

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEALS NO. 116/2008 & 232/2008
FIRST APPEAL NO.116 OF 2008

C. M. Abdul Khadar,
Since deceased,
Through his Legal Representatives,
a) Mrs. Nafeesa Ballur Ismailhaji
Widow of late C.M. Abdul Khadar,
Major of age,

b) Mr. Ismail Shahiludheen
Son of late C. M. Abdul Khadar,
Major of age,

c) Ms. Chinamunissa,
Daughter of late C. M. Abdul Khadar,
Major of age,
The above Legal representative nos.
(a), (b) and (c) are Residents of
Kudroli White House, 5th Mile,
Chengala Post, Cherkala,
Kasaragod, Kerala – 671541

d) Mr. Shraju Kader,
Son of late C. M. Abdul Khadar,
Major of age,

e) Mr. Kalandhar Shanibu
Son of late C. M. Abdul Khadar,
Major of age,
The above Legal representative nos.
(d) and (e) are Residents of

Resident of Plot No.52,
Orchid Avenue, Babu Nagar,
Opp. Milroc Retreat,
Ribandar, Ilhas Goa.

..... Appellants
(Original Plaintiffs)

Versus

1. State of Goa,
Represented by the Chief Secretary,
Government of Goa, Porvorim Goa.

2. The Executive Engineer,
Works Division XV (NH),
Public Works Department,
Ponda Goa.

..... Respondents
(*Original Defendants*)

Mr. S. D. Padiyar, with Mr. P. Shirodkar and Mr. S. Bhangu, Advocate for the Appellant.

Ms. Priyanka Kamat, Additional Govt. Advocate for the Respondents.

FIRST APPEAL NO.232 OF 2008

1. State of Goa,
Represented by the Chief Secretary,
Government of Goa, Porvorim Goa.

2. The Executive Engineer,
Works Division XV (NH),
Public Works Department,
Ponda Goa.

..... Appellants.

Versus

C. M. Abdul Khadar,
Since deceased,
Through his Legal Representatives,

a) Mrs. Nafeesa Ballur Ismailhaji
Widow of late C.M. Abdul Khadar,
Major of age,

b) Mr. Ismail Shahiludheen
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(d) and (e) are Residents of
Resident of Plot No.52,
Orchid Avenue, Babu Nagar,
Opp. Milroc Retreat,
Ribandar, Ilhas Goa.

..... Respondent.

Ms. Priyanka Kamat, Additional Govt. Advocate for the Appellant.

Mr. S. D. Padiyar, with Mr. P. Shirodkar and Mr. S. Bhangui, Advocate for the Respondent.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Reserved on : 29/01/2019

Pronounced on : 15/02/2019

JUDGMENT: (Per M.S. Sonak, J.)

1. Heard. The learned Counsel for the parties.
2. In both these appeals, the challenge is to the Judgment, Order and Decree dated 29 December 2007, made by the Ad-hoc District Judge, (FTC-I), Panaji (Trial Court) in Civil Suit No.48/2006. The operative portion of the Judgment and Order reads as follows :

“ The suit is partly decreed. The defendants are directed to refund the amount of Rs.4,07,000/- deducted by the defendants towards the non supply of jeep, with interest @ of 6% per annum from 19.2.2001 till date of actual payment and the defendants are directed to pay to the plaintiff an amount of Rs.53,800 deducted by the defendants towards compensation for delay with interest @ 6% per annum from 31.3.2004 till actual payment and the defendants are directed to pay to the plaintiff an

amount of Rs.1,21,832/- deducted by the defendants towards royalty @ interest of 6% per annum from 31.3.2004 till actual payment, and the defendants are directed to pay to the plaintiff an amount of Rs.4,00,000/- deducted by the defendants towards laboratory apparatus, with interest @ 6% per annum from 30.9.2004 till actual payment and the defendants are directed to pay to the plaintiff final bill amount of Rs.1,50,000/- with interest @ 6% per annum from the date of this judgment till the actual payment of the final bill amount and the security deposit, of Rs.5,00,000/- with interest at the rate of 6% per annum from 31.3.2005 till actual payment.

Decree be drawn up accordingly.”

3. Civil Suit No.48/2006 was instituted by C.M. Abdul Khadar, PWD Contractor (Plaintiff) against the State of Goa and another (Defendants) seeking, *inter alia*, a Decree in an amount of ₹ 5,00,59,876/- (rupees five crores fifty nine thousand eight hundred seventy six only), together with interest @ 18% per annum on the said amount. It was the case of the Plaintiff that he was awarded the work of “*widening and improvement of geometrics of NH 4-A between Km.133/600 to 137/00 in Goa*” and in the execution of such works, the Defendants created hindrances and committed breaches of contract, thereby entitling the Plaintiff to the aforesaid amount. The Defendants denied the Plaintiff's contentions and had urged that the suit be dismissed in its entirety.

