

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.86 OF 2010

1. State of Goa,
through the Chief Secretary,
having office at Secretariat,
Porvorim, Goa. ... Appellants

V e r s u s

M/s. Sneha Constructions
Engineers & Contractors
A registered partnership from
having its office at House No. 26,
Duler, Mapusa, Bardez-Goa,
through its partners,
Mr. K. V. Hareendran and
Mr. K. M. Gopinath. ... Respondents

Ms. Susan Linhares, Addl. Government Advocate for the
Appellant.

Shri Nitin Sardesai, Senior Advocate with Ms. Neha Shirodkar,
Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Reserved for Judgment on : 29 June 2018
Judgment Pronounced on : 6 July 2018

JUDGMENT

This is an appeal by the State challenging the
Judgment and order dated 12.11.2009 passed by the District
Judge-II, North Goa, Panaji, pursuant to which the learned

Judge partly allowed the suit filed by the respondent and directed the appellant to pay to the respondent an amount of ₹43,03,412.92 alongwith interest at the rate of 15% per annum from 17.04.2003.

2. In the brief facts of the case, tenders were invited by the State for the work of improvement and drainage system at main nullah at Naikvadda in the Village Panchayat of Mandrem and the tender was ordered to the respondents at the cost of ₹19,85,115/-. The time for completion of the work was 150 days. The respondents have filed the suit for declaration and recovery of money against them claiming that due to delay, the variations and hindrances caused by the appellants, there was a breach of the condition of the contract and the work could not be completed in time. The appellant however raised a plea that the suit was barred by limitation and that the respondents have not carried out the work in a planned manner causing delay followed by a show cause notice to show cause why the contract should not be terminated for the delay. Nonetheless, the learned District Judge partly allowed the suit and held the appellants liable to pay ₹43,03,412.92 and directed them to pay the said amount with interest at 15% per annum.

3. The appellants felt aggrieved and assailed the judgment and order on the ground that it was contrary to law, passed without considering the documents and evidence on record. The learned District Judge had erred in holding that the suit was not barred by the law of limitation and it ought to have appreciated that the contract came to end on 31.05.2002 and no suit could have been filed for recovery of money after three years from the time when the amount claimed became due. The learned District Judge erred in awarding the claim of the respondents based on the books produced by them. The learned District Judge did not appreciate that no reliance could be placed on the said measurement book since it was not signed by the appellants as required. The learned District Judge erred in awarding the claim no.6 to the respondents on account of loss of profit and business opportunity to them and awarded the same on the basis of conjunctures and surmises and in the absence of any evidence to substantiate the same. The learned District Judge erred in awarding the claim no.7 to the respondents on account of idleness caused to their machinery and to award interest at the rate of 15% per annum. The impugned Judgment and Order was thus liable to be interfered with and quashed and set aside and the Appeal had to be allowed.

4. Ms. Susan Linhares, learned Addl. Government Advocate came to be heard on behalf of the appellants who contended that the work order was issued to the respondents in 2001 pursuant to which they had to complete the work within 150 days including the monsoon period and accordingly an agreement was entered into between them. Clause (2) thereof provided for compensation for delay and therefore time was of the essence of the contract. The respondents had not completed the work within the time-frame and quite on the contrary the wall constructed by them had collapsed. She referred to the affidavit filed on behalf of the appellants in which the Assistant Engineer had reiterated their case. She adverted to his evidence tested on the touchstone of cross examination where he had prepared the estimate on the basis of his experience of several years and on inquiries with the local people to buttress her claim. There were letters written to the respondents particularly as regards the sub-standard quality and poor workmanship in the execution of the work, referred to the documents produced alongwith the evidence including the running account bills and submitted that the learned District Judge could not have decreed the suit in the respondents' favour. The respondents had raised the bills beyond limitation on 02.04.2004 and filed the suit only on 19.06.2007 which was beyond limitation. No evidence was led

by the respondents on the claims nos.3 to 9. Ms. Linhares, learned Addl. Government Advocate, next adverted to the impugned Judgment, canvassed a plea that the measurement book was not signed and that the contract with the respondents ended on 31.05.2002. The impugned Judgment had therefore to be reversed and the Appeal had to be allowed.

