength of the existing bridge, plaintiff has given their bid for tender for 24 meters long balanced bridge. Thus, it was the duty of plaintiff to change the cables of the existing bridge before commencing the construction of balance work of the bridge.

He denied receipt of document Nos.6 and 7 annexed to the plaint in support of the allegations that the plaintiff has obtained the drawings and designs from earlier Engineering Consultant by name Sri Ramkumar Raju and Company and submitted to the Department on 27.12.2008. He contended that it was a forged rubber stamp of the Office of Defendants and seal and signatures of the Office of the Department are not the seal and signature of the Officers of the Department. Thus, he specifically denied receipt of document Nos.6 and 7 annexed to the plaint.

16. On the other hand, on 03.01.2009 defendant No.4 requested the plaintiff to furnish detailed technical designs and necessary drawings obtained from plaintiff's technical consultant to enable defendant No.4 to obtain approval from the competent authority. Pursuant to same, defendant on 17.02.2009 has submitted the designs and drawings along with covering letter dated 16.02.2009 i.e., more than 3 weeks after collapse of the bridge. On 17.01.2009 when TRFI consultant visited the site, plaintiff

has not yet furnished the designs and drawings though only he had submitted physical and financial programme. Defendant No.4 denies that the deck slab for 6 meters was casted on 21.01.2009 in presence of defendant No.4- Assistant Executive Engineer and Assistant Engineer. In fact, plaintiff had proceeded with construction work without furnishing the drawings and designs for approval and thus defendant No.4 along with engineers visited the site for instructing plaintiff not to proceed with construction work till furnishing of drawings and designs by him for approval by the Department and on that date they have visited the spot not for supervision of the construction work but to ask the plaintiff not to proceed with the work. Whatever work done by plaintiff till 21.01.2009 was without getting designs and drawings approved by the Department. Thus, plaintiff proceeded with the work in gross violation of terms and conditions of the agreement dated 15.12.2008, which was entered into on Turn-Key basis.

17. During execution of the construction work, plaintiff put heavy weight on the existing bridge by parking heavy vehicles, by keeping heavy machineries and by dumping heavy construction materials, which resulted in collapse of the bridge on 22.01.2009. Thus, plaintiff is solely responsible for collapse of the bridge. The claim of plaintiff in his letter dated 14.08.2009 is rejected by the defendants by letter dated 26.02.2010. Defendant No.4 only admits about issuance of legal notice and Counter-Claim made by defendant, etc., but denied all other averments made in the plaint. Because of collapse of the bridge, the Department of defendant No.4 has sustained loss of ₹.5,95,25,000/- and thus plaintiff has to reimburse it.

18. Plaintiff made several claims based on the arbitral awards that have been passed in between plaintiff and other Companies for which this defendant No.4 is not party and thus those arbitral awards are not binding on defendant No.4 and hence defendant No.4 is not liable to reimburse the amount mentioned in those arbitral awards.

The agreement between plaintiff and defendants is on Turn-Key basis, and there is no clause in the agreement dated 15.12.2008 giving right to the plaintiff to claim from Department any amount towards any loss sustained by him by reason of loss of or damage to any machinery or any other property belonging to plaintiff or obtained by him from any other person or firm or Company on hire basis or otherwise for his use in execution of the construction work. Thus, even if plaintiff establishes that due to collapse of the existing bridge he sustained any loss as alleged in the plaint, defendant No.4 is not liable to make good of it. Besides that the bridge was collapsed as a result of negligence on the part of plaintiff. Defendant No.4 in the alternative further took contention that without prejudice to the above contentions if the Court comes to the conclusion that on legally admissible evidence the plaintiff is entitled to any amount towards any loss sustained by him as a result of collapse of the existing bridge, he would be entitled to only such amount or loss as proved, which have been sustained by him for the work done by him during the

period from commencement of construction work till collapse of bridge on 22.01.2009 and nothing more than that. Hence, prayed for dismissal of the suit with costs.

19. After filing this written statement, defendants got amended the written statement and included para Nos.17-A and 17-B, that suit is not tenable, as the work entrusted on Turn-Key basis, it is the exclusive responsibility of contractor for completion of the work as desired by the Department. But, plaintiff executed the work without getting approval to design, drawing and methodology of construction from the competent authority of the Department. Further, plaintiff has executed the work without replacing old rusted cable strands as mentioned in special condition No.6 of the contract and thus plaintiff violated the conditions of the contract.

20. Further, defendant No.4 took contention that Government of Karnataka has written letters dated 14.12.2015 and 28.04.2016 to the Executive Engineer Kakinada, Andhra Pradesh to give concurrence in respect of

the B.V. Reddy and Company Limited i.e., plaintiff's company and Sri K.Subbaraju, Executive Engineer, Kakinada Division has submitted letter dated 21.05.2016 stating that plaintiff's company said to be submitted work done certificate is false and not issued from their office. These are public documents and can be relied safely to hold that plaintiff has cheated the defendants.

21. Subsequently on 30.07.2016 Superintendent Engineer, Public Works, Ports and Iland Water Transport Department, Ballari has written letter to defendant No.4 to take action against plaintiff and accordingly, crime has been registered against plaintiff in Crime No.173/2016 alleging the offences punishable under Sections 420, 465, 470, 467, 471 and 468 IPC for committing forgery and furnishing false documents to defendant No.4. For the above reasons, defendant No.4 prayed for dismissal of suit with costs.

22. Based on these pleadings, initially 15 issues were framed on 20.09.2012; two additional issues were framed on 13.01.2015; two more additional issue Nos.3 and 4 were

framed on 25.01.2017 and two more additional issue Nos.5 and 6 were framed on 01.01.2019. The said issues are as follows:

"ISSUES

1. Whether the plaintiff proves that it is entitled for Reimbursement of loss of cost of the Ajax Concrete Machine of Rs.32 Lakhs?
2. Whether the plaintiff proves that it is entitled for Reimbursement of rent for 2 cranes (40 Tons capacity) engaged for 1½ months of Rs.54 Lakhs?
3. Whether the plaintiff proves that it is entitled for Reimbursement of loss of cost of 2 Generators of 220 KV capacity of Rs.16 Lakhs?
4. Whether the plaintiff proves that it is entitled for Reimbursement of two Girders built up with 4 nons. of ISMB 600 and Secondary ISMB and other items (rate includes cost of steel girders, fabrication, centering, shuttering and transport charges) of Rs.1,08,00,000/- ?
5. Whether the plaintiff proves that it is entitled for Reimbursement of loss of cost of HYSD Steel bars placed in position for 24 M length of deck slab including fabrication and centering charges of Rs.53,97,875/-?
6. Whether the plaintiff proves that it is entitled for Reimbursement of loss of cost of concreted portion of deck slab (6M length, including material, labour charges, collapsed and submerged in the River) of Rs.15,39,268/-?
7. Whether the plaintiff proves that it is entitled for Reimbursement of loss of welding machine for Rs.16,00,000 Lakhs?
8. Whether the plaintiff proves that it is entitled for Reimbursement of loss of HT Cables (TATA), HDPE Pipes & Grouting Pump (1) including expansion joints of Rs.88,58,790/-?
9. Whether the plaintiff proves that it is entitled for Reimbursement of loss of cost of Cables stressing and

distressing with hydraulic jack and pumps (4), 4 nos. of lifting jacks, 4 nos, of trolleys of Rs.26 Lakhs?

10. Whether the plaintiff proves that it is entitled for Reimbursement of loss of rent for 4 Tippers for 1½ months of Rs.7,20,000/-?

11. Whether the plaintiff proves that it is entitled for Reimbursement of loss of profit @ 15% per annum at Rs.1,03,50,000/-?

12. Whether the plaintiff proves that it is entitled for Reimbursement of loss towards overhead charges @25% at Rs.1,72,50,000/-?

13. Whether the plaintiff proves that it is entitled for Reimbursement of EMD paid at the time of agreement of Rs.6,90,000/-?

14. Whether the plaintiff is entitled for suit claim with interest at 18% P.A., from the date of suit till the date of payment?

15. To what order or decree?

ADDL.ISSUES

1. Whether the plaintiff proves that the plaintiff has executed the work as stipulated in the agreement based on the original drawings approved by the defendants and also approved by consultants of PWD and as per physical and financial program approved by defendant No.4 under supervision of defendant No.3 and 4.?

2. Whether the plaintiff proves that due to will full negligence and default on the part of defendants, the bridge collapsed and plaintiff sustained loss.?

ADDL.ISSUES No.3 & 4

3. Whether the defendant proves that the plaintiff has violated special condition No.1 and 6 of the contract?

4. Whether the defendant further proves that due to the aforementioned act of the plaintiff the Government has suffered loss of Rs.5,95,25,000/- and the same is recoverable by the plaintiff?

Additional issue No.5 & 6.

5. Whether the defendant proves that the plaintiff has cheated the defendants?

6. Whether the defendant proves that due to the negligence of the plaintiffs the bridge in question has collapsed?"

23. Initially, the suit was filed before the Senior Civil Judge and JMFC, Gangavathi, wherein the above issues and additional issues were framed.

24. After establishment of Commercial Courts as per Commercial Courts Act, 2015, as the dispute of present case is pertaining to commercial dispute, this case is transferred to designated Commercial Court i.e. Principal District Judge, Koppal and re-numbered as Commercial O.S.No.2/2020.

25. On behalf of plaintiff, P.W.1 is examined apart from marking Exs.P.1 to P.132 before the Trial Court and closed his side. On behalf of defendants, three witnesses D.W.1 to D.W.3 are examined apart from marking Exs.D.1 to D.49 and closed their side before the Trial Court.

26. After recording evidence of both sides and hearing arguments of both sides, before pronouncing judgment, when the case was posted for judgment, the Trial court has deleted the earlier issues and additional issues and framed re-casted issues as follows:

- "1) Whether the plaintiff proves there was a misrepresentation and suppression of facts while he entering into a contract?*
- 2) Whether the defendants prove the plaintiff has violated the terms and conditions of agreement as there were a breach of contract?*
- 3) Whether the defendants prove because of willful negligence of plaintiff, the Stay Bridge was collapsed?*
- 4) Whether the plaintiff proves he is entitled for recovery of money made under the different heads with interest at 18% P.A., from the date of suit till the date of realization?*
- (5) To what order or decree?"*

27. Based on those issues, the learned Trial Judge has decreed the suit of plaintiff directing the defendants to pay a sum of ₹.5,63,58,250/- with interest at 18% per annum from the date of suit till realization of entire amount.

28. Afterwards a Civil Review Petition was filed in Civil Review Petition No.1/2021, which was allowed. The

total amount of damages was enhanced to ₹.7,00,05,000/- with interest at 24% per annum from the date of cause of action till realization of the entire amount instead of original decretal amount of ₹.5,63,58,250/- with interest at 18% per annum from the date of suit till realization of entire amount.

29. Aggrieved by said judgment and decree and orders passed in the Civil Review Petition, the appellants/defendants have filed Commercial Appeal No.100018/2021.