4. Accordingly, First Appeal No.232/2008 is instituted by the Defendants, aggrieved by the impugned Judgment and Decree and the award made therein. First Appeal No.116/2008 has been instituted by the Plaintiff, aggrieved by the denial of the entire reliefs claimed by the Plaintiff in the suit. In a sense, therefore, these are the cross appeals against the same impugned Judgment and Decree and, therefore, it is only appropriate that both these appeals are taken up together and disposed of by a common Judgment and Order. In fact, the learned Counsel for the parties agree that this would be an appropriate course of action to adopt in a matter of this nature.

5. To the Plaintiff, in Civil Suit No.48/2006, the Plaintiff had appended "*Schedule A*" in which the Plaintiff had furnished details/description of various claims set out in the plaint. By the impugned Judgment and Decree, some of the claims came to be allowed and others rejected. The Plaintiff's First Appeal No.116/2008, therefore, concerns the rejected claims and the Defendants' First Appeal No.232/2008 concerns the claims granted by the impugned Judgment and Decree.

6. In this appeal, however, Mr. Padiyar, the learned Counsel for the Plaintiff, on the basis of the instructions from the Plaintiff, made it clear that the Plaintiff was scaling down some of the claims and even not pressing for some of the claims that came to be rejected

in the impugned Judgment and Order.

7. In order to appreciate the aforesaid, we transcribe Schedule A to the plaint, along with remarks to indicate which of the claims came to be granted by the impugned Judgment and Decree, which of the claims came to be rejected by the impugned Judgment and Decree and which of the claims, the Plaintiff now scales down or no longer presses in the present appeal.

Sr. No.	Description	Principal amount in ₹	Remarks
1	Final bill, as stated in para 9 above interest from 30.9.2004 at 18% p.a.	1,50,000-00	Granted
2	Security deposit as stated in para 10 above renewal charges at 3% interest from 31.3.2005 at 18 % p.a.	Bank guarantee	i) Return of security deposit ordered; ii) However, payment towards Bank Guarantee charges for renewal of Bank Guarantee denied.
3	Idling charges for men and machineries as described in para 11 above interest from 31.10.2001 at 18% p.a.	29,07,000-00	i) not granted; ii) However, Mr. Padiyar states states that this claim is now scaled down from ₹ 29,07,000/- to ₹ 24,48,000/-

4	Mobilization expenses as described in para 12 above interest from 31.11.2003 at 18% p.a.	60,000-00	This claim is not pressed.
5	Idling charges for men and maintenances as described in para 13 above, interest from 11.07.2003 at 18 % p.a.	51,55,650-00	i) Not granted; ii) However, Mr. Padiyar states states that this claim is now scaled down from ₹ 51,55,650/- to ₹ 46,17,000/-
6	Claim for additional payment due to change of scope of work as described in para 14 above interest at 18% p.a. From 31.3.2004.	1,84,79,277-00	i) Not granted; ii) However, Mr. Padiyar states states that this claim is now scaled down from ₹1,84,79,277/- to ₹ 94,62,656.17
7	Claim for additional payment for work done after the stipulated date of completion i.e. after 9.09.2002, as described in para 15 above interest from 31.03.2004 at 18% p.a.	73,14,199-00	i) Not granted; ii) However, Mr. Padiyar states states that this claim is now scaled down from ₹ 73,14,199-00 to GSR rates approximately ₹ 50.00 lakhs.
8	Claim for additional		

	payment for additional lift involved in concrete work, as described in para 16 above interest at 18% p.a. From 15.05.2002	6,46,235-00	Mr. Padiyar states that this claim is not pressed.
9	Claim for additional payment for additional lift involved for extra earth work as described in para 17 above Interest at 18% p.a. From 31.3.2004	11,30,000-00	Mr. Padiyar states that this claim is not pressed.
10	Claim for rectification of damage in stretches of road where chemical treatment was done by other agency as described in para 18 above a) from ch.1930m to 2230m interest at 18% p.a. From 9.6.2003 b) From ch.2440m to 2770m interest at 18% p.a. From 3.11.2203	73,238-00 1,50,296-00	Not granted. Not granted.
11	Claim work of		

	granular sub bare as described in para 19 above Interest at 18 % p.a., from 3.11.2003	5,93,725-00	Not granted.
12	Claim from work of tackcoad as described in para 20 above interest at 18 % p.a. From 31.3.2004	1,24,083.00	Mr. Padiyar states that this claim is not pressed.
13	Claim for using extra asphalt and described in para 21 above interest at 18 % p.a. From 31.3.2004	2,02,974.00	Mr. Padiyar states that this claim is not pressed.
14	Claim for refund of wrongly recovered amount on account of non-supply of jeep, as described in para 22 above Interest at 18 % p.a. From 19.2.2001	4,07,000-00	Granted.
15	Claim for refund of amount wrongly recovered by the Defendant as compensation for delay in completion of work, as described in para 23 above Interest at 18 p.a.	53,800-00	Granted.

	From 31.3.2004.		
16	Claim for refund of royalty wrongly recovered as described in para 24 above Interest at 18 % p.a. From 31.3.2004	1,21,832.00	Granted.
17	Claim for breaking laterite boulders, as described in para 25 above. Interest at 18 % p.a. From 31.3.2004	6,40,000-00	Not granted.
18	Claim for refund of amount wrongly recovered allegedly on account of laboratory apparatus as described in para 26 above. Interest at 18 % p.a.. from 31.09.2004.	4,00,000-00	Granted.

