

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 61 OF 2018**

1. State of Goa,
Represented by the Chief Secretary,
Government of Goa,
Secretariat, Panaji, Goa.
 2. The Executive Engineer,
Works Division XXIII,
Public Works Department,
Bicholim, Goa.
- Appellants.

V e r s u s

M/s. Delcon Engineering,
A partnership firm registered
with the Registrar of Firms,
Ilhas under no.201/95,
Having its registered office at
Mulla Mansion, Ponda,Goa.

..... Respondent.

Coram:- C. V. BHADANG, J.

Date:- 25th July 2018.

Ms. Susan Linhares, Addl. Government Advocate for the Appellants.
Mr. V. Rodrigues, Advocate for the Respondent.

Oral Judgment:

Looking to the short question involved, the First Appeal is taken up
for final disposal at the stage of admission by consent of parties.

2. The respondent was granted a contract by the petitioner for execution of certain civil work, which contract was for the period from 7/8/1998 to 6/8/2000. According to the respondent, there were certain additional works/extra items which the respondent was asked to execute which are as under:

1. Bushes clearance	12300m ²	71.50/100m ²	8,794.50
2. Steel	2854.42 kg	21/kg	59, 942.82
3. Cent & shut	27.44 m ²	82 m ²	2, 250.69
4. R.C.C 1:2:4	22.68 m ³	2319.50/m ³	52,606.26
5. Cent. & shut	56.50m ²	113.50/m ²	6,412.75
6. RCC 1:2:4 walls	1.80 m ³	2242.50/m ³	4,036.50
7. WBM Grade 11	810.22m ³	1179.50m/3	9,55,654.49
8. WBM Grade III	607.36 m ³	1162.50/m ³	<u>7,06,056.00</u>
Total work			17,95,753.00

3. It is undisputed that in so far as the work which was to be executed as part of the contract, the agreed rates were of GSR 1993. It is further undisputed that on and after the expiry of the contract the GSR rates of 1997 were applicable.

4. The respondent filed a civil suit being Civil suit no.11/2004 seeking the amount in respect of the extra work as per GSR 1997. It appears that the suit was dismissed by the trial court on 30/6/2007 which was challenged by the respondent before this Court. This Court by a judgment and order dated

15/12/2012 partly allowed the appeal and remanded the matter back to the trial court for deciding the following issues:

- (i) Whether the respondents are entitled for the value of the extra work as claimed in the plaint.
- (ii) Whether the respondents are liable to refund the value of the 175 barrels at the rate of Rs.8439/- per metric ton.
- (iii) Whether the parties are entitled for payment of interest on the said amounts and at what rate.

5. After the remand, the learned trial court by a judgment and decree dated 23/2/2017 has partly decreed the suit in the sum of Rs.17,19,753/- along with interest at the rate of 6% p.a. from 27/1/2003 till actual payment.

6. Feeling aggrieved the appellant/State is before this Court.

7. I have heard Ms. Linhares, the learned Additional Government Advocate for the appellant and Shri Rodrigues, the learned counsel for the respondent. With the assistance of learned counsel for the parties, I have gone through the record and the impugned judgment passed.

8. The only contention raised on behalf of the appellant is that out of the eight items as set out in para 3 of the impugned judgment, payment in respect

of item nos.1 to 6 was already made in the year 1999 and as such, the respondent is not entitled to the said payment. It is also submitted that even in respect of the remaining two items the GSR 1993 would be applicable. It is, however not disputed that after the period of expiry of the original contract on 6/8/2000, the GSR rates of 1997 were applicable.

8. Shri Rodrigues, the learned counsel for the respondent has pointed out that the trial court has not granted the claim in respect of the item nos. 1 to 6. He points out that out of Rs.17,95,753/-, which is the total amount payable in respect of item nos. 1 to item no.8 after deducting the amount in respect of item nos.1 to 6, the trial court has decreed the suit only in the sum of Rs.17,19,753/-. At the hearing of the appeal, the learned Additional Government Advocate in all fairness did not dispute that the amount in respect of item nos.1 to 6 has not been granted in favour of the respondent by the impugned judgment and decree. In that view of the matter, the only question is whether the matter in so far as item nos 7 and 8 are concerned would be governed by GSR 1997 as claimed by the respondent and granted by the trial court. A perusal of the impugned judgment shows that the learned trial court after considering the evidence of Mr. Umesh Kulkarni, DW.1 had come to the conclusion and to my mind rightly so, that there was no evidence on record to show that the original contract period was extended beyond

6/8/2000. DW.1 had also admitted that the work which was part of the 7th R.A. Bill (pertaining to the extra work) was completed on 7/12/2001 and even the 6th R.A. Bill was paid on 31/5/2001, both of which are after the expiry of the period of the original contract.

10. In such circumstances it is apparent from the record that the extra work which was the subject matter of the 7th R.A. Bill was executed beyond the period of the original contract and during which the applicable rates were GSR 1997. At one stage it was tried to be urged on behalf of the appellant that the respondent was paid on the basis of the GSR rates of 1993 in respect of all the two items and therefore, the respondent at the highest would only be entitled to the difference between the amount calculated on the basis of the GSR of 1993 and the GSR of 1997. However, the learned Addl. Government Advocate on verifying the record has now submitted that in respect of item nos. 7 and 8, no payment has been made to the respondent prior to filing of the suit even on the basis of the GSR rates of 1993. In that view of the matter, I do not find that any exception can be taken to the finding recorded by the learned trial court decreeing the suit in respect of the item nos.7 and 8 on the basis of the GSR of 1997.

9. The only modification of the impugned judgment which is necessary is

that the computation of the amount in respect of the items nos.7 and 8 is mathematically incorrect. The learned Addl. Government Advocate as well as the learned counsel for the respondent submit that the correct amount would be Rs.16,61,710/-. In that view of the matter, the First Appeal is partly allowed. The impugned judgment and decree is modified. The suit stands partly decreed in the sum of Rs.16,61,710/- along with interest at the rate of 6% p.a. from 27/1/2003 till actual payment. The rest of the impugned decree is hereby confirmed. In the circumstances, the parties shall bear their own costs. Decree to be drawn accordingly.

C. V. BHADANG, J.

Ap/-