30. Defendants have also filed Commercial Appeal No.100019/2021 praying to allow the Counter-Claim made by them and to dismiss the suit of the plaintiff.

31. Learned counsel for the appellants/defendants Sri Manu K. would submit that the bridge from Anegundi to Hampi was constructed from 1997 to 1999 and its total length was about 211 meters length and 11.6 meters width, but for some unforeseen reasons, it was not completed and during 1999 its construction was stopped and that time, in

between 24 meters of length and 11.6 meters width, work was incomplete and for completion of said work, a tender notification was called on 20.08.2007 for item-wise contract, ultimately it was converted as Turn-Key contract by issuing tender corrigendum dated 16.10.2007. After calling the tender on 16.10.2007, plaintiff has applied for construction of the work and ultimately the plaintiff's bid was accepted and work order-cum-agreement dated 15.12.2008 was executed. On 15.12.2008, the agreement for ₹.662.04 lakhs was agreed and it was a Turn-Key agreement. The plaintiff has to perform his contract work in accordance with the said agreement and he has to obtain drawings and designs and to furnish them to defendant No.4 and after obtaining approval, he ought to have commenced his construction work and he did not do so. Six months time stipulation was also fixed to complete the bridge work. The plaintiff has supplied the methodology that how the balance work is to be completed. On 07.01.2009, the plaintiff has submitted physical and financial programme to defendant No.4. On 17.01.2009, TRFI consultant visited

the worksite and saw the progress and reported to defendant No.4. On 19.01.2009, plaintiff has made the fabrication of reinforcement of 6 meters length span for completion of staging for the entire balance length of 24 meters. On 21.01.2009, the officials of defendant No.4 visited the spot and directed the plaintiff to stop the work as he has not produced the drawings and designs and not obtained approval for it. However, on 22.01.2009, the bridge collapsed because the plaintiff has brought heavy loads to the bridge.

32. Learned counsel further contended that the plaintiff was asked to dismantle the damages, pylons by Anegundi side of bridge in view of the public safety and also plaintiff laid heavy weight on the existing bridge by parking heavy vehicles, machinery and dumping, as a result of which the bridge collapsed and it is only because of the irresponsibility of the plaintiff. However, plaintiff by forging some letters has sent the drawings and designs on 17.02.2009 i.e., 3 weeks after collapse of the bridge and

that letter dated 16.02.2009 itself shows that plaintiff has not acted in accordance with the contract between parties.

33. It is further contended that after collapse of bridge, on 29.01.2009 defendant No.4 has written letter to plaintiff to submit detailed technical designs and drawings and frequential technical construction methodology adopted for balance work as desired by the task force committee. Plaintiff has issued legal notice dated 26.02.2010 demanding ₹.10,43,70,000/- with interest at 18% per annum as damages and his prayer in the legal notice was rejected. Defendant No.4 has given reply and raised Counter-Claim of ₹.5,95,25,000/- from plaintiff.

34. Learned counsel for defendant No.4 would further submit that the plaintiff reduced his claim to ₹.7,00,05,936/- and filed a suit. However, majority of his claims are based on arbitration awards for which defendant No.4 is not a party and thus those arbitration awards are not binding on defendant No.4. Further, there is no whisper about negligence/misrepresentation/suppression of material

facts against defendant No.4 in the plaint pleadings. However, without appreciating these facts, the learned Trial Judge has re-casted the issues strangely and casted burden upon defendants to disprove the contention of plaintiff and also framed an issue regarding misrepresentation and suppression of facts while entering into contract which is not the pleading of plaintiff. Thus, the learned Trial Judge has erred in framing improper issues, which resulted in improper judgment and decree.

35. Learned counsel would further submit that some of the claims of plaintiff are not based on any document. Even though it is stated that one of the claims was based on arbitration award, no such arbitral award is produced. But only some calculation sheets are produced. Based on those calculation sheets, without any proof, the learned Trial Judge has decreed the suit. He would further submit that even after passing the decree, a review petition was entertained by the learned Trial Judge in CRP No.1/2021 and without any evidence or without there being any

establishment of new facts, the Tribunal has awarded interest at 24% against the prayer of 18% by the plaintiff. The Tribunal has awarded the interest from the date of cause of action instead of from the date of filing of the suit, which is also not prayed in the plaint. Furthermore, the learned Trial Judge has enhanced the amount of damages of ₹,7,00,05,000/- instead original judgment for ₹.5,63,58,250/- by exemplifying the prayer of plaintiff without any basis.

36. Learned counsel for defendant No.4 would further submit that defendant No.4 has made Counter-Claim before the Trial Court, which was rejected as time barred. Against which he had preferred an appeal, which was also dismissed. Now he has preferred Commercial Appeal No.100019/2021 challenging the said dismissal of Counter-Claim.

37. It is further contended that defendant No.4 has prayed for Counter-Claim of ₹.5,95,25,000/- stating that only because of the negligence of plaintiff, in respect of

compensation awarded to the legal heirs of 8 persons amounting to ₹.5,00,000/- each and ₹.25,000/- each to 41 persons, who suffered injuries in this alleged incident. Defendants also claimed Counter-Claim stating that plaintiff has not removed the pylon after collapse of the bridge and hence defendant No.4 got it removed by another institution by spending ₹.15,90,000/-. Further, to remove the concrete and iron pipes which were lying at the spot poured by the plaintiff and defendant No.4 has spent ₹.50,00,000/-. It was further stated that defendant No.4 had spent ₹.4,85,00,000/- towards construction of the earlier portion of the bridge and it has given ₹.1,00,000/- to Police Department and Revenue Department towards their bills and thus totally because of collapse of the bridge, the defendants' Government has sustained loss of ₹.6,02,15,000/- and out of it, the earnest money paid by plaintiff to defendant No.4 is forfeited by defendant No.4 and by deducting said amount, the defendants have claimed Counter-Claim of ₹.5,95,25,000/- from plaintiff. In this regard notice was issued to plaintiff for reimbursement, for

which plaintiff has given reply as per Ex.P.18. Hence, learned counsel for appellants/defendants prayed for allowing the appeals with costs throughout by setting aside the judgment and decree passed in Commercial O.S.No.2/2020 and orders on Civil Review Petition No.1/2021 and to allow their Counter-Claim.

38. Learned Senior counsel for respondent/plaintiff Sri Vivek Subba Reddy would submit that there is suppression of material facts by defendant No.4 at the time of entering into Turn-Key contract dated 15.12.2008. After issuance of tender notification dated 16.10.2007, defendant No.4 has obtained the report from Civil Aid Company that the cables are corroded and should be replaced before commencing the work, but it was not brought to the notice of plaintiff. If it was brought to the notice of plaintiff, definitely the plaintiff would first replace the existing cables and would distress it and would put up the new cables and then commence the work of balance 24 meters in length. Only because of negligence on the part of defendant No.4 in

suppressing the facts and misrepresentation of facts, the bridge was collapsed. In the investigation report dated 30.01.2009 of defendants at the earliest point of time, it was noticed by the defendants. However, they have suppressed these facts.

39. Learned Senior counsel for plaintiff would further submit that suppression of material facts lead to breach of contract and thus plaintiff is entitled to claim damages.

40. The plaintiff had entered into an agreement with several suppliers, who have supplied machines, girdles and raw materials and because of the collapse of bridge within a span of 37-38 days and because some machineries were flowed in the river water, plaintiff has to repay the amount to his suppliers. Hence, several arbitration awards have taken place between plaintiff and those suppliers. They are all different persons and thus there are arbitral awards against the plaintiff and plaintiff is having every right to recover the amount mentioned in the arbitral awards from defendants for breach of contract.

41. Learned Senior counsel for plaintiff would further submit that how the plaintiff is entitled for all the claims (A) to (M) by referring the documents produced by plaintiff. He would further submit that apart from arbitral awards, plaintiff has also produced some invoices, bills and receipts for having purchased machineries. Hence, those documents coupled with arbitral awards, plaintiff has clearly established claim No. A to D. The defendants have not produced the methodology of construction work to plaintiff. Plaintiff has supplied drawings and designs much earlier to collapse of the bridge to defendant No.4 and has obtained the acknowledgment from defendant No.4. Executive Engineer, Assistant Executive Engineer and other Senior Officers of defendant No.4 have visited the spot on 21.01.2009 and they have supervised the work of putting concrete on deck slabs of 6 meters. They were not at all examined by defendant No.4 in this case, but they were examined before the Criminal Court and the certified copies of depositions of those witnesses are produced in this case, which established that they have admitted about the case of

plaintiff. Hence, intentionally they are not produced in this case. Hence, the Court has to take adverse inference for non-examination of those witnesses. The evidence of D.W.1 is not at all admissible in law because he has no personal knowledge about the case and only based on records, he has given his evidence. There is some delay in preferring the appeal.

42. For all these reasons, learned Senior counsel for plaintiff prayed for dismissal of appeals with costs throughout by confirming the judgment and decree and orders on Civil Review Petition by the Trial Court.

43. Having heard the arguments of both sides and upon verifying the appeal papers and records of Trial Court, the points that arise for consideration are:

1. Whether re-casted issues framed by the learned Trial Judge are in accordance with Order XIV of CPC?
2. Whether the learned Trial judge was right in entertaining the Civil Review Petition, without there

being fulfillment of grounds mentioned under Order XLVII Rule 1 of CPC?

3. Whether defendant No.4 proves that the learned Trial Judge erred in coming to the conclusion that the plaintiff is entitled for ₹.7,00,05,000/- with interest at 24% per annum from the date of cause of action?
4. Whether plaintiff is entitled for decree in respect of claims made at para (A) to (M) in the plaint?
5. What order or decree?

44. Our finding on the above points is as under:

Point No.1 : Negative;

Point No.2 : Negative;

Point No.3 : Affirmative;

Point No.4 : Negative;

Point No.5: For the following:

REASONS

45. Answer to point No.1: The admitted facts of the case are that there was a bridge under construction from Anegundi to Hampi for Tungabhadra River commenced during 1997 and for some reasons it was stopped during

1999 by keeping pending the balance work of 24 meters in length work in the middle of the bridge. For some or the other reasons, it was postponed. Ultimately, a tender was called for construction of this middle portion of the bridge work initially on item-wise contract and ultimately on 16.10.2007, a tender-corrigendum was issued by converting item-wise contract into Turn-Key contract. Afterwards, the plaintiff became successful bidder in the said tender and he has executed agreement in favour of defendant No.4 dated 15.12.2008, which consists of terms and conditions and that, is the work order to plaintiff.

46. Turn-Key contract is a type of agreement, where a single contractor takes oath on full responsibility for designing, building and equipping a project, delivering it to the client in a fully operational state, ready for immediate use. The client's role is typically limited to defining the initial requirements and then turning the key to operate the completed project.