** The Plaintiff had claimed for interest at 18% p.a. However, in the impugned Judgment and Decree, in so far as the claims which are granted, interest at the rate of 6 % p.a. has been ordered. Therefore, in the Plaintiff's appeal No.116/2008, it is the case of Mr. Padiyar that the Plaintiff ought to have been awarded interest, on the awarded amount, at the rate of 18 % p.a.

8. Mr. Padiyar, the learned Counsel for the Plaintiff submitted that there is ample evidence on record which establishes that there was delay of 19 months for completion of the contractual works and this delay was entirely on account of hindrances and breaches of contract on the part of the Defendants. He points out that there was failure to make available unhindered site, particularly since the permission for felling of trees from the Forest Department was obtained only in June 2000. He points out that there was failure to hand over the portion of the site at the hairpin bend from Ch.500 to 1200 as no timely decisions were taken and conveyed. He points out that there was abnormal increase in quantity and the scope of the works and it is an admitted position that the Plaintiff was required to undertake additional earth excavation to the extent of 94,000 cubic metres on account of such change scope of work. Mr. Padiyar points out that this contributed to delay in completion of the work for which the plaintiff was not in any manner responsible.

9. Mr. Padiyar points out that as the works commenced, it was realised that there was a water pipeline, on account of which it was impossible for the Plaintiff to undertake the work at the required pace. On account of this pipeline, the site had to be divided into two segments, thereby disturbing the original schedule and increasing the costs for the execution of the works. He submits that the work

between Ch. 0.00 to Ch.720 was delayed as the Defendants failed to take any decision on either the removal of the pipeline or its situation by structural support.

10. Mr. Padiyar submits that there were similar delays on the part of the Defendants in taking and communicating decisions on several issues during the execution of the works and these delays led to escalation of costs. He submits that on account of such delays, the Plaintiff was forced to idle the men and machinery. He referred to the delay of decision concerning the work near Tapobhumi (Ch.700 to Ch.1000), change of final levels, rectification of damaged portion of works which was assigned to some other agency.

11. Mr. Padiyar submits that the defendants ordered suspension of works for Ch.2830 to Ch 3310 (kalimati portion) until the decision of stabilization of soil was taken only on 1.10.2002, way after the stipulated date of completion of the works. Even the water pipeline was ultimately shifted by the Defendants only on 1.7.2002, again way after the stipulated date of completion, thereby stopping the works in this portion until then. He points out that there were issues relating to nonavailability of good earth for excavation and on account of increase in scope of works, there were further delays, for which the Plaintiff was not, in any manner, responsible. Mr. Padiyar

points out that the Defendants, thus bound to fail to even providing for a proper dumping area for the excess excavated earth, thereby hampering the progress of the works. Mr. Padiyar submits that there is ample evidence on record to establish that not only the delay was entirely for the reasons attributable to the Defendants, but to establish the loss/damages caused to the Plaintiff on account of such delay and breaches of contract on the part of the Defendants. Mr. Padiyar submits that in any case, applying the principles laid down by this Court in the case of *State of Goa & anr. vs. C.M. Abdul Khadar*¹ decided on 24th December 2014 and *State of Goa and Anr. vs. C.M. Abdul Khadar*² decided on 3.7.2004, an award corresponding to 20 % of the contract price, has to be made in favour of the Plaintiff.

12. Mr. Padiyar submits that in the present case, admittedly, the Plaintiff was required to do additional work of excavation to the extent of 94000 cubic metres, which is abnormally high quantity, way beyond the permissible deviation of 10 to 20%. He submits that for these abnormally extra works, the Plaintiff cannot be tied down to the original tendered rates. He submits that the Plaintiff was required to be paid at the market rates or in the minimum at the new GSR rates. He submits that the Trial Court has virtually held that there was some sort of implied contract between the Plaintiff and the

1 First Appeal No.224/2007 with Cross Objection No.15/2008

2 First Appeal No.6/2007 with Cross Objection No.26/2007

Defendants, in terms of which the Plaintiff was required to undertake the abnormally extra works at the tendered rates. Mr. Padiyar submits that this is not correct both, on facts as well as in terms of law. He relies on Article 299 of the Constitution of India to submit that there can be no implied contract with the Government. He also relies on some decisions in this regard, including the decision of the Hon'ble Apex Court in *K.P. Choudhary vs. State of M. P.*³ in support of these submissions.