5. Shri Nitin N. Sardessai, learned Senior Advocate for the respondents submitted that a joint inspection was carried out at the instance of the appellants. There was evidence on record to show that the wall along the nallah was built by them and there was weekly check on the construction as per the specific requirement. The agreement in any event did not evidence when the contract stood concluded and therefore there was no basis in the contention that the agreement was said to have been terminated. He referred to the agreement and its various clauses and in particular clause (5) which dealt with the extension of time for completion of the work on the ground that the contractor had been unavoidably hindered in the execution of the work. Clause No.8 of the Agreement required the respondents to submit the bills on a monthly basis in respect of all the works executed in

the previous months. He invited attention to the affidavit of the respondents pursuant to which there was a clear assertion that though the work was commenced in right earnest as per the issuance of the work order, the date of the contract was extended on account of the additional work. It was also not the case of the appellants that the work was not done. The collapse of the wall was due to shrinkage and not in the normal course. The delay which occurred in completing the contract was on account of the vagaries of nature and not due to any fault of the respondents. If at all time was of the essence of the contract, then the work had to be stopped which was not the case. A plea was raised for the first time in 2004 that the work was not done by the respondents.

6. Shri N. N. Sardesai, learned Senior Advocate referred to the evidence of the appellants and inviting attention to the various letters produced on record, showed that the appellant had admitted to the continuance of the agreement. He placed reliance in M/s. R. P. Souza & Co. vs. The Chief Engineer & Ors. [1999 (2) GLT 142] to meet the contention on behalf of the appellants that the suit was barred by limitation when the cause of action had arisen in their favour only in 2004. He placed reliance in M/s. Hind Constructions Contractors by its Sole Proprietor Bhikamchand Mulchand Jain (Dead) by LRs vs.

State of Maharashtra [(1979) 2 SCC 70], M/s. A. T. Brij Paul vs State or Gujarat [1984(4) SCC 59],MSK Projects India (JV) Limited vs. State of Rajasthan & anr. [(2011) 10 SCC 573] and Food Corporation of India & Ors. vs. Vikas Majdoor Kamdar Sahkari Mandli Limited [(2007) 13 SCC 544] to meet the contention on behalf of the appellants that the time was the essence of the contract. He adverted to the evidence of Rangaraju and submitted that it failed to inspire confidence even considering a stray statement that he had relied on the experience of the people in the locality to prepare the estimate. It was his contention that time was not of the essence of the contract and therefore the suit as filed by them was not barred by limitation and they were entitled to the amount awarded by the learned District Judge.

7. Ms. S. Linhares, learned Addl. Government Advocate in reply contended that the work assigned to the respondents was of the construction of a drainage to the nullah which work done by the respondents was of a sub-standard quality. They could also not be encouraged to be benefited from the work not done as per the time frame. She too adverted to the correspondence exchanged between the parties and submitted that it was for the respondents to improve the quality of his workmanship which was not the

case here. The respondents had also not come forth for a joint inspection. The respondents were not entitled to the claim nos.7 and 8 and as delay could not be attributed to the Department. The interest which had been awarded in their favour was rather too high and at the highest they were entitled to the interest at the rate of 8%. The Appeal had therefore to be allowed and the impugned judgment had to be quashed and set aside.

8. The respondents as the original-plaintiffs had set out a case that pursuant to the tenders invited by the appellants herein in February 2001 for the work of improvement and drainage system of nullah, they offered the tender which was accepted and the work was awarded to them vide the letter dated 09.02.2001 providing the time limit of 150 days excluding the monsoon period. An agreement was entered into dated 09.03.2001 with the appellants and the date of commencement of the work was 15th day after the work order and which was to be completed by 19.12.2001. It was their case that there were considerable delays, variations and hindrances caused to the work by the Water Resources Department thereby committing breach of contract and that work could not progress. They had however secured the completion of a substantial quantum of work by 19.12.2001.

Initially, they had to do the excavation work and then carry out the random rubble masonry. They had commenced the work in right earnest on issuance of the work order. However, as the work progressed, the Water Resource Department had observed that the quantity provided under no.1 was insufficient and they were asked to give their consent to get the extra quantity at their quoted rates. They did not undertake the work of construction of the random rubble masonry during the pre-monsoon work season of 2001 as they did not take up the construction of the second item right from day one and they had an apprehension about the sufficiency of structural design stability. No drawings of work were appended to the tender. The work was executed and completed under the direct supervision and control of their Engineers without any objections or defects. They had realised that the construction of the wall would get backfilled automatically during the rainy season and the dry random rubble wall could seldom withstand the earth retention pressure and conveyed their apprehension to the appellants. Despite informing the appellants, they were directed to proceed with the work as per the agreement items specifications.