47. Reliance is placed on the judgment of Hon'ble Apex Court in the case of **M/s. Bata India Limited vs. Sri Sagar Roy** reported in **2014 SCC OnLine Cal 17998**, wherein 'Turn-Key project' is defined in the following manner:

"In Black's Law Dictionary Turn-Key contracts have been defined in the following manner:-

"A fixed price, schedule-Intensive construction contract-typically used in the construction of single-purpose projects, such as energy typically plants-in which the contractor agrees to a wide variety of responsibilities, including the duties to provide for the design, engineering, procurement, and construction of the facility; to prepare start-up procedures; to conduct performance tests; to create operational manuals; and to train people to operate the facility."

In Hudson's Building and Engineering Contracts, the essential conditions of a Turn-Key contract are enumerated as under:

"Thus, in these contracts the essential feature is that the owner does not employ his own professional advisers to produce the design of the building or project which he requires. Either by negotiations, or by outline specification to tendering contractors, the owner makes known his requirements and the contractor then produces the design, in the form of drawings, a specification and sometimes schedules of rates to cover possible variations, Bills are not usually used in such contracts. which will almost invariably be lump sum, since clearly there would be unacceptable pricing risks for an owner if bills were to be prepared by a contractor for use in a measured contract...."

In FIDIC - An Analysis of International Construction Contracts, it has been stated:

"In India the concept of Turn-Key is understood in the same way as it is in most of the other countries. Generally speaking, it relates to that aspect of Construction Contracts where the contractor takes 'complete responsibility' for an engineering project. Complete responsibility would include furnishing of all plant, labour, materials, supplies, equipment, transportation, supervision, technical, professional and other services. The contractor is under an obligation to perform all operations relating to design, manufacture, delivery installation and the design and execution of building or engineering works, as contracted."

48. Initially, the suit is filed by plaintiff before the Senior Civil Judge Court, Gangavathi and same was numbered as O.S.No.6/2012. At that time, after completion of pleadings, learned Senior Civil Judge has framed 15 issues; subsequently 3 times, totally 6 additional issues were framed. Subsequently, after inception of Commercial Court at Koppal, as the transaction was commercial in nature, it was transferred to Commercial Court, Koppal and re-numbered as Com.O.S.No.2/2020. Before such transfer, evidence of plaintiff's side was completed and some portion of evidence of defendant's side was also completed.

49. After transfer of the case to the Commercial Court, after completion of recording evidence of defendants' side and hearing arguments of both sides, the learned Trial Judge has re-casted the issues on 07.01.2021 and then passed the judgment on 20.02.2021.

50. At the time of recasting issues, the learned Trial Judge has cast burden upon the plaintiff to prove one issue i.e., whether plaintiff proves that there was misrepresentation and suppression of facts while entering into the contract.

51. On careful perusal of the entire plaint averments, we noticed that there is no averment about misrepresentation or suppression of facts or the pleading giving said meaning. It appears that only at the time of arguments, said point might have been canvassed and accordingly, said issue might have been re-casted.

52. Order XIV CPC deals with framing of issues. According to said provision, the issue would arise when a material proposition of fact or law is affirmed by the one

party and denied by the other. The material propositions are those propositions of law or fact which the plaintiff must allege in order to show a right to sue or the defendant must allege in order to constitute his defence. Each material propositions affirmed by one party and denied by the other shall form the subject of a distinct issue.

53. In the instant case, on careful perusal of plaint pleadings, it is only alleged that there is no lapse on the part of plaintiff in carrying the work, but it is defendant No.4, who is solely responsible for the mishap. Thus, there is no pleading of whatsoever nature, either the negligence or the misrepresentation or suppression of facts by the defendants in the plaint. However, strangely the learned Trial Judge has framed an issue casting burden upon the plaintiff to prove the misrepresentation and suppression of facts, which is not at all pleaded and this framing of issue itself is erroneous.

54. Even though, the claim of defendants for Counter-Claim was rejected long back, the learned Trial

Judge has framed issues No.2 & 3 and casted burden upon the defendants to prove whether plaintiff has violated the terms and conditions of the agreement and because of willful negligence of the plaintiff, the said bridge was collapsed.

55. The initial burden is always upon the person, who approaches the Court and not upon the defendants to disprove it. Only if defendants admit any of the plaint pleadings, then the admitted facts need not be proved. The facts which are specifically denied by defendants are to be established by plaintiff by producing cogent evidence.

56. In the instant case, strangely without any pleadings, issue No.1 is framed.

57. In this regard, learned counsel for appellants' places reliance on the judgment of Co-ordinate Bench of this Court in the case of **Smt.Nalini Sunder vs. G.V.Sunder** reported in **ILR 2002 KAR 4734**, wherein it is held that a party cannot make out a case on the basis of evidence for which he/she has laid no foundation in the

pleadings. It is fairly well settled that no amount of evidence can prove a case for a party who has not set up the same in his/her pleadings.

58. Learned counsel for appellants places reliance on the judgment of Hon'ble Apex Court in the case of ***Kaushik Narsinhbhai Patel and Others vs. S.J.R. Prime Corporation Private Limited and Others*** reported in ***(2024) 9 SCC 462***, wherein it is held as under:

"23. In the context of the aforesaid provisions under the CPC, it is apt to refer to a decision of a Division Bench of the Karnataka High Court in Nalini Sunder v. G.V. Sunder. It was held therein that a party could not make out a case on the basis of evidence for which he/she has laid no foundation in the pleadings. It is fairly settled that no amount of evidence can prove a case of a party who had not set up the same in his/her pleadings, it was further held therein."

59. As discussed above, without any pleadings, issue No.1 is framed, which misdirected the Trial Court, which ultimately resulted in erroneous finding.

60. Chapter VII of the Indian Evidence Act, 1872 deals with burden of proof. Section 101 of the Indian Evidence Act says that whoever desires any Court to give

judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Thus, always the initial burden is on the plaintiff to prove the existence of facts i.e., the facts which are pleaded in the plaint.

61. Now in the instant case, the plaintiff pleaded that he entered into contract with defendants, he was a weaker party and he was unable to verify the spot within a span of 18 days and he further pleaded that in the supervision of defendants, he was carrying out the bridge construction work and on one fine day the bridge was collapsed and before its collapse, on the previous day of its collapse, defendant No.4 and his officers visited the spot and have verified putting up of deck slab of 6 meters. According to plaintiff, for this mishap, there is no lapse on the part of plaintiff in conducting the work. He has not specified or given details that how defendant No.4 is solely responsible for the collapse and works, which he has conducted in accordance with the terms of the agreement and there is no

lapse on his part is not pleaded in the plaint, even though the plaint is very lengthy, it does not speak about these details. Further, there is no evidence on these points.

62. On the other hand, plaintiff pleads that it is unfortunate that the bridge was collapsed. Thus, he has pleaded the word 'unfortunate' in the plaint. Thus, according to him it is his bad luck and it is bad chance and not because of lapse on the part of anyone. This shows that there is no negligence on the part of defendants or there is no misrepresentation/suppression of facts from the side of defendants pleaded in the plaint.

63. Any amount of evidence without pleading has no value in the eye of law.

64. Without there being such a pleading in the plaint and when defendants have denied each and every averment of the plaint, except admission about this calling of tender and acceptance of tender, execution of agreement dated 15.12.2008, it was incumbent upon the Trial Court to frame proper issues by casting burden upon plaintiff and not by

casting burden upon defendants to establish how the plaintiff is entitled for suit claim.

65. Furthermore, recasting issue No.1 does not arise at all because not only the words but the summary of the entire plaint would not reveal the misrepresentation or suppression of facts. Hence, we are of the considered opinion that framing of a wrong issue without following the intent of Order XIV of CPC by the Trial Court is not justifiable. Accordingly, point No.1 is answered in NEGATIVE.

66. Answer to point No.2: after passing the judgment, the trial court entertained the review petition filed under O. XLVII Rule 1 r/w S.114 CPC.

67. Under Order XLVII Rule 1 of CPC, the application for review of judgment can be filed under following grounds:

"1. Application for review of judgment— (1) Any person considering himself aggrieved—
(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) *by a decree or order from which no appeal is allowed, or*

(c) *by a decision on a reference from a Court of Small Causes,*

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

(2) *A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.*

[Explanation—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.]”

68. A plain reading of this provision makes it clear that there shall be following conditions to entertain a petition for review:

i) from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the applicant;

- ii) the important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made;
- iii) on account of some mistake or error apparent on face of record
- iv) for any other sufficient reason.

69. This sufficient reason should be analogous with the above three conditions and not for any other extraneous circumstances. Power of review is available only when there is an error apparent on face of record and not on erroneous decision. If the parties aggrieved by the judgment on the ground that it is erroneous, remedy is only questioning the said order in appeal. The power of review under Order XLVII Rule 1 of CPC may be exercised inter alia only if there is a mistake or an error apparent on face of record. Said power can be exercised as it is not permissible for an erroneous decision to be reheard and corrected. Thus, review of a judgment on the ground of some mistake or error apparent on face of record is permissible.

70. Under Section 114 of CPC, any person considering himself aggrieved by a decree or order from which an appeal is allowed, but from which he has not preferred any appeal; by a decree or order from which no appeal is allowed by the court or by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

71. The coupled reading of Section 114 read with Order XLVII Rule 1 of CPC makes it amply clear that only if there is any error apparent on it or when there is some mistake i.e., arithmetical/mathematical calculation, then the party could seek for review of the judgment, but not for any other reason.

72. In this regard, learned counsel for appellants placed reliance on the judgment of Hon'ble Apex Court in the case of ***Malleeswari vs. K.Suguna and Another (AIR***

2025 SC 4143 (Civil Appeal No.11437/2025 (@SLP(C)

No.12787/2025), wherein it is held as under:

"17. Having noticed the distinction between the power of review and appellate power, we restate the power and scope of review jurisdiction. Review grounds are summed up as follows:

17.1 The ground of discovery of new and important matter or evidence is a ground available if it is demonstrated that, despite the exercise of due diligence, this evidence was not within their knowledge or could not be produced by the party at the time, the original decree or order was passed.

17.2 Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record. Such an error is a patent error and not a mere wrong decision. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

17.3 Lastly, the phrase 'for any other sufficient reason' means a reason that is sufficient on grounds at least analogous to those specified in the other two categories"

73. Thus, it is obviously evident that only if any new evidence is discovered or mistake or any error which is manifest on the face of record, then the party could seek for review of the judgment, but not for any other reason.

74. With this background, the fact for which review petition is filed is to be analysed.

75. The review petitioner/plaintiff has filed the Civil Review Petition under Order XLVII Rule 1 read with Section 114 CPC praying for reviewing the judgment on following grounds:

"1. The judgment and decree of this Hon'ble Court is so far as the same did not award the entire amount towards overhead charges is a sum of Rs.1,72,50,000/- and so far as the same denied the interest from the date of cause of action till the payment @ 24% per annum suffers from error as a part on the face of record and requires review by this Hon'ble Court. As this aspect has been allowed as per Para No: 154 of said Judgement.