13. *Mr. Padiyar has also relied upon the principle of 'Quantum Merit' and cited some decisions in support of this principle. Mr. Padiyar, on the basis of the instructions from the Plaintiff, has made a statement that he was scaling down some of the claims as originally raised in the plaint and he was also not pressing some of the claims as originally raised in the plaint. He, however, submits that such of the claims as are now being pressed, constitute the basic minimum entitlement of the Plaintiff. On all these grounds, Mr. Padiyar submits that First Appeal No.116/2008, instituted by the Plaintiff, be allowed with costs.*

14. Ms Priyanka Kamat, learned Additional Govt. Advocate, disputes the contentions raised by Mr. Padiyar. She submits that even the claims which have been awarded by the Trial Court in the

³ AIR 1967 SC 203

impugned Judgment and Decree are vulnerable and warrant interference. She submits that there was contractual provision that the Plaintiff provides a jeep and laboratory apparatus. However, the Plaintiff committed a breach in complying with such contractual provision. Despite that, the Trial Court has incorrectly awarded an amount of ₹ 4,07,000/- and ₹ 4,00,000/- respectively in favour of the Plaintiff. She submits that such award is contrary to the contract entered into between the parties and, therefore, the same is liable to be set aside.

15. Ms. Kamat states that the recoveries made by the Defendants as against Claim Nos.1, 14, 15, 16 and 18 were entirely justified and consistent with the contractual provisions. She submits that the learned Trial Court, without adverting to the proper scope and import of the contractual provisions, has directed the Defendants to pay the amounts towards such claims to the Plaintiff. She submits that such an award is unsustainable both, on facts as well as in law.

16. Ms. Kamat submits that by letter dated 14 February 2001, the Defendants had specifically inquired with the Plaintiff as to whether he is agreeable to undertake the extra work of excavation to the extent of 94,000 cubic metres at the tendered rates. She points out that though the Plaintiff was otherwise prone to addressing

several letters to the Defendants, this particular letter, despite receipt of the same, was never responded to by the Plaintiff. Instead, the Plaintiff proceeded to discharge this extra works, without raising any issue. Ms. Kamat points out that the Defendants have paid the Plaintiff in respect of his extra works at the tendered rates and such accounts were also accepted by the Plaintiff without any serious dispute or dimmer. She points out that in fact the Plaintiff has made substantial profits on account of these extra items. Taking into consideration all these circumstances, she submits that the Trial Court was entirely justified in rejecting the Plaintiff's claim for exorbitant amounts based upon the alleged market rates or GSR rates.

17. Ms. Kamat submits that there is no material on record to establish that the delays were on account of reasons attributable to the Defendants. She points out that the Plaintiff has claimed that no works could proceed during the monsoons when, in fact, the contract is very clear that the stipulated period of 30 months for completion of the works, includes the period of monsoons. She points out that the permission for felling of trees which came on 6th June 2000, did not, in any manner, hamper the progress of the rest of the portion of works. She points out that timely decisions were taken and conveyed to the Plaintiff and, therefore, there is absolutely no merit in the

Plaintiff's contention that there were delays or breaches of contract on the part of the Defendants. She points out that in the present case, the Plaintiff has only produced some correspondence on record and, there is absolutely no proof in support of the contents of such correspondence. She submits that First Appeal No.116/2008, instituted by the Plaintiff is liable to be dismissed and First Appeal No.232/2008, instituted by the Defendants, is liable to be allowed, with costs.

18. Based upon the rival pleadings, as well as the rival contentions, the following points arise for determination in these two appeals.

- (A) Whether the delay in completion of the works was on account of hindrances and breaches of the contract, committed by the Defendants, or the Plaintiff alone is to be blamed for the same ?
- (B) Whether the Plaintiff is entitled to award any amount in terms of Schedule A, as now incorporated in paragraph 6 of this Judgment and Order ?
- (C) Whether the Award made by the Trial Court in the impugned Judgment and Decree warrants interference ?
- (D) Whether any order is required to be made towards payment of interest and costs, in the facts and circumstances of the present case?

19. In the present case, the Work Order was issued by the Defendants to the Plaintiff on 31 March 2000. The Work Order clearly stipulated that time for completion of the works under the contract was to be 30 months from 10th day after issuance of the work order, including the period of monsoons. The date for commencement of the contract was, therefore, 10 April 2000 and the stipulated date for completion was, therefore, 9 September 2002. Admittedly, the entire works could be completed by 31 March 2004 i.e. after delay of almost 18 months. The question, therefore, is whether the Defendants were responsible for this delay or whether it is the Plaintiff who was alone responsible for this delay or whether this is a case where both the parties can be said to be proportionately responsible for the delay ? Based upon such determination, the issue of loss and damages will have to be assessed.

20. The Work Order dated 31.3.2000 in fact had directed the Plaintiff to start the works "*at once*". However, it was stated that time allowed for carrying out the work shall be reckoned from the 10th day after the date of the work order. It was further clarified that the stipulated date of commencement would, therefore, be 10 April 2000, the stipulated date of completion would, therefore, be 9 September 2002 and in order to avoid any ambiguity, it was made clear that the period allowed for completion of the work was 30

months, including the monsoon period.

21. The Plaintiff contends that the permission for felling trees was received from the Forest Department only on 6 June 2000. It is, therefore, the case of the Plaintiff that no works could actually commence upto 6 June 2000. It is also the case of the Plaintiff that by 6 June 2000, monsoon set in and, therefore, it was not possible to commence the works at least upto September 2000.