9. The respondents further pleaded that a show cause

notice was issued by the appellants dated 23.01.2002 why the contract should not be terminated but by their reply dated 05.03.2002, the respondents had conveyed that the work was done at the risk of the Department and as they had ignored the structural liability of the wall. They were told by the appellants to go ahead with the work as per the agreement specifications. A substantial length of the retaining wall had collapsed during the first rains around 12.06.2002 as apprehended by them which the appellants had identified as due to shrinkage of the earth. They were also not paid though the measurements were recorded by the appellants. They had completed the construction of the entire boulder wall on both the sides of the nullah from January 2002 till the end of May 2002 and documented by their letter dated 17.06.2002. The appellants had allowed them to complete the work and even recorded the measurements without pointing out any defects. It was an usual practice in the Department to prepare all the running account bills and final bills based on the measurements recorded by them and there was no practice for the respondents to prepare and submit any bills.

10. The appellants by their letter dated 09.01.2002 had conveyed that the construction of the boulder wall would only commence in January 2002. Time was not of the essence

of the contract at the initial fixing of time on 23.03.2001 as the date of commencement of work was nominal. The appellants by their conduct of waiver and acquiescence had allowed and they had carried out their work by May 2002 without any objections and without raising their right to levy compensation. The appellants by their letter dated 20.04.2004 for the first time denied their case that they had completed the work in all respects and called upon them for joint measurement at site on 04.05.2004. It was not feasible for them to attend the joint measurement on 04.05.2004 as by then the constructed wall had collapsed to the extent of 95% on account of the previous two monsoons.

11. The appellants were bound to make monthly payments for the value of the work executed under clause no.7 of the Contract which they failed to do inspite of the requests causing financial hardship apart from losses to them. They had pointed out several difficulties to the appellants and ultimately they were constrained to issue a legal notice as there was no response from the appellants and to file the present suit. In case the appellants had made the deposits and payments from time to time, they could have utilised the same for more work and to earn the profits. They raised various claims on different heads and prayed for the relief of

declaration that time was not of the essence of the contract, that the notice dated 15.05.2007 was unreasonable, arbitrary and illegal, to restrain the appellants from terminating the contract and for payment of the outstanding claim amounts.

12. The appellants in their statement had taken the plea of bar of limitation and that no cause of action arose in their favour as pleaded by them. The final claim raised by the respondents was pursuant to a letter dated 02.02.2004 which was beyond limitation and the suit was therefore liable for dismissal. They had handed over the site to the respondents on 19.03.2001 and the respondents completed the work of ₹10,74,375/- upto 24.05.2001. Had the respondents carried out the works by maintaining the quality, the retaining wall could not have collapsed which it did on account of poor quality of the work. They reiterated that the collapse of the wall was primarily on account of sub-standard quality of work. It was their case in defence that they had called upon the respondents to attend joint measurements on three different occasions but there was no response from the respondents.

13. Time was the essence of the contract which the respondents failed to abide by and instead delayed the execution of the work. The respondents were liable to pay the

compensation for non-execution of the work within the stipulated time. They had paid the running bills 1 and 2 for the work executed by the respondents to the satisfaction of the Department. The other work was of sub-standard quality and was therefore not paid. The respondents were called upon to rectify the damaged portion of the wall which they failed to do after the monsoon which was more on account of the sub-standard quality of work executed by them. There were no breaches on their part which could cause financial hardship and difficulty to the respondents. The respondents had to raise the bills as per the contract upon the execution of the work. They had not raised any bills after the first two and as such no question arose of making any payment to them. The respondents were not entitled to any of the claims raised by them and thus the suit was liable for dismissal.

14. i have considered the submissions of Ms. S. Linhares, learned Additional Government Advocate appearing for the appellants and Shri Nitin Sardessai, learned Senior Advocate appearing for the respondents, the judgments relied upon and in the light of the material on record, proceed to assess the material and decide the appeal appropriately.

15. Ms. Linhares, learned Additional Government

Advocate had invited attention to the tender pursuant to which the respondents were required to read the specifications, study the working drawn carefully before submitting the tender and acquaint with the work and working condition of the site and locality. Besides, she had invited attention to the tenders pursuant to which the tendered contractor was to consider the nature of the work and the description of the various items which he was required to observe. However, it would not absolve the liability of the State of its corresponding obligation as per the agreement entered into between them. Admittedly, the tender was awarded to the respondent on 09.03.2001 and work order issued consequent to which it was allowed the time of 150 days excluding the period for carrying out the assigned work. Although an attempt was made by Ms. Linhares, learned Additional Government to show from the agreement that time was the essence of the contract, Ms. Shirodkar, learned Advocate for the respondents had shown from the very same agreement that there was an implied extension of time and the period extended by the correspondence exchanged between the parties.