2. It is well settled that the breach of contract by the party gives right to the contractor to claim the damages under various heads including reimbursement of overhead charges by the contractor for maintaining the head office and operational office and facilities at the work site. The Hon'ble Court, it is humbly submitted, failed to appreciate this and restricted the claim only to allow labour charges, which is altogether different from the overhead charges.

3. It is well settled that the Hon'ble Court, which determining the overhead charges can apply workable formula to avoid the minute calculations for arriving at the over head charges. This principle is also incorporated in the MORTH guidelines, as stipulated in the contract agreement dated 15-12-2008 wherein it is provided that 25% would be reasonable value of the overhead charges in a contract for construction of bridges/especially the bridge just like cable strayed bridges.

4. It is submitted that this principle as above has also been accepted judicially in Mc DERMOTT case, the Hon'ble Supreme Court accepted the HUDSON formula and laid down that in arranging the overhead charges. The Courts can safely adopt and apply the said formula.

5. The Hon'ble Court failed to consider the plea of the petitioner for overhead charges keeping in view of the decision of the Hon'ble Supreme Court

6. As per the Contract Ex.P-124 the period of completion is six months. The failure to do so will also makes the contractor to pay penalty. Therefore, the petitioner made arrangements at work site men, machinery, material and technical services for six months and he is forced to pay money to them.

7. The approach of this Hon'ble Court is therefore suffer error appeared as on the face of the record.

8. It is submitted that the Commercial Court Act (Act No.4 of 2016) was enacted with effect from 23.10.2015. Paragraph C of Schedule r/w Section 16 of the said Act amended some provisions of the C.P.C. It is relevant to submit that vide Para (C) Rule 2-A was inserted in Order VII of C.P.C. Interpreting this provision, the Bombay High Court held that in all commercial disputes the decree holder would be entitled to interest @ 24% per annum. Therefore, the petitioner is entitled for interest as the decreed amount from the date of cause of action till the payment i.e., 15.12.2008 till 20.02.2021 and from 20.02.2021 till the payment. The Hon'ble Court failed to appreciate this aspect though it is raised before this Hon'ble Court.

9. The Hon'ble Court ought to have seen that the cause of action for filing the suit was arose on 15.12.2008 when the contract was signed between the parties and therefore as per Section 34 of C.P.C. r/w Order VII Rule 2 A (as amended by Commercial Court Act), the petitioner is entitled for interest from the date of cause of action.

10. In the Mc DERMOT case, the Hon'ble Supreme Court also approved grant of overhead charges and it was held that, "a claim for overhead costs resulting in decrease in profit or additional management costs is a claim for damages."

In the same decisions ie McDermott International Inc. vs. Burn Standard Company Limited & others reported in SCC 2006 (11) Page 181 which is based on M/s. A.T. Brij Paul Singh and Others Vs. State of Gujarat, 1984 AIR (SC) 1703), the liability of the government to pay the damages for breach of contract is also observed besides referring the

Hudson formula which reads as "(Contract Head Office overheads profit %) x Contract sum+ period in weeks) x delay in weeks for computation of damages as the government suppressed material fact and thereby committed breach of contract.

11. The petitioner further submits that the petitioner/plaintiff is entitled to claim interest @ 24% due to the subsequent amendment to Order VII Rule 2 Sub Rules 2 and 3 within the meaning of Sec.34 of Code of Civil Procedure Code, 1908 as the transaction is admittedly commercial in nature and as such the plaintiff is entitled to claim 24% interest on the total claim. The petitioner submits that in I.A.No.4/2015 which was filed by me during the trial claiming interest @18% from the date of suit claim fell due ie from the date of cause of action and the same was allowed by this Hon'ble Court which has become final. The petitioner submits that by virtue of the subsequent enactment of the Commercial Courts Act, 2015, the petitioner is entitled to claim the interest @24% p.a instead of 18% p.a and the same was not disputed by the defendants either in their written arguments or in their evidence and as such the interest on the suit claim may be corrected as @ 24% instead of 18% by considering the undisputed fact that the suit claim is a commercial transaction by allowing the review petition.

12. I submit that since there is no mention regarding the rate of interest that may be claimed by the innocent party against the erring party the Hon'ble Bombay High Court held in a decision reported in AIR 2005 Bombay at page 257 a follows

"In the light of this settled legal position it is difficult to sustain the view that interest cannot be awarded on the amount of damages prior to the date of award..... Section 31(7) specifically contemplates that, in a situation where the parties have not agreed upon a rate of interest, the Arbitral Tribunal when awarding payment of money may include in the sum for which the award is made interest at such rate as it deems reasonable on the whole or any part of the money, for whole or any part of the period between the date on which cause of action arose and the date on which the award is made....."

The petitioner submits in the present case admittedly there is no mention about the rate of interest in which event the analogy adopted by the above decision has to be followed considering the suit transaction is commercial in nature.

13. *The petitioner submits that, in the judgment at page No.69, para 118 the petitioner is only given the claim "from the date of suit" instead of from the date of suit claim fell due since the petition in I.A.No.4/2015 which was allowed by this Hon'ble Court and become final since the same was not challenged by the defendants and as such this Hon'ble Court may be pleased to grant the suit claim from the date of cause of action instead of from the date of suit under review since the petitioner/plaintiff is entitled to claim the damages from the date of cause of action and as such the claim has to be allowed "from the date of commencement of work" and accordingly Hon'ble Court may correct the same under review with the powers u/s 114 of C.P.C and pass the decree accordingly. The granting of suit claim from the date of filing of the suit is also a ground but the Hon'ble Court was pleased to grant the interest from the date of filing of the suit which is apparent error, since the petitioner/filed the suit in the year 2012 ie after three years from the date of collapse of the subject bridge.*

14. *The Petitioner states that in light of the afore said facts and circumstances and upon the grounds stated herein above, it is just and reasonable, and it would be in the interest of justice that the said decree and judgment be reviewed.*

15. *The Petitioner craves leave to add, amend, alter and/or delete any of the aforesaid grounds if required.*

16. *The Petitioner states that except this no other petition, appeal, application or review of the said judgment is filed or pending either in this Hon'ble High Court or in the Hon'ble Supreme Court of India."*

76. The plain reading of these grounds makes it amply clear that the plaintiff is praying not for review of the judgment but praying for amendment of the entire

judgment in respect of one of the claims made by him i.e., regarding overhead charges by relying on so many factors, which he has not pleaded or proved or produced any cogent material before the Trial Court. Further, very strangely, the plaintiff has prayed for review of the judgment in respect of rate of interest, which he has claimed only 18% in the plaint, but praying for enhancement to 24% and praying for grant of interest from the date of cause of action till the date of payment in the review even though there is prayer in the suit for grant of interest only from date of suit. Thus, the prayers, which were not at all pleaded in the plaint, are prayed for the first time in the Civil Review Petition.

77. In this regard, learned Trial Judge in the review order at para No.22 stated as follows:

"22. On the submissions of both counsels for the petitioner and respondents and rulings relied upon the both the parties, there is an apparent error in para 154 of judgment and granted under the global labour component head in para 162, which is not touching upon any of the issues, evidence and the documents. The option left over for the petitioner is only to justify the reasonable grounds on the basis of the admitted documents of an agreement of Ex. P-124 only, nothing more than this. Hence, the review petition as pressed by the petitioner under section 114 R/w.

order 47 Rule 2 R/w. 151 of CPC is maintainable and cannot be said not maintainable as submitted by the counsel for the respondents.”

78. Thus, the learned Trial Judge has given fresh reasons, and examined the documents, which were already discussed in the original judgment. A fresh reasoning is impressive.

79. In the instant case, as discussed above, the plaintiff has not discovered any new evidence, there is no apparent error on face of the judgment.

80. If no reason is assigned by the learned Trial Judge to grant any relief or to reject any relief, then it amounts to non-application of mind and that cannot be reviewed by the same Court. It only could be challenged in the appeal.

81. Even though the learned Trial Judge has referred several judgments of Hon'ble Apex Court and judgments of High Court of Bombay and other High Courts, the learned Trial Judge in the guise of review has re-appreciated the

evidence as if an appellate authority and thus, committed grave injustice and thus, said finding on review petition is erroneous. Accordingly point No.2 is answered in NEGATIVE.

82. Answer to point No.3: While discussing point No.1, it is already held that the agreement dated 15.12.2008 between the parties is an admitted fact. Plaintiff has produced it as per Ex.P.3. According to Ex.P.3-the work order dated 15.12.2008, the plaintiff has to commence his work after taking mark out from defendant No.4 and he has also requested to submit the physical and financial programme immediately. Plaintiff contended that he has submitted his physical and financial programme as per Ex.P.6. The letter dated 07.01.2009 (Ex.P.6(a)) is physical-financial programme chart.

83. Defendants have produced copies of pre-bid meeting, tender corrigendum, postpone notification, copy of letter written by plaintiff to PWD, Koppal and several other documents. Ex.D.1 is the pre-bid meeting held on

29.11.2007. In this pre-bid meeting, plaintiff has participated along with defendant No.4 and its officers. In this meeting, it is stated that defendant No.4 instructed to take up the contract work on Turn-Key basis and they have also issued corrigendum in that regard and those points are discussed on that day. Thus, in that meeting dated 29.11.2007 itself, plaintiff was aware about how the contract ought to have been executed. On 16.10.2007, the tender corrigendum and postpone notification was issued as per Ex.D.2. In this, it is specifically stated that the works are to be conducted on Turn-Key basis. There are two sub-headings to conduct the work. The first sub-heading gives details that what are the works to be done and second sub-heading is special conditions to be adopted in tender.

84. In the price bid submitted along with the agreement also there is specific mention about replacement of existing stay cables by de-stressing, providing new stay cables. Thus, plaintiff was fully aware about replacing of the cables which he has not done at relevant point of time.

85. Condition Nos.1, 4, 6 and 13 of the tender corrigendum reads as follows:

"1) *All designs and working drawings of the balance portion of work of the bridge to be submitted by the contractor for obtaining approval of the Chief Engineer for adoption before commencing the work.*

2) XXXXX

3) XXXXX

4) *The consultation charges from different designers for verification of the contractor's design (i.e. proof consultancy should) should be borne by the contractor himself. An undertaking to this effect to be furnished.*

5) XXXXX

6) *All the existing cable strands should be replaced with new cables and final prestressed to take the design load intended to, proof testing of these cables to be done by experts/consultants at the cost of contractors. The existing old cables should be handed over to custody of department.*

7) XXXXX

8) XXXXX

9) XXXXX

10) XXXXX

11) XXXXX

12) XXXXX

13) *All the drawings of already constructed portion of the bridge, supplied by TOR Steel Research Foundation in India Bangalore, can be had from this office during office hours.*

14) XXXXX

15) XXXXX"

86. Thus, the basic special condition Nos.1 and 4 establish that the plaintiff has to obtain the drawings and designs and the charges for it shall be borne by him. All

designs and working drawings of the balance portion of work of the bridge is to be submitted by the contractor(plaintiff) for obtaining approval of the Chief Engineer for adoption before commencing the work.