22. The letter dated 6 June 2000 (Exhibit 20), addressed by the Executive Engineer to the Plaintiff, does state that the permission to fell trees coming in the alignment of the works is received from the Forest Department and the Plaintiff, may, therefore, fell those trees which are within the toe lines. The letter states that the Plaintiff may fell the trees and clear the jungle immediately, so that the initial levels could be recorded, without further delay.

23. In the Plaint, at paragraph 7(a), the Plaintiff has averred that no work could be commenced upto 6 June 2000 for want of permission to fell trees from the Forest Department, which permissions the Defendants were duty bound to secure. However, there is a further averment that site could be cleared of the trees and jungle only by October, on account of monsoons. There is averment that initial levels could be recorded only between 3 October and 3rd

November 2000. Thus, the site was made available to the Plaintiff only in November 2000. According to the Plaintiff, this constitutes a serious breach of contract.

24. According to us, there is some substance in the contention of Mr. Padiyar that serious works could not commence until 6 June 2000 for want of permission from the Forest Department to fell trees. On behalf of the Defendants, their witness has deposed that the work of felling trees could have commenced even before the permission was obtained from the Forest Department, since there was no doubt that such a permission would eventually be obtained by the Defendants. We do not, for the moment, appreciate such a stand, particularly when it comes from an Executive Engineer who deposed in the matter. We agree with Mr. Padiyar that the Plaintiff was entirely justified in not felling any trees unless there was permission from the Forest Department to fell the same.

25. The material on record, therefore, indicates that the site was not made fully available to the Plaintiff at least up to 6 June 2000 and consequently, it is the Defendants who will have to bear the responsibility for the delay of approximately three months between 10 April 2000 and 6 June 2000. However, for the delay between 6 June 2000 and November 2000, the blame cannot be apportioned

upon on the Defendants. This is for two reasons. In the first place, the contract was very clear, in that, the Plaintiffs could not exclude the period of monsoons, when it came to the stipulated period for completion of the works. Secondly, there is absolutely no material on record to establish that the work of felling of trees or clearing of the jungle could not be undertaken on account of the monsoons. Production of the letters and even exhibiting the same is one thing, but proof of the contents of such letters/correspondence is quite another. Therefore, we are not prepared to hold that the delay between June 2000 and November 2000 was attributable to the Defendants.

26. In fact, we find letters addressed by the Defendants to the Plaintiff urging the Plaintiff to expedite the works and also informing that no further delay would be tolerated in any circumstances. Further, the Executive Engineer, vide letter dated 19 September 2000 (Exhibit 21), informed the Plaintiff that the work of recording initial level is already delayed because of non-clearance of jungle and such work cannot be further postponed under any circumstances. On the aspect of failure to hand over the portion of the site at the hairpin bend from Ch.500 to 1200, again apart from the correspondence produced on record, there is really no evidence that there was some serious delay on the part of the Defendants. On

the aspect of delay on account of the Plaintiff being required to undertake additional earth excavation to the extent of 94,000 cubic meters, the said aspect is dealt with separately in the course of this Judgment. Suffice it to say that some additional time must have been required by the Plaintiff to undertake and complete this work and, therefore, it is only appropriate that some portion of the delay is apportioned to the Defendants, on this count.

27. There is some evidence on record on the issue of water pipeline at the site and consequent difficulties experienced by the Plaintiff on that count. There is evidence on record that the site had to be divided into two segments. All this must have affected the work schedule of the Plaintiff. Therefore, some portion of the delay will have to be attributed to the Defendants, on this count.

28. As regards the Plaintiff's contention that generally there was delay in taking and conveying the decisions, we must say that there is no proper evidence to make good this contention. No doubt, there is correspondence brought on record by both the parties. However, production of the correspondence and even exhibiting the same is one thing, but proof of the contents of such correspondence is quite another. Both the parties, in most of the cases, have not bothered to prove the contents of the documents which they chose to place on record and/or even exhibited the same. Some delay, it

appears, did arise on account of the failure on the part of the Defendants to indicate the precise dumping site. However, there is evidence on record that some dumping site was indicated, though, it is not quite clear as to whether the formalities necessary to enable the Plaintiff to dump at such site were indeed complied with by the Defendants.

29. On overall consideration of the evidence on record, we are of the opinion that the delay to the extent of about 10 months, was on account of the reasons attributable to the Defendants. However, we do not agree with Mr. Padiyar that the entire delay of 18 to 19 months was for the reasons attributable to the Defendants. There is no such clear evidence on record in order to arrive at any such finding. The evidence on record, only suggests that there was some delay on the part of the Defendants and there was also some delay on the part of the Plaintiff. Based upon the assessment of material on record, as also the pleadings of the parties, in our opinion, the Defendants can be held responsible for delay of about 10 months and on such basis, some of the claims of the Plaintiff can be considered and assessed. The first point for determination is answered accordingly.