16. Ms. Linhares, learned Additional Government Advocate also tried to take benefit of clause 17 of the agreement to canvass that if there was any damage to the

work while in progress from any cause whatsoever or that if any defect, shrinkage or other faults appear in the work within six months, the contractor was to make the same good at his expense to meet the contention on behalf of the respondents that the collapse of the wall was not due to any sub-standard quality of construction but on account of the shrinkage of the soil and the monsoons and for which the respondents could not be held liable. The work was admittedly started in March 2001 which was to end in December 2001 and for which the Contractor was paid for the work done till May 2001. The respondents had invited attention of the Executive Engineer that the earth work excavation had already been carried out in May before the monsoons and that they intended to carry out the work of random rubble masonry. Vide their letter dated 18.09.2001 they informed the appellants' Engineer that the sites were slushy and of loose earth and dry pitching will not withstand and there were chances of collapsing and therefore a strong retaining wall was necessary to retain the slushy and loose earth.

17. The respondents had expressed their willingness to execute the work of constructing a retaining wall in rubble masonry with cement mortar and as per the rates derived

under the agreement and to convey the approval with immediate effect. However, it does not appear that there was any response to this letter made by the respondents and in that context they had even sent a reminder to the appellants. Quite on the contrary, the appellants had written to the respondents to re-start the work immediately vide their letter dated 09.01.2002 which by itself militates against the case of the appellants that time was the essence of the contract. Ms. Linhares, learned Additional Government Advocate invited attention to the notice dated 23.01.2002 which came to be issued to the respondents for initiating action against them for failure to complete the work within the stipulated time. A further letter was addressed to the respondents dated 15.03.2002 wherein the appellants themselves had through their Engineer confirmed that the rubble wall as provided in the agreement was safe and under no condition it was going to be failed provided the quality of work which the respondents were executing was as per specification. She invited attention to another letter addressed to the respondents dated 17.06.2002 wherein the appellants' Engineer had observed that the laterite masonry wall constructed by the respondents along both the banks of the nullah had collapsed at several places and it was likely that the walls may collapse at other places also which was attributable due to the shrinkage of

earth/cracks developed on the filled-up surface behind the walls and directed the respondents to attend the site immediately and rectify the damage.

18. Ms. N. Shirodkar, learned Advocate for the respondents had rightly pointed out to the letter of the respondents dated 05.03.2002 addressed to the Appellants' Engineer whereunder they had invited attention to their earlier resolution dated 18.09.2001 and 09.01.2002 after ascertaining the site conditions and confirmed that they had started working as per the agreement and assuring to complete the work by the end of April 2002. The reply of the appellants dated 15.03.2002 was in clear acquiescence to the tender period and once again showing that time was not the essence of the contract. Besides the letter of the appellants' Engineer to the respondents confirms that they had admitted of the construction of the work for the tender terms and that the collapse which was attributed to them was due to the shrinkage of the earth. At no point of time till then were any attempts made on behalf of the appellants to take joint measurements at site.

19. The respondents as the original-plaintiffs through their Contractor Hareendran had spelt out the tender process,

that they had commenced the work in right earnest on the issue of the work order, that they had agreed by letter dated 02.05.2001 to take up additional quantity of earth work which was done by them and they were paid in two running account bills. They had not undertaken the work of construction of the random rubble masonry on account of the apprehension about the sufficiency of structural design stability of the work intended to be done and that no drawings of the work being executed were appended to the tender nor to the contract. They were working as per the instructions and guidelines of the Engineers at site. They had made their apprehension clear to the office of the appellants by their letter dated 18.09.2001 and 09.01.2002 for construction of the random rubble masonry wall but the appellants' Engineer did not respond and had directed them to proceed with the work as per agreement item specifications. A substantial portion of the retaining wall had collapsed during the first rains around 12.06.2002 for which the cause had been identified by the appellants themselves as shrinkage of earth. They had written several letters to the appellants apart from oral communication to settle and pay the huge amounts to them for the work done/completed but, there was no heed at the instance on the appellants. The appellants were bound to make monthly payments for the value of the work executed in terms of the

agreement despite which there was a breach of contract by the appellants themselves. There was no continuous correspondence with the appellants and ultimately they were constrained to file the suit raising various claims against the appellants which they were bound to settle.