87. Both the words 'drawings' and 'designs' are used here. Both are not synonyms but they are different and there are minute differences between the two. The meaning of the words 'drawings' and 'designs' is as under:

"Drawing refer to detailed visual representations or plans that depict the specifications, dimensions and layout of a project. Drawings are essential for communicating ideas, ensuring accuracy and providing clarity for builders, contractors and other stakeholders involved in a project.

Design is a discipline of study and practice focused on the interaction between a person a user and the man/made environment, taking into aesthetic, functional, contextual, cultural and social considerations. A plan or drawing produced to show the look and functions or workings of a building or other object before it is made."

88. Thus, drawings and designs are different and they are not one and the same. It was the bounden duty of plaintiff to obtain both drawings and designs and furnish both of them separately to the defendant or person authorized by the defendants before commencement of his

work; however, he furnished only drawings that too prepared by the earlier Engineer for formation of bridge during 1997. But even then in the cross-examination, he specifically deposed that only after obtaining drawings and designs, he commenced his work, which is not true as per the documents produced by him.

89. Learned counsel for plaintiff took contention that there is clear admission about furnishing Drawings and Designs by plaintiff in the written statement; hence, he need not prove it. However, the sum and substance of the written statement does not reflect the above admission. Further, when plaintiff furnishes the drawings, it was his bounden duty to produce designs also, which he failed to produce, as discussed above.

90. Plaintiff has taken contention that, on 17.12.2008 itself as per Exs.P.4 and P.5 he has submitted the drawings and designs to the defendants for approval. According to plaintiff, he has submitted Ex.P.5(a) to (d)-drawings, but they do not contain the designs. The

defendants have categorically denied receipt of those drawings and designs before collapse of the bridge, but according to them they were submitted by the plaintiff about three weeks after the collapse of the bridge through a letter dated 16.02.2009.

91. Plaintiff has stated that these documents bear the seal and chota signature of the defendants' institution, whereas defendants dispute it seriously. Hence, it was incumbent upon plaintiff to call the officer of the defendants' office, who has received them to say that on which date they were received by them and he would have also called the 'inward and outward register' of defendant No.4 office to verify whether these two documents were received by defendant No.4 office on 17.12.2008 or not when it is specifically expressly denied by defendant No.4. However, plaintiff did not do so. These two documents are very crucial documents to say whether plaintiff has submitted drawings before collapse of the bridge or subsequent to collapse of

the bridge. Hence, it was incumbent upon the plaintiff to establish this fact. But, he did not venture to do so.

92. It is suggested to D.W.1 that whether he is able to produce the outward register of their office from 18.12.2008 to 22.01.2009, for which he answered that he can produce it. However, plaintiff has not taken any steps to summon those registers from the defendants. Without summoning those documents, he cannot rely upon those documents.

93. D.W.1 in his cross-examination has deposed that the fabrication work commenced after 15.12.2008 and it was concluded on 19.01.2009. But in that period, the plaintiff ought to have put up temporary stay cables as per the programme which he has not done. In this regard, a question was posed to D.W.1 that whether any notice was issued to plaintiff on that point, for which he answered that he does not know.

94. Even if it is assumed that plaintiff has submitted drawings, he has not at all submitted designs to defendants

for approval. The approval of Chief Architect was not at all taken by plaintiff as on the date of collapse of the bridge. Thus, it is amply clear that plaintiff has not obtained prior approval of the defendants before commencing his work as per the mandatory conditions of the tender corrigendum notice.

95. Plaintiff in his physical programme as per Ex.P.6(a) has only stated that in between 15.12.2008 and 31.01.2009 he would perform the following act:

- Fabrication and launching of box girders between gap portion
- Centering, shuttering for gap portion
- Fabrication of steel re-inforcement and laying of slab for gap position
- Installation of expansion joints
- Removal of old cables and replacing with new cables

96. He has not stated specifically in this physical programme that which programme he would do first and which he will do subsequently. The said document is incomplete document of only 2 pages. The full document of

it is produced by defendants, which is found in paper book page Nos.1182 to 1187.

97. The document at page No.1186 is the bar chart prepared by plaintiff produced along with this physical and financial programming. It reveals that initially the plaintiff has to mobilize the materials; then he has to do fabrication of steel truss; then fabrication of farm work; afterwards erection of temporary stay cables, then replacement of existing cables, then erection of steel truss, erection of farm work, construction of 6th segment Hampi side, construction of 6th segment Anegundi side, etc. The number of days he required to do these things is mentioned in this bar chart.

98. According to this bar chart, before construction of 6th segment from Hampi side and before erection of farm work truss, it was the bounden duty of plaintiff to replace the existing cables and before that he ought to have done erection of temporary stay cables, which he has not done in the present case admittedly. This resulted in collapse of the bridge.

99. Under those circumstances, the say of plaintiff that there is no lapse on his part in carrying the work cannot be accepted. Thus, the document given by the plaintiff to defendants along with physical and financial programme, which he suppressed at the time of filing the suit. In this regard, P.W.1 was specifically cross-examined that he ought to have removed the old cables and then he has to put up new cables, but he denied the said suggestion. When Ex.P.124 produced by plaintiff himself was confronted to plaintiff, he admitted that there is such a condition in said document.

100. The above special conditions are mentioned in tender corrigendum as discussed earlier. According to special condition No.6, all the existing cable strands should be replaced with new cables and final pre-stressed to take the design load intended to, proof testing of these cables to be done by experts/consultants at the cost of contractors. The existing old cables should be handed over to custody of department.

101. In special conditions, condition No.15 specifies that in case any cracks or damages to the existing structure are observed during the process of replacement of existing cables with new cables or during the final stressing of cables, the same should be rectified by the contractor at his own cost and risk.

102. Thus, the plaintiff before putting 6 meters deck slab on 21.09.2009; ought to have observed whether there were any cracks in the existing bridge and it was his bounden duty to remove the existing cables before he putting up the new cables, but he did not do so.

103. It is to be noted here that immediately after collapse of the bridge, the defendants have issued notice to plaintiff as per Ex.P.7 on 24.01.2009, for which plaintiff has given his reply on 03.03.2009 as per Ex.P.9. Subsequently, on 16.03.2009, plaintiff made claim that he is entitled for ₹.10,00,00,000/- and odd as damages from defendants and issued legal notice as per Ex.P.14 dated 16.03.2009. He has also issued another notice dated 14.08.2009 as per Ex.P.16

and ultimately he has given reply as per Ex.P.18 dated 03.05.2010 to the defendants. These documents are correspondence between the plaintiff and defendant No.4 after collapse of bridge and they are not in dispute.

104. Plaintiff claims damages in claim Nos.(A) to (M) in the plaint as per the provision of S.73 of the Indian Contract Act, 1872.

105. Under Section 73 of the Indian Contract Act, 1872 plaintiff is entitled for damages, if he is able to establish that the contract has been broken and the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach or which the parties knew, when they made the contract to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

106. Thus, to get compensation, plaintiff has to establish that there is breach of contract from the defendants, resultantly; defendants knew that plaintiff is entitled for compensation.

107. In this regard, learned counsel for the appellants has placed reliance upon the judgment of Hon'ble Apex Court in the case of **Batliboi Environmental Engineers Limited vs. Hindustan Petroleum Corporation Limited and Another** reported in **(2024) 2 SCC 375**, wherein it is held as under:

"23. Ordinarily, when the completion of a contract is delayed and the contractor claims that s/he has suffered a loss arising from depletion of her/his income from the job and hence turnover of her/his business, and also for the overheads in the form of workforce expenses which could have been deployed in other contracts, the claims to bear any persuasion before the arbitrator or a court of law, the builder/contractor has to prove that there was other work available that he would have secured if not for the delay, by producing invitations to tender which was declined due to insufficient capacity to undertake other work. The same may also be proven from the books of accounts to demonstrate a drop in turnover and establish that this result is from the particular delay rather than from extraneous causes. If loss of turnover resulting from delay is not established, it is merely a delay in receipt of money, and as such, the builder/contractor is only entitled

to interest on the capital employed and not the profit, which should be paid."

108. Learned counsel for the appellants has placed further reliance upon the judgment of Hon'ble Apex Court in the case of **Unibros vs. All India Radio** reported in **2023 SCC OnLine SC 1366**, wherein it is held as under:

"e) Dissatisfied with the findings of the learned Single Judge, the appellant preferred an appeal before the Division Bench of the High Court under Section 37 of the Act. While dismissing the appeal vide the impugned judgment, the Division Bench was of the view that no evidence was produced on behalf of the appellant to support the plea of loss of profit during the period when the work was prolonged; findings returned by the Arbitrator are, therefore, contrary to law, more particularly the Contract Act which governs matters related to loss of profit. Having found no Infirmary or illegality, the judgment of the learned Single Judge was confirmed, and the appeal was dismissed, being devoid of any merit."

109. On the other hand, as discussed above it is the plaintiff himself, who has pleaded in the plaint that it is unfortunate that the bridge was collapsed. Thus, he is saying that it is because of bad luck the bridge was collapsed and he is not pinpointing any lapses on the part of defendants. Under these circumstances, plaintiff is

debarred from claiming any compensation from defendants for collapse of the bridge.

110. Before claiming compensation, plaintiff has to basically establish that there is breach on the part of defendants in executing the contract. With this background, his further contention to be looked into.

111. In this regard, in the plaint, it is stated that defendants are not having any methodology as to how to go with the execution of the work; to say the least it was a disjointed effort on the part of defendants without any proper planning to execute such a mind boggling work. The defendants did not furnish any methodology along with the bid documents to acquaint with the nature of the work to be done and also to proceed with the work.

112. Admittedly, as discussed above, it is Turn-Key contract. Hence, defendants need not furnish any methodology to plaintiff. Even then, by looking into Ex.P.124, we can verify the methodology, which defendants had at the time of agreement.

113. Condition No.3 in Ex.P.124-Agreement No.167/12/2008, which is the part and parcel of agreement dated 15.12.2008, reads as follows:

"3. We Agree to execute the work as per approved designs and drawings confirming to IRC and MOT standards and as per Departmental requirements and finishing works as desired by UNESCO/Hampi World Heritage Area Management Authority, to complete the work in all respects within a stipulated period of 6 months (including monsoon) and with in the approved amount of Rs.662.40 Lakhs (Rs. Six crore sixty two lakhs and forty thousand only) on Turn-Key basis. And designs shall be proof checked by TOR steel Research Foundation in India (TRFI), Bangalore and the same should be submitted for approval from the competent Authority before executing the work."