30. In so far as the first claim raised by the Plaintiff is concerned, the same relates to the final bill. In this case, the final bill

was duly certified and it is evident that an amount of ₹ 1.50 lakhs was required to be paid by the Defendants to the Plaintiff. There is no convincing reason as to why such amount was not paid by the Defendants to the Plaintiff. Accordingly, we see no reason to interfere with the award of ₹ 1.50 lakhs, together with interest at the rate of 6 % p.a. made by the Trial Court in the impugned Judgment and Decree.

31. However, we do not agree with Mr. Padiyar that interest on this amount at the rate of 18 % p.a. was required to be granted. In this regard, we refer to our decision in First Appeal No. 6/2007 (with Cross Objection No.26/2007) concerning the case of this very Plaintiff, wherein considering the nature of the controversy, we had awarded interest at the rate of 6% p.a. from the date of institution of the suit. In fact, Mr. Padiyar, learned Counsel for the Plaintiff has placed reliance upon this very Judgment, though for different reasons. Accordingly, we hold that the award of ₹ 1.50 lakhs, with interest at the rate of 6 % p.a. warrants no interference. However, this interest will have to be computed from the date of institution of the Suit and not from the date of impugned Judgment and Decree in the suit.

32. The second claim concerns the return of security deposit. Again, there is absolutely no reason to interfere with the impugned

Judgment and Decree on this score. Mr. Padiyar, learned Counsel for the Plaintiff, however, states that the defendants ought to have been directed to reimburse the renewal charges, which the Plaintiff had to bear in order to renew the Bank Guarantee. According to us, there is no case made out for grant of this relief to the Plaintiff. It is not as if the entire portion of the delay was for the reasons attributable to the Defendants. Besides, the Bank Guarantee had to be kept alive in terms of the contractual provisions. Thus construed, we agree with Ms. Kamat, learned Additional Government Advocate that there is no case made out for ordering reimbursement of the payments towards renewal of the Bank Guarantee. As it is, the return of the security deposit has already been ordered in the impugned Judgment and Decree. The Defendants have made out no case so as to warrant interference with this relief, which the Trial Court has granted in favour of the Plaintiff.

33. The third and fifth claims relate to “*idling charges for men and machineries and maintenance*”. Towards Claim No.3, the Plaintiff had claimed an amount of ₹ 29,07,000/-. However, this was scaled down by Mr. Padiyar, the learned Counsel for the Plaintiff to ₹ 24.48 lakhs. Similarly, towards Claim No.5, an amount of ₹ 51,55,650/- was demanded. However, Mr. Padiyar has even scaled down this amount to ₹ 46.17 lakhs. Thus, with regard to the third

and fifth claims, the Plaintiff has demanded a total amount of ₹ 70.65 lakhs.

34. The Trial Court, in the present case, has held that there is no evidence produced on record to establish these two claims. Upon perusal of the material on record, we also agree with the Trial Court that no evidence has been produced to establish the idling of men and machinery and consequent damage. The Plaintiff, who examined himself had, however, deposed that the machinery employed at the site was owned by him and the same remained at the site throughout i.e. from the date of commencement of the works, till the date of conclusion of the works. There are no details produced as regards the machinery or as regards the income, if any. The Plaintiff might have earned in case such machineries were to be deployed at some other sites. Similarly, there is no proper evidence to indicate the number of personnel, who allegedly had to remain idle on account of the delay attributable to the Defendants. Therefore, it will not be possible to accept Mr. Padiyar's contention that compensation towards the third and fifth claims of ₹ 70.65 lakhs must be ordered. However, since we have held that the defendants were responsible at least for 10 months' delay in the execution of the works, some compensation is due and payable to the Plaintiff on this count.

35. In *State of Goa & anr. vs. C.M. Abdul Khadar* (First Appeal No.224/07 with Cross Objection No.15/2008), decided by the Division Bench of this Court on 24 December 2014 as well, there was no proper evidence produced on the aspect of idling charges. However, the Division Bench, relying upon the decisions of the Apex Court in *Union of India vs. Saraswat Trading Agency and ors.* (2009) 16 SCC 504 and *Food Corporation of India vs. A.M. Ahmed & Co.* (2006) 13 SCC 779 held that compensation at the rate of 10% of the value of the contract can be awarded where the delay on the part of the Defendants is established. To the same effect is the decision of this Court in the case of *State of Goa & anr. vs. C.M. Abdul Khadar* (First Appeal No.6/07 with Cross Objection No.26/2007). The Division Bench advertent to the provisions of Sections 73 and 74 of the Contract Act, as well as the decision in the cases of *F. T. Kingsley Vs. The Secretary of State for India* 72 Ind Cas 270; *MSK Projects India (JV) Ltd. Vs. State of Rajasthan and anr.* (2011) 10 SCC 573, *Dwaraka Das Vs. State of Madhya Pradesh* AIR 99 SC 1031 and *Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.* (2003) 5 SCC 705, held that even if the Plaintiff fails to prove the quantum of work done by him after the stipulated date, a broad evaluation of the amount will have to be done and some compensation will have to be awarded to the Plaintiff for prolongation of the works for the reasons attributable to the

Defendants.