20. Hareendran in his cross examination maintained that the Department had to handover the contract drawings to execute the work but which were never issued by the department but they were only shown sketches of the work to be executed by one Rangaraju and a Junior Engineer. There was no rebuttal of his testimony despite his cross examination at length. His witness Salim Ali Shah (Pw.3) too had stated that he was contacted by the respondents to opine on the structural design and the stability aspect of the bank protection wall which was awarded to them. He had inspected the site of the nullah at Mandrem to carry out the survey and given his findings. He had accordingly advised Hareendran on the nature of the work and advised that it was unsafe to execute the work of bank protection wall based on the specifications described in item no.2 of the said schedule. The respondents were instrumental in writing to the appellants on 18.01.2009 on his advice placing before them that the sides of the nullah were slushy and of loose earth and there were

chances of collapsing and getting backfilled.

21. The appellants had examined their Engineer Rangaraju (Dw.1) who reiterated his case on oath as spelt out in the defence but, while under cross examination, he relented that the estimate was prepared based on the inquiry of the local people residing at the bank of the nullah and their several years experience when it should have been his experience backed by his technical knowledge and not hearsay of the local people. It is another matter that he could not remember the names of the persons with whom he had made such inquiries. He had otherwise admitted that there was a reciprocal contract in terms of which the contractor had to do the progressive work and the department had to pay monthly regular fees. He had prepared the bill as and when the respondents approached the office despite their duty that they had to pay the bill once in a month as per the agreement. He also admitted that he had not made any letter to the respondents that the work was not done as per the specifications and materially that he had not recorded any observations during his site visit in the site order book as regards the quality of work.

22. Rangaraju (Dw.1) also admitted that although the

show cause notice dated 23.01.2002 was issued to the respondents, they had not taken any consequential action since they had already started the work and despite which claimed that it was not within his power to extend the time of work. There was also an admission at his instance that they had not paid any bills for the month of January and February 2002 nor had sent any notice with reference to the so called unsatisfactory work executed by the respondents. Yet, he denied the suggestion that no notice was issued by the department as the work was satisfactory. This was all the evidence brought on record by the appellants to rebut the case of the appellants on the various claims raised by them.

23. Ms. Neha Shirodkar, learned Advocate appearing for the respondents invited attention to the various letters dated 05.08.2002, 24.02.2003, 17.04.2003, 29.07.2003, 15.10.2003 and 02.06.2004 to show the attempts made by the respondents to draw the attention of the appellants that they had carried out the entire work in accordance with the specification of the agreement and as per the directions and supervision of their Engineers and also clarifying to the department that the side needed a heavy retaining wall in cement mortar to make the wall safe and durable and the cost of damages caused was not attributable to them. They had

prevailed upon the appellants to settle the dues and in accordance with the specifications and directives and despite which there was no response from the office of the appellants. The appellants for the first time by their letter dated 20.04.2004 denied that they had completed the work as per the agreement and instead asked them to attend the office for taking joint measurements of the work done by them that was more than two years later. It was completely lost on the appellants that such a wall would not be available with the passage of more than two monsoons later. A show cause notice was issued to the respondents for the first time in 2007. In any event, the appellants were not able to show from any material on record that the suit was barred by limitation and the respondents had otherwise categorically asserted that the appellants having made the payments under the two running account bills and the other amounts being open for finalisation, time would not start to run and therefore the case was not barred by limitation.

24. In R. P. Souza (supra) a learned Single Judge held that the period of limitation is three years from the finalisation of the final appeal and not three years from the completion of the bill. It held at para 10, as below :

“10. It cannot be disputed that once the

work of construction entrusted by the respondents to a contractor is completed, it would be the duty of the respondents themselves to see to it that the final bill in relation to the dues payable to such contractor in respect of the work is prepared and paid within reasonable time from the date of completion of such work, unless otherwise there are justifiable reasons for delaying the preparation and/or payment of the final bill. It has been clearly observed in the matter of Major(Retd.) Inder Singh Rekhi vs. Delhi Development Authority's case (supra) that on completion of work, a right to get payment would normally arise in favour of the contractor. In other words, it is not the duty of the contractor to raise a claim against the respondent on completion of the work by him, but it is the duty of the respondents themselves to finalise the account by preparation of the final bill on completion of the work and not to expect and wait for the contractor to put forth his claim regarding dues in respect of the work completed by him in terms of the agreement. The respondents by themselves should come forward within reasonable time from the date of completion of the work to prepare the