114. In that condition, the plaintiff categorically admits that designs shall be approved and checked by TOR Steel Research Foundation in India (TRFI), Bangalore and the same should be submitted for approval from the competent authority before executing the work. This agreement further reveals that the following documents shall be deemed to form and be read and construed as part of this agreement:

- a) Tender Notification;
- b) Tender corrigendum and postpone Notification;

- c) Tender Postpone Notifications issued thereafter;
- d) District tender bulletin;
- e) State tender bulletin;
- f) Proceedings of pre-bid meeting;
- g) Detailed Technical specification

115. This detailed technical specification mentioned in this agreement itself is a proof that defendants have given methodology to the plaintiff that how the construction work is to be carried out, which is part of Ex.P.6 and P.6(a) on 13.03.2008 i.e., before issuing tender corrigendum i.e., before execution of agreement dated 15.12.2008. This is the letter written by plaintiff to defendant No.4. In this letter para Nos.1 and 2 specifies these two observations made by plaintiff, which itself shows that plaintiff has visited the spot and examined it and thus his say that 18 days was insufficient for him to examine the bridge is incorrect. He himself stated that the stay cables were left open to atmosphere for a very long time and are highly corroded. Temporary stay cables are to be provided with additional temporary steel trusses near cable locations at top of pylon

and below the deck slab and these temporary cables and trusses cannot be utilized for the reconstruction. However, it is apparent that the plaintiff has not followed these rules, which he himself has stated to defendant No.4 much earlier to commencement of the contract work.

116. The plaintiff himself has produced the opinion of Ramkumar Raju, the Design Consultant of Anegundi bridge as per Ex.P.37, wherein it is stated that the bridge is well designed on conservative side and portion of the bridge that is already constructed is well built about 9 years back, ultrasonic tests were conducted on pylons and pylons were found to be structurally in sound condition. This is given on 24.01.2009 i.e., 2 days after the collapse of the bridge. Thus, the fault was not on the existing bridge, but because of heavy load brought by the plaintiff without making proper test of the bridge to put deck slabs.

117. Plaintiff also pleads that there was no sufficient time at his disposal for acquiring technical expertise and information with regard to the conditions and strength of

the existing cables prior to submission of bids since the plaintiff had 18 days time to submit the tender after receiving the tender documents. He further pleaded that the nature of the work involved is highly technical and it requires expertise consultancy and the same is quite different from general engineering skills required for ordinary bridge work. However, knowing fully well all these risky conditions, plaintiff himself has agreed for the tender document and executed the tender agreement voluntarily. He admitted so in his cross-examination also. He categorically admitted that he understood the conditions of tender. He has not stated in pre-bid meeting that 18 days time is insufficient to take decision of verifying the existing bridge and the balance bridge to be constructed. He further admitted that he has to obtain the design and drawing through experts or consultants and it should be approved by the TRFI before commencement of his work. He has also deposed that he admitted to complete the bridge work within 6 months.

118. Under those circumstances, when plaintiff voluntarily admitted the contract without any force, coercion or undue influence from any one especially from defendants, he cannot contend that the nature of work was highly technical and requires expertise and consultancy and thus the time for disposal of 18 days was insufficient. Further, as discussed above, in the tender notification itself, conditions are clearly and categorically stated that which work is to be done at what time. As discussed above, special condition Nos.6, 13 and 15 makes it clearer that the defendants are having methodology and they have informed said methodology to the plaintiff to go on with the work.

119. Admittedly, this is the Turn-Key project. As discussed above, in Turn-Key project each and every minute details will not be given by the defendants, but it is the responsibility of plaintiff to collect all the information and he admitted so in his cross-examination that he has to obtain the approval of TRFI before commencing the work in respect of designs and drawings. He has produced only the

drawings, which were prepared by the earlier engineer and commenced the work without any designs. This is the primary mistake committed by the plaintiff in carrying out the contract work.

120. Only at the time of arguments, learned Senior counsel appearing for plaintiff would submit that there is suppression of material facts by defendants. In this regard, he mainly relied upon the report dated 15.11.2007 given by Civil-Aid as per Ex.P.128 i.e., after calling the tender corrigendum. This is the report submitted by Civil-Aid Techno clinic Private Limited to the Executive Engineer KPWD, Koppal. In this report, it is stated that all the stay cables along with the anchor head and anchorages have to be replaced with new cables, anchor heads and anchorages. Suitable scheme and sequence for de-stressing, removing of existing cables, providing and stressing new cables, has to be worked out so that these cables are replaced without causing structural distress in the deck. In the said report, it is further stated that it is proposed to provide stone

cladding to the pylons in order to camouflage the concrete surface. There is no provision to fix the cladding slabs on to the concrete surface. Fixing the slabs at that height without proper lugs may be risky. The height of pylons can pose problems in handling and fixing. Further, if the cladding slabs are not properly secured, they can detach and fall down, causing safety concern to the moving traffic. Hence, it is recommended to review the provision of stone cladding. Instead, special plasters such as "Wall Texture" plasters which can give appearance similar to granite stone can be applied on these pylons. Alternatively, granite finish camouflage can be done using FRP.

121. Thus, they have stated that the cables have to be replaced without causing structural distress in the deck. They have also observed that there was a cracked region of deck slab and for that they have recommended to provide concrete bearing course of one grade higher over a bond coat of epoxy to strengthen the slab section at cracked

region by utilizing wearing course concrete as structural concrete.

122. Learned Senior counsel for plaintiff further relied upon the report of TOR steel Research Foundation in India that the detailed inspection of the constructed portion of the bridge reveals that the cable strands now placed are partly corroded. Therefore, it is suggested to replace all the cable strands and also to use new cable strands for the balance portion of the bridge.

123. By looking into this document only this special condition No.6 might have been included in the tender corrigendum that all the existing cable strands should be replaced with new cable and final pre-stressed to take the design load intended to proof testing of these cables to be done by experts/consultants at the cost of contractors. Thus, the say of plaintiff that defendants have suppressed these two documents is not acceptable because the conditions are already mentioned in tender corrigendum that how the work is to be executed by the plaintiff.

124. Learned Senior counsel for plaintiff would further submit that immediately after collapse of the bridge, on 30.01.2009 a report is submitted by the Executive Engineer that the contractor after receipt of drawings from the technical persons got examined on 18.01.2009 and he had put 6 meter length deck slab and as per the directions of the technical experts, he has put 6 meter length deck slab on 21.01.2009 and on 22.01.2009 when they had been to put up concrete at 02.45 p.m., the pylon of the bridge from Talwar Ghatta fell down and thus the bridge was completely collapsed on the river and the pylon towards Anegundi was also bending; in this regard, the report from Dr.Vishwanath, Managing Chairman was called, who has earlier submitted the report dated 15.11.2007. Based on it, he has submitted the subsequent report after collapse. In that report, he has made analysis and stated that the supervision and checking of the details were done by the department officials.

125. However, as discussed above, the plaintiff has not carried the work as per special condition No.6

mentioned in the tender corrigendum, which resulted in collapse of the bridge. When it was not foreseen according to him itself, then it cannot be a breach on the part of defendants. Only if plaintiff establishes the breach from defendants, he is entitled for any compensation which is not forthcoming in the present case. Hence, as per Section 73 of the Indian Contract Act, 1872 plaintiff is not entitled for any compensation as claimed in the plaint.

126. Learned Senior counsel for plaintiff would rely upon the following citations in respect of quantification of damages in case of breach of contract:

1. **M/s A.T. BRIJ PAUL SINGH AND OTHERS Versus STATE OF GUJARAT** reported in **(1984) 4 Supreme Court Cases 59**, wherein it is held as under:

“Contract Act, 1872 Section 73 Damages claimed by contractor where Government committing breach by improperly rescinding the contract-Contractor entitled to damages for loss of expected profit on the remaining work For estimating the amount of damages, court should make a broad evaluation instead of going into minute details Views of different benches of the High Court based on evaluation of evidence in two cognate and identical contract cases involving the same contractor reconciled”

2. MCDERMOTT INTERNATIONAL INC. Vs. BURN STANDARD CO. LTD. AND OTHERES reported in **(2006) 11 Supreme Court Cases 181**, wherein it is held as under:

"H. Contract Act, 1872-S. 55-Compensation for delay in performance-Entitlement to- Need for service of notice on promisor in respect of such compensation, if any-On facts, though the contract had a time-limit for performance, held, that did not imply that the promisee should have repudiated the contract as soon as the time-limit had expired-The contract not being one where time was of the essence, it was not voidable for delay, but compensation was payable, and for the same no notice was required to be served on the promisor"

3. ASSOCIATE BUILDERS Vs. DELHI DEVELOPMENT AUTHORITY reported in **(2015) 3 Supreme Court Cases 49**, wherein it is held as under:

"J. Arbitration and Conciliation Act, 1996-Ss.34 and 28(3)- Exception clause in contract providing that no damages arising out of "unavoidable delay" would be payable - Damages claimed by promisor for delay in execution of contract/prolongation of contract attributable to promise-Delay found to be entirely avoidable and caused solely by promise-Furthermore, respondent promisee did not properly invoke the exception clause as per its own terms-Thus, held, arbitrator committed no error in awarding the damages claimed-There was no violation of the a exception clause (Clause 22) - Contract and Specific Relief-Contractual Obligations and Rights-Exemption/Exclusion/Restriction Clauses/Negative Covenants-Application of-Compliance with terms of the clause-Contract Act, 1872, Ss. 51 to 54"

4. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED Vs. DATAR SWITCHGEAR LIMITED AND OTHERS reported in **(2018) 3 Supreme Court Cases 133**, wherein it is held as under:

"C. Contract and Specific Relief-Remedies/Relief-Remedies for Breach of Contract- Damages-Mitigation of loss- Reduction of compensation for non-mitigation of damages by injured party-Impermissibility of, when losses cannot be mitigated owing to the nature of goods

-Rejecting the contention that claimants did not make any efforts to mitigate the loss suffered, held, the objects in question were manufactured by R-2 to suit the specific needs of the appellant as they could not be used otherwise Therefore, there was no possibility on the part of R-2 to make an endeavour to dispose of the same in order to mitigate the losses."

127. All the above said citations are relied by the learned Senior counsel for plaintiff on the ground that how to compute damages in the case of present nature. However, before quantifying the damages, plaintiff has to establish that defendant is liable to pay the damages and then only quantification of damages would arise. In first of the above said citations, it is held that damages can be awarded to the contractor because when a contractor submits tender in response to an invitation to tender for a work contract, a reasonable expectation of profit is implicit in it and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract. As discussed earlier, the plaintiff has not produced

any material before the Court to show that there is breach of contract by the defendants to claim damages.

128. In the subsequent citations, how to compute damages is explained vividly. It is also explained in those citations that in case of unreasonable delay and if defendants are cause for such unreasonable delay, then plaintiff is entitled to claim damages.

129. In the instant case, as discussed earlier the question of quantification of damages does not arise at all. Furthermore, there is no delay on the part of defendants in the present case because the contract itself becomes infructuous because of collapse of the bridge within 37-38 days of commencement of the contract i.e., much earlier to closure of the tenure of contract, which was six months. It was not at all completed. Hence, those citations are not helpful for the plaintiff to substantiate his contention.