36. In the present case, it is true that as contended by Ms. Kamat, learned Additional Govt. Advocate, the delay was also on account of the reasons attributable to the Plaintiff himself. Ms. Kamat has also pointed out that there is no clear evidence of idling of the men and machinery. Upon overall consideration of the material on record, and making a broad evaluation, we are of the opinion that towards the idling charges, against the third and fifth claims raised by the Plaintiff, a consolidated amount of ₹ 25.00 lakhs is required to be paid by the Defendants to the Plaintiff. In arriving at this amount, we draw sustenance from 10 % principle laid down by the Division Bench of this Court in First Appeal No.6/07 with Cross Objection No.26/2007 dated 3 July 2014 which, coincidentally, concerns the very same Plaintiff in the present case. However, we accept Ms. Kamat's contention that this principle of 10 % cannot be mechanically applied and the compensation will have to be determined on the basis of the evidence on record. Therefore, upon due consideration of the evidence on record, according to us, the compensation payable against the third and the fifth claims, in the facts and circumstances of the present case, can be ₹ 25.00 lakhs.

37. The sixth claim in an amount of ₹ 1,84,79,277/- relates

to change of scope of work beyond the permissible deviation limits. Mr. Padiyar submitted that the plaintiff was required to undertake extra excavation to the extent of 94000 cubic metres. He submits that the Defendants have paid the Plaintiff for this extra works at the tendered rates, but not at the market rates. He has scaled down this amount from ₹ 1,84,79,277/- to ₹ 94,62,656.17 by adverting to the GSR rates.

38. Now, there is evidence on record to indicate that the Plaintiff was indeed called upon to indicate his willingness as to whether he was prepared to undertake the work of excavation to the extent of 94000 cubic metres at the tendered rates. In this regard, Ms. Kamat has rightly referred to the letter dated 14 February 2001 (Exhibit 113), which reads as follows :

“ *No.PWD/WDX/NH/ADM/OOCS/574/2000-2001
Government of Goa,
Office of the Executive Engineer,
Works Division XV (NH),
Public Works Department
Ponda, Goa.
Date : 14th February 2001.*

*To,
Shri C.M. Abdul Kahder
PWD Contractor, A/3 Surendra Building,
Khadpabandh, Ponda, Goa.*

*Sub:- Widening & Improvement of Geomatics
of NH 4A bet. Km.133/600 to Km.137/00
in Goa.*

*Agreement No.AGM/46/99-2000**Sir,*

It is decided to support existing C.I. pipeline near Ch.725.00 with structural truss system. The proposal has been approved by C.B. In principle. The excess quantity of earthwork in excavation due to regrading between hair pin bend and IDC is 94,000 M3 approximately.

You are hereby requested to convey your willingness in writing that you are ready to execute the excess quantity at your quoted rates and no claims will be raised later on.

*Yours faithfully,**Sd/-**(R.B. S. Kakodkar)**Executive Engineer**Works Div. XV (NH),**P.W.D. Ponda.**Copy to :-*

*The Assistant Engineer, Sub-Div.II, W.D.XV (NH), PWD
Banastarim for information."*

39. Strangely, the Plaintiff who has otherwise addressed several letters to the Defendants, chose not to respond to the defendants letter dated 14.2.2001 despite the fact that the letter dated 14.2.2001 was clearly received by the Plaintiff. Further, the Plaintiff proceeded to execute this work of excavation to the extent of 94,000 cubic metres, without raising any dispute or dimmer.

40. Mr. Padiyar for the Plaintiff contends that in terms of the contract, the Plaintiff had no option to stop the work and it is, therefore, that the Plaintiff executed the said work. Now, on one

hand it is case of the Plaintiff that this work of excavation to the extent of 94,000 cubic metres, was an extra work, and that the same was beyond the permissible deviation limits, on the other hand, the Plaintiff seeks to rely upon the contractual provisions which puts an embargo upon the Plaintiff to stop the works which are within the scope of the contract or within the permissible deviation limits. The Plaintiff was very much aware that the Plaintiff could have refused to undertake this work or at least refused to undertake this work at quoted or tendered rates.

41. The aforesaid letter dated 14.2.2001, also makes it clear that the Defendants did not force the Plaintiff to undertake this work. They only requested the Plaintiff to indicate his willingness to do the said work at the quoted rates and made it clear that no claims can be raised later on. There is no dispute that the Plaintiff received the letter on 14.2.2001, but chose not to respond to the letter dated 14.2.2001. Instead, the Plaintiff undertook the work of excavation to the extent of 94,000 cubic metres and was also paid for this work, though at the quoted rates. The Defendants had made it very clear that no further claims, on this issue, can be raised by the Plaintiff later on. The plaintiff was thus given a clear option to refuse to undertake this work at the quoted rates. However, the Plaintiff chose to execute this work and, therefore, we agree with Ms. Kamat that

there is no merit in the claim now put forth by the Plaintiff.