final bill in relation to the work carried out by the contractor. In case the respondents unreasonably and without any justification prolongs the preparation of final bill for the work carried out by the contractor for the respondents, it would not be permissible for the respondents thereafter to raise a point of limitation merely because the contractor had not asserted his claim in respect of the work carried out for the respondents within three years from the date of completion of the work. The respondents cannot claim a bonanza for the Government from unjustifiable delay caused on account of lethargy and negligence exhibited by its officers. Certainly, if such a lethargy or negligence has resulted in causing inconvenience or prejudice or loss in any manner to the Government, the latter would be entitled to take appropriate steps against its officers who are responsible for such delay in finalising the bill and causing inconvenience or prejudice or loss to the Government."

25. In *M/s. Hind Constructions (supra)* a three Judge Bench of the Apex Court held that the question whether or not the time was of the essence of the contract would essentially

be a question of the intention of the parties to be gathered from the terms of the contract. Even where the parties have expressly provided that time is of the essence of the contract such a stipulation will have to be read alongwith other provisions of the contract and such other provisions may, on completion of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental; for instance, if the contract were to include clauses providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract.

26. In Food Corporation (supra), the Apex Court held at paras 19 and 20 as below :

“19. The principle of quantum meruit is often applied where for some technical reason a contract is held to be invalid. Under such circumstances an implied contract is assumed, by which the person for whom the work is to be done contracts to pay reasonably for the work done, to the person who does the work. The provisions of this section are based on the

doctrine of quantum meruit, but the provisions of the Contract Act admit of a more liberal interpretation; the principle of the section being wider than the principle of quantum meruit.' The principle has no application where there is a specific agreement in operation. A person who does work or who supplies goods under a contract, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the goods supplied. If the work is outside the contract, the terms of the contract can have no application; and the contractor is entitled to be paid a reasonable price for such work as was done by him.

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

27. MSK Projects (supra), held at para 38 as below :

"38. In common parlance, "reimbursement" means and implies restoration of an equivalent for something paid or expended. Similarly, "Compensation" means anything given to make the equivalent. (See: State of Gujarat v. Shantilal Mangaldas & Ors., AIR 1969 SC 634; Tata Iron & Steel Co. Ltd. v. Union of India & Ors., AIR 2000 SC 3706; Ghaziabad Development Authority (2004) 5 SCC 65 ; and H.U.D.A. Vs Raj Singh Rana,(2009) 17 SCC 199. However, in Dwaraka Das vs. State of Dwaraka Das vs. State of Madhya Pradesh & anr., AIR 1999 SC 1031, it was held that a claim by a contractor for recovery of amount as damages as expected profit out of contract cannot be disallowed on ground that there was no proof that he suffered actual loss to the extent of amount claimed on account of breach of contract."

28. MSK Projects India (supra) also considered A. T. Brij Paul Singh vs State of Gujarat [AIR 1984 SC 1703], where the Apex Court while interpreting the provisions of Section 73 of the Indian Contract Act, 1972, held that damages can be claimed by a contractor where the government is proved to have committed breach by improperly rescinding the contract and for estimating the amount of damages, court should make

a broad evaluation instead of going into minute details. It was specifically held that where in the works contract, the party entrusting the work committed breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract. Claim of expected profits is legally admissible on proof of the breach of contract by the erring party. It was further observed that what would be the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid.

29. In Mohd. Salamatullah & Ors. vs. Government of Andhra Pradesh [AIR 1977 SC 1481], the Apex Court held that there is no justification for the Appellate Court to interfere with the finding of fact given by the Trial Court unless some reason based on some fact is traceable on the record.

30. Ms. Linhares, learned Additional Government Advocate was otherwise not able to substantiate how the respondents were not entitled to the various claims raised by the respondents and which were granted by the learned

District Court. Rather, the learned District Judge had appraised itself of the case set out by the respondents that the work was done in right earnest and held on the basis of the material on record that the respondents had clearly established that the show cause notice calling for the termination of the agreement in terms of clause (3) as issued by the appellants was unreasonable, arbitrary, wrongful and illegal. The learned Judge assessed the evidence to come to a clear finding on appreciating the law on the point of contract that the respondents were entitled to the amounts as raised in the claims and that the appellants had failed to establish that the suit was barred by limitation. The judgment under challenge therefore does not call for any interference and in view thereof, i pass the following :

ORDER

The appeal is dismissed with costs to the respondents.

NUTAN D. SARDESSAI J.

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