130. It is to be noted here that as discussed earlier since from beginning both parties agree that it is Turn-Key project and hence for each and every work aspect,

defendants need not issue notice to plaintiff and it is the entire responsibility of plaintiff to look after these facts, which he has not done.

131. Plaintiff intends to rely upon the evidence given by some of the witnesses in criminal case and has produced the said evidence. However, it is an admitted fact that the persons, who have given evidence before the Criminal Court are alive and they are within the reach of court. Under those circumstances, as per S.33 of the Indian Evidence Act, when the evidence given by a witness in criminal case, i.e., in a judicial proceeding is not confronted to him in the case, where plaintiff intends to rely upon it; plaintiff is not permitted to rely such evidence.

132. Reading of Section 33 of the Indian Evidence Act, 1872, at this juncture is very much relevant. It reads as follows:

"33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.- Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial

*proceeding, the truth of the facts which it states, **when the witness is dead, or cannot be found, or is incapable of giving evidence**, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case, the Court considers unreasonable:*

Provided-

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation. - A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section."

(Emphasis supplied)

133. According to this provision, evidence given by a witness in a judicial proceeding is relevant for the purpose of proving, in a subsequent judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.

134. In the instant case, as discussed earlier and as submitted by the learned Senior counsel for plaintiff, those witnesses were examined in parallel criminal proceedings akin to the time in which evidence in the present case is recorded. Hence, if defendants have not summoned those witnesses on their behalf, it was always open for plaintiff to summon them as their witnesses and to confront the evidence given by them in criminal case to rely upon their evidence given in criminal case.

135. It is the prerogative of defendants to examine any witness, which they deem fit. If intentionally defendants withhold the examination of those witnesses and plaintiff intends to rely upon their evidence, then the only course open for plaintiff to rely said evidence is summoning those witnesses and confronting the evidence given by them in criminal case. If the Court has not allowed the application for summoning, that it is not reasonable, or if such witness is not at all available, then the plaintiff could have relied

upon the evidence given by those witnesses in criminal case.

136. In the present case, without exhausting the said remedy open to plaintiff; mere production of the certified copies of depositions given by some of the witnesses in criminal case has no relevancy in this case and those depositions cannot be looked into in this case.

137. Furthermore, learned counsel for appellants/defendants would submit that in that criminal case, the negligence of plaintiff is proved and he was convicted and in this regard they have produced certified copy of judgment of the said case in CC No.219/2018 as per Ex.D.31.

138. Be it as may be, the plaintiff who approaches the Court initially has to establish his case; then only, the question of rebuttal from defendants would arise.

139. The above discussion reveals that plaintiff has not produced any iota of evidence to show that there is

breach of contract by defendants to claim compensation by way of damages from them.

140. Accordingly, point No.3 is answered in AFFIRMATIVE.

141. Answer to point No.4: Claim No.(A): The plaintiff claims reimbursement of loss of cost of the Ajax Concrete Machine of ₹.32,00,000/-.

142. Plaintiff's contention is that he has obtained these two Ajax concrete machines on hire basis for a period of 6 months and due to collapse of the bridge, those machines were drowned in the river and he could not return those machines. Those machines worth ₹.32,00,000/-. Plaintiff has to pay the price of said machines to owner who hired them to him.

143. In this regard, plaintiff has produced arbitral award as per Ex.P.20, which was filed by the plaintiff's Company and hence he claims said amount of ₹.29,12,500/- with 18% interest + arbitral costs, in total

₹.32,00,000/-. Apart from furnishing this arbitral award, plaintiff has produced Exs.P.42 to P.45. They are correspondence between plaintiff and BVSR Constructions Private Limited. Ex.P.45 is accompanied by Sales Certificate and certain invoices. Considering those documents, the learned Arbitrator has passed the award.

144. It is stated in this arbitral award that the lifespan of said machinery is 10 years and 10% depreciation is calculated for each year and thus 30% of the value i.e., ₹.8,73,750/- ought to have been deducted from said amount; thus, it would come to ₹.20,38,750/-.

145. Even though, there is such an observation in the arbitral award at para No.10, but in para No.11 finally learned arbitrator has passed the award for entire amount of ₹.29,12,500/-, which is apparently erroneous. Plaintiff has not challenged it. This itself shows the collusion between plaintiff and that BVSR Constructions Private Limited. Moreover defendants are not parties to the said arbitral award. Hence, at no stretch of imagination, said

arbitral award binds the defendants. Hence, this arbitral award as per Ex.P.20 will not be helpful for the plaintiff to prove their claim No.A.

146. Claim No.(B): The plaintiff claims reimbursement of rent for 2 Cranes (40 tons capacity) engaged for 1-½ month for ₹.54,00,000/-.

147. Plaintiff claimed that the learned Arbitrator has passed the award in respect of ₹.49,00,000/- after deducting deposit amount of ₹.5,00,000/-. Thus, plaintiff claimed ₹.54,00,000/- from defendants.

148. Plaintiff claims that this agreement was taken place between plaintiff and Ravi Crane Company. In this regard, he has produced Ex.P.21-the Arbitral Award. This is in between plaintiff and one M/s.Ravi Cranes. As per this arbitral award, plaintiff utilized the cranes for 1-½ months, thus, he has to repay the hire charges of those cranes to said Ravi Cranes amounting to ₹.49,00,000/- because already he has received ₹.5,00,000/- as an advance amount.

149. The defendants are not parties to this arbitral award. Plaintiff has produced the correspondence between him and Ravi Cranes as per Exs.P.46 to P.53. However, the author of these documents is not examined. Further, they only reveal the correspondence between the plaintiff and said Ravi Cranes. The regular formal agreement between them is not produced. Hence, this arbitral award as per Ex.P.21 will not be helpful for the plaintiff to prove their claim No.B.

150. Claim No.(C): Plaintiff has claimed reimbursement of loss of cost of 2 Generators of 220 KV capacity of ₹.16,00,000/-.

151. The plaintiff contended that there is an arbitral award as per Ex.P.22 between him and M/s.Delight Electricals represented by its authorized signatory.

152. In this regard, plaintiff has produced the arbitral award as per Ex.P.22 and correspondence between him and M/s. Delight Electricals as per Exs.P.54 to P.59. Admittedly, defendants are not parties to the arbitral award. Hence,

anything that conspires between plaintiff and his suppliers does not bind the defendants. Exs.P.54 to P.59 are only correspondence between those parties and there is no formal agreement between them produced in this case. Further, the author of those documents is also not examined.

153. On the other hand, in all these correspondence, it is the plaintiff who has approached the arbitrator. Generally, the claimant would suggest for appointment of Arbitrator, but in this case it is the plaintiff, who has suggested the name of Arbitrator and prayed for arbitration between him and his alleged suppliers of machines, which appears to be strange. Hence, this arbitral award as per Ex.P.22 will not helpful for the plaintiff to prove their claim No.C. For these reasons, plaintiff is not entitled to claim said amount from defendants.

154. Claim No.(H & I): The plaintiff has claimed reimbursement of loss of HT Cables (TATA), HDPE Pipes & Grouting Pump (1) including expansion joints

(₹.88,58,790/- and reimbursement of loss of cost of cables stressing and distressing with hydraulic jacks and pumps (4), 4 Nos. of lifting jacks, 4 Nos. of trolleys ₹.26,00,000/-.

155. According to plaintiff, there is an arbitral award between him and and M/s.Murali and Company for supply of HDPE Pipes, HT Cables and Machineries (TATA), HDPE pipes and grouting pump. Thus, it is alleged that there is agreement between plaintiff and Murali and Company for supply of cables and machineries.

156. According to plaintiff, the said Murali and Company have supplied the cables and in that regard this arbitral award as per Ex.P.23 was passed in respect of claim of plaintiff's supplier for a sum of ₹.1,14,58,790/- with interest at 18% per annum. Plaintiff has to pay the said amount to his suppliers and hence he claims that he is entitled for reimbursement of said amount from defendants.

157. In this regard, plaintiff has produced correspondence between him and said Murali and Company as per Exs.P.88 to P.94. They are only the correspondence

between plaintiff and Murali and Company and not the agreement between them. Defendants are not party to any of these correspondence and furthermore the author of these documents i.e., Murali and Company is not examined. Further, defendants are not parties to the arbitral award.

158. Under these circumstances, only based on Ex.P.23 and Ex.P.88 to P.94, the plaintiff is unable to prove his claim in respect of H and I claim.

159. Plaintiff has produced these arbitral awards as per Ex.P.20 to P.23 and some correspondence between plaintiff and his alleged suppliers, But defendants are not parties to these awards. Furthermore, none of the above suppliers were examined by the plaintiff to prove those claims. Furthermore, as discussed earlier, plaintiff has not produced any, material to show that there was breach of contract on the part of defendants to claim damages from them. Furthermore, apparently it appears there is collusion between plaintiff and the other alleged suppliers of plaintiff. For all these arbitral awards, only a single Arbitrator was

appointed. The reasoning in all the arbitral awards are almost one and the same. Thus, it appears that there is nexus between plaintiff and the alleged hirers.

160. Based on these documents, definitely, claim of plaintiff for claims of (A), (B), (C), (H) and (I) cannot be granted.

161. Claim No.(D): The plaintiff has claimed reimbursement of loss towards Girder Built up with 4 Nos. of ISMB 600 and secondary ISMB and other items (Rate includes cost of steel girders fabrication, centering, shuttering and transport charges) ₹.1,08,00,000/-.

162. As far as claim No.(D) is concerned, plaintiff contended that there is an arbitral award, but it is not being produced. Except producing some correspondence as per Exs.P.60 to P.66 between plaintiff and one Devinder Sahu Suppliers and Fabricators, the agreement between plaintiff and said Devender Sahu Suppliers is not produced. The arbitral award is also not produced. Some invoices are produced, which could not be looked into without examining

the author of those documents. This is more so when defendants are not parties to any of these documents. Hence, plaintiff fails to prove his claim on claim No.D.

163. Claim No.(E): The plaintiff has claimed reimbursement of loss of cost of HYSD Steel Bars placed in position for 24 meters length of deck slab including fabrication and centering charges of ₹.53,97,875/-.

164. In this regard, plaintiff relies on Ex.P.122, which is only a calculation sheet with some receipts and it do not reveal the actual payment or what was the actual correspondence between plaintiff and his hirer to get this compensation. Exs.P.114 to P.117 are invoices to show that, Murali and Company has purchased some single slab steel type expansion joint system machineries. But merely because that Murali and Company has purchased those machineries; that cannot be a ground to decree the suit of plaintiff against defendants, as defendants are not parties to those invoices. In these invoices, it is stated that Murali and Company has supplied the articles to Anegundi Bridge

on 18.12.2008. In these bills, name of plaintiff's Company is not forthcoming. It is only between Ameenji Rubber Private Limited and Murali and Company. How these bills are helpful for plaintiff to prove his claim is not forthcoming. Only at Ex.P.117, there is a bill issued to plaintiff for Vizag Steel Profiles (HYD) Private Limited and not between plaintiff and Murali and Company. Hence, these documents do not establish the claim of plaintiff in respect of claim No.(E).