42. It is true that in terms of Article 299 of the Constitution of India, there can be no implied contract as such with the Government. However, this is a provision made for the protection of the Government. Besides, this contention can cut either ways. If it is the case of the Plaintiff that there was no contract between the Plaintiff and the Defendants on the issue of excavation to the extent of 9,4000 cubic metres, then, we fail to understand the basis on which the Plaintiff not only undertook such works, but also accepted the payment at the quoted rates. Obviously, such works enabled the Plaintiff to earn a significant amount over and above the costs of the works which were in the original tender. In the course of arguments, Mr. Padiyar stated that it is possible that the Plaintiff undertook such works because there were no other contracts which the Plaintiff was at that stage discharging. In any case, the Plaintiff has clearly benefited from being called upon to undertake this additional work. The Plaintiff has also been paid for this additional work, though at the quoted rates. The fact that the additional work was entrusted to the Plaintiff has also been taken into consideration by us when it comes to apportionment of the delay upon the Defendants.

43. The decisions relied upon by Mr. Padiyar in the context of Article 299 of the Constitution of India, are clearly distinguishable

and the fact situation therein was not at all comparable to the fact situation in the present matter. Accordingly, we are of the opinion that there is no case made out for award of any amount to the Plaintiff as against claim No.6.

44. Similarly, in so far as the claim No.7 is concerned, again we are afraid there is absolutely no evidence on record to sustain such a claim. In any case, we have already held that the Defendants are liable to pay an amount of ₹ 25.00 lakhs towards idling charges on the basis that prolongation of the work at least by 10 months was on account of the reasons attributable to the Defendants. If we were to make any award as against Claim No.7, this would amount to a clear case of overlap.

45. As against Claims No.10 and 11, again, we are satisfied that there is no evidence on record to order any amount as against such claims. The evidence on record is not at all clear on the aspect of damage to stretches of road, or on the aspect of amounts allegedly expended by the Plaintiff to set right such damage. Same is the position with regard to the work of granular sub bare. Accordingly, we hold that there is no infirmity in the impugned Judgment and Decree to the extent of tenth and eleventh claims and stand rejected.

46. Similarly, there is no case made out for making any award

as against Claim No.17. The contractual provisions, in this regard, are quite clear and the Defendants were justified in requiring the Plaintiff to break laterite boulders at the appropriate sizes so that they could be stacked in an appropriate manner.

47. Clause 67 of the contract provides that available excavated earth and laterite boulders shall be used for all items requiring such materials, viz. item Nos. 5, 10, 13, 15, 18 and 27 etc. This clause further provides that recoveries will be made at the prescribed rates from the R.A./Final bill of this work.

48. Thereafter, clause 68 of the contractual provisions provides that surplus earth/boulders/serviceable material from excavation, not required for this work, shall be dumped/stacked on Mardol By-pass alignment between chainage 133/00 to Km.133/600 or such locations approved by the Engineer-in-charge within a lead of 5.00 kms. Clause 69, which is most important, provides that the laterite boulders will have to be broken to the required sizes by the contractor at his own costs.

49. Taking into consideration the clear contractual provisions, we cannot accept Mr. Padiyar's contention that Clause 69 will apply only in respect of laterite boulders which are to be used for all items requiring such materials, viz. item Nos. 5, 10, 13, 15, 18

and 27 etc.. According to us, Clause 69 of the contract is required to be read along with Clauses 67 and 68 and from the same it is quite clear that even laterite boulders, not required for the work had to be dumped/stacked at the specified locations and further such laterite boulders had to be broken into the required sizes by the contractor at his own costs. Now, if the claim of the Plaintiff as regards the breaking of such boulder to the desired sizes is to be allowed, then, the same would clearly be contrary to the contractual provisions contained in Clauses 67, 68 and 69, including in particular, Clause 69, which clearly states that the laterite boulders will have to be broken to the required sizes by the contractor at his own costs. Accordingly, we see no good ground for making any award as against Claim No.17.

50. In so far as First Appeal No.232/2008, instituted by the Defendants is concerned, we are of the opinion that the impugned Judgment and Decree quite correctly ordered the refund of ₹ 4.07 lakhs to the Plaintiff, which amount the Defendants withheld on account of the alleged failure on the part of the Plaintiff to supply a jeep to the Defendants. The Trial Court has correctly appreciated this issue and we see no ground to take a different view in the matter.

51. The same is the position with regard to Claims No.15, 16 and 18. All these amounts were wrongfully recovered by the

Defendants and the Trial Court was quite justified in ordering the refund of these amounts to the Plaintiff.

52. On the aspect of interest, we are of the opinion that the interest amount is to be at the rate of 6 % p.a., but from the date of institution of the Suit and not merely from the date of the impugned Judgment and Decree

53. For all the aforesaid reasons, we dismiss the First Appeal No.232/2008 and we partly allow First Appeal No.116/2008 and direct the Defendants to pay to the Plaintiff interest at the rate of 6% p.a. on the amounts awarded in the impugned Judgment and Decree, from the date of institution of the Suit. In Addition, we also direct the Defendants to pay to the Plaintiff an amount of ₹ 25.00 lakhs, along with interest thereon at the rate of 6% p.a. from the date of institution of the Suit.

54. There shall, however, be no order as to costs.

55. Decree to be drawn out accordingly.

(Prithviraj K. Chavan, J.)

(M.S. Sonak, J.)