165. Likewise Exs.P.118 to P.121 are the correspondence between plaintiff and one Prabhakar Bar Benders. It is only approximate cost of the articles mentioned in Ex.P.122 and that cannot be a ground to grant decree the suit against defendants.

166. Claim No.(F) & (G): The plaintiff has claimed reimbursement of loss of cost of concrete portion of deck slab (6 meter in length, including material, labour charges, collapsed and submerged in the river) amounting to

₹.15,39,268/-; and reimbursement of loss of welding machine amounting to ₹.16,00,000/-.

167. These two claims are based on Ex.P.123 and Ex.P.94. Ex.P.123 is the alleged cash voucher, but amount everything is kept blank. Ex.P.123 is given by plaintiff to one Prabhakar for having received the advance amount of ₹.5,00,000/-, ₹.7,00,000/-, etc. These are only the cash vouchers between plaintiff, Prabhakar and one Narasimha, Devender Sahu, but none of them were examined to prove these documents. Hence, these documents will not helpful for the plaintiff to prove his claim No.F & G.

168. Claim No.(J): The plaintiff claimed reimbursement of loss of rent for 4 Tippers for 1-½ months amounting to ₹.7,20,000/-.

169. In this regard, P.W.1 has produced correspondence letters between him and the tipper lorry owner and also produced vouchers as per Ex.P.123 claiming that he spent such amount towards hiring of Tipper lorries. P.W.1 has not examined the person, who hired those

vehicles and not produced proper materials except producing some vouchers to show that he has paid ₹.7,20,000/- to the hirer. Hence, he is not entitled to claim this amount.

170. Claim No.(K): The claim of plaintiff is reimbursement of loss in respect of profit at 15% per annum totally amounting to ₹.1,03,50,000/-.

171. Plaintiff contended that when he entered into a Government contract, there was a reasonable expectation for him to get profit and it should be at least 15% of the contract work, but because of non-execution of total project he could not get any profit. Hence, he is entitled for the aforesaid amount.

172. It should be noted here that in the above paragraphs we have already made discussion that it is only because of lapse on the part of the contractor and plaintiff in executing the work improperly, the bridge was collapsed. Hence, he cannot be profited for his own loss. Hence, we

are of the considered opinion that he is not entitled for this claim-K.

173. Claim No.(L): The plaintiff has claimed reimbursement of loss towards overhead charges at 25% amounting to ₹.1,72,50,000/-.

174. As far as reimbursement of loss towards overhead charges, the Trial Court initially has granted ₹.35,96,585/- under this head. After reviewing the order, the Trial Court has granted ₹.1,72,50,000/- by relying upon some judgments of Hon'ble Supreme Court. However, the facts and circumstances of those cases are entirely different from the present case.

175. Learned counsel for plaintiff/respondent placed reliance on the following judgments:

1. MCDERMOTT INTERNATIONAL INC. VS. Burn Standard Co. Ltd., (2006) 11 SCC 181, wherein it is held as under:

"H. Contract Act, 1872-S. 55-Compensation for delay in performance –Entitlement to- Need for service of notice on promisor in respect of such compensation, if any-On facts, though the contract had a time-limit for performance, held, that did not imply that the promisee

should have repudiated the contract as soon as the time-limit had expired - The contract not being one where time was of the essence, it was not voidable for delay, but compensation was payable, and for the same no notice was required to be served on the promisor."

"Method for computation of damages

102. *What should, however, be the method of computation of damages is a question which now arises for consideration. Before we advert to the rival contentions of the parties in this behalf, we may notice that in M.N. Gangappa v. Atmakur Nagabhushanam Setty & Co. [(1973) 3 SCC 406] this Court held that the method used for computation of damages will depend upon the facts and circumstances of each case.*

102-A. *In the assessment of damages, the court must consider only strict legal obligations, and not the expectations, however reasonable, of one contractor that the other will do something that he has assumed no legal obligation to do. (See Lavarack v. Woods of Colchester Ltd. [(1967) 1 QB 278 : (1966) 3 All ER 683 : (1966) 3 WLR 706 (CA)] , All ER p. 690 G.)"*

"106. We do not intend to delve deep into the matter as it is an accepted position that different formulae can be applied in different circumstances and the question as to whether damages should be computed by taking recourse to one or the other formula, having regard to the facts and circumstances of a particular case, would eminently fall within the domain of the arbitrator.

107. If the learned arbitrator, therefore, applied the Emden Formula in assessing the amount of damages, he cannot be said to have committed an error warranting interference by this Court."

2. Associate Builders VS. Delhi Development Authority (2015) 3 SCC 49, wherein it is held as under:

J. *Arbitration and Conciliation Act, 1996-Ss. 34 and 28(3) -Exception clause in contract providing that no damages arising out of "unavoidable delay" would be*

payable-Damages claimed by promisor for delay in execution of contract/prolongation of contract attributable to promise-Delay found to be entirely avoidable and caused solely by promise-Furthermore, respondent promisee did not properly invoke the exception clause as per its own terms-Thus, held, arbitrator committed no error in awarding the damages claimed - There was no violation of the exception clause (Clause 22)-Contract and Specific Relief-Contractual Obligations and Rights-Exemption/Exclusion/Restriction Clauses/Negative Covenants-Application of-Compliance with terms of the clause-Contract Act, 1872, Ss. 51 to 54

3. Maharashtra State Electricity Distribution Company Limited. v. Datar Switchgear Ltd., (2018) 3 SCC 133, wherein it is held as under:

Award of damages

61. *Refuting the argument of the appellant that there was no breach in respect of 17,294 installed objects and, therefore, no damages were payable in that behalf, Mr Dada pointed out that the appellant had itself submitted before the Arbitral Tribunal as under:*

"The respondents submitted that the claimants at the most would be entitled to the costs of the objects installed i.e. cost of 17,294 contract objects. Alternatively it was submitted that the claimants would be entitled to lease rent for reasonable period after deducting the cost of maintenance and taking out of printouts."

He also pointed out that identical submission is to be found in the written submissions filed by the appellant before the Arbitral Tribunal at para 13. According to him, the arbitrators accepted the said submission of the appellant and awarded damages. The appellant is, therefore, not at all entitled to invoke public policy to challenge the award on the said premise. This aspect has been considered by the Division Bench at para 73, which has already been reproduced above.

62. *We see substance in the contention of Respondent 2 and are of the opinion that the appellant cannot now*

turn around and raise objection to the award of damages which are measured having regard to the loss suffered by Respondent 2 in terms of lease rent for reasonable period for which it would have been entitled to otherwise.

63. *That apart, we also find that the Arbitral Tribunal, while awarding the damages, has relied upon the judgment of this Court in Union of India v. Sugauli Sugar Works (P) Ltd. [Union of India v. Sugauli Sugar Works (P) Ltd., (1976) 3 SCC 32] wherein a cardinal principle of damages had been laid down to the effect that the injured party should be placed in as good a position as money could do as if the contract had been performed. The following passage from the said judgment was kept in mind by the Arbitral Tribunal: (SCC p. 36, para 22)*

"22. The market rate is a presumptive test because it is the general intention of the law that, in giving damages, for breach of contract, the party complaining should, so far as it can be done by money, be placed in the same position as he would have been in if the contract had been performed. The rule as to market price is intended to secure only an indemnity to the purchaser. The market value is taken because it is presumed to be the true value of the goods to the purchaser. One of the principles for award of damages is that as far as possible he who has proved a breach of a bargain to supply what he has contracted to get is to be placed as far as money can do it, in as good a situation as if the contract had been performed. The fundamental basis thus is compensation for the pecuniary loss which naturally flows from the breach. Therefore, the principle is that as far as possible the injured party should be placed in as good a situation as if the contract had been performed. In other words, it is to provide compensation for pecuniary loss which naturally flows from the breach. The High Court correctly applied these principles and adopted the contract price in the facts and circumstances of the case as the correct basis for compensation."

176. Learned counsel for plaintiff/respondent placed reliance on the above said citations to compute overhead charges. However, for the reasons stated above, plaintiff/respondent is not entitled for overhead charges itself. Hence, computation of the same does not arise.

177. Claim No.(M): Plaintiff claims reimbursement of EMD at ₹.6,90,000/- which he has paid at the time of commencement of the agreement as a pre-condition for participation in the bid.

178. It is to be noted here that as discussed earlier, the bridge was collapsed mainly because of the plaintiff and under those circumstances defendants have rightly exercised their power of forfeiture as mentioned in the agreement and forfeited this EMD of ₹.6,90,000/-, which cannot be refunded. However, the learned Trial Judge has granted this amount on the contention that the bridge was collapsed due to misrepresentation on the part of defendants, which was not at all pleaded or proved by the

plaintiff. Hence, the plaintiff failed to prove their claim No.(M).

179. For the above reasons, we are of the considered opinion that the plaintiff is not entitled for any claim made by him in Claim Nos.(A) to (M). Accordingly point No.4 is answered in NEGATIVE.

180. As far as Commercial Appeal No.100019/2021 is concerned, the appellants have filed this appeal to consider their Counter-Claim and to decree their Counter-Claim.

181. It is to be noted here that along with I.A.No.6, the defendants have filed additional written statement by way of Counter-Claim before the Trial Court and Trial Court has rejected I.A.No.6 and not permitted defendants to file additional written statement by way of Counter-Claim.

182. Said orders on I.A.No.VI was challenged before this Court in WP No.103266/2016 and WP No.103682/2016 and by order dated 27.09.2016, this Court has rejected the prayer of defendants to file additional written statement by

way of Counter-Claim and dismissed those writ petitions by confirming the order passed on I.A.No.6 by the Trial Court and they were not permitted to amend the written statement as prayed in I.A.No.6 and not permitted to pray for Counter-Claim, as it is time-barred. The said decision became final. Under those circumstances, again considering the Counter-Claim of defendants does not arise. Hence, Commercial Appeal No.100019/2021 does not survive for consideration.

183. For the above reasons, the judgment and decree along with orders passed on review petition by the Trial Court is highly erroneous and thus it requires interference.

184. Answer to point No.5: In view of our findings on above points, we pass the following:

ORDER

1. Commercial Appeal No.100018/2021 filed by the defendants under Section 13(1) of Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015 is

allowed by setting aside the judgment and decree dated 20.02.2021 in Commercial O.S.No.2/2020 on the file of Principal District Judge, Koppal and also orders passed in Civil Review Petition No.1/2021 dated 08.07.2021;

2. Suit of the plaintiff is dismissed with costs throughout;
3. Commercial Appeal No.100019/2021 filed by the defendants under Section 13(1) of Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015 claiming Counter-Claim is dismissed.

Sd/-
(S G PANDIT)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE

Sh
CT:VP