

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO. 1418 OF 2003

M/s.Ajay Deep Construction Pvt.Ltd.	...Plaintiff
vs.	
Maharashtra State Police Housing & Welfare Corporation Ltd.	...Defendants

Mr.Devrat Singh with Mr.Arthav Sanghvi i/b. Praxis Legal for Plaintiff.
Mr.Narayan Sahu with Ms.Khursheed Vajifdar and Ms.Rahat Kalpatri i/b.
Legasis Partners for Defendants.

CORAM : S.C. GUPTE, J.

DATE : 28 JUNE 2021

JUDGMENT :

The Plaintiff has filed the present suit for recovery of Rs.1,09,78,024 together with *pendente lite* and post decree interest. The claim arises out of a construction contract.

2 The Defendants had invited tenders for construction of 650 quarters for policemen of SRPF Group IX at Amravati, with infrastructural amenities. The Plaintiff was the successful bidder. The construction contract was evidenced by work order dated 7 November 1996 and a formal contract agreement of the same date, i.e. 7 November 1996. Under the contract, the date of commencement of work was 7 November 1996, whereas the time for completion of the contract work was 36 months. Based on the revised quantum of scope of work, the original contract value of Rs.15,29,54,891 was revised by the Defendants to Rs.21,50,35,706. The original stipulated date of completion was extended upto 19 December 1999. These facts are not in dispute. It is also not in dispute that the

Plaintiff completed the entire work within the stipulated date of completion. There is no dispute as to the quality of the work carried out by the Plaintiff. The bills submitted by the Plaintiff from time to time, both as running bills and as final bill, were recommended for payment by the project management consultant, whose job was to oversee the work. The grievance of the Plaintiff pertains to three individual items of work for which payment was not made by the Defendants and a claim for excess amount recovered by the Defendants from mobilisation advance given by the Defendants to the Plaintiff and diverse claims of interest, i.e. interest on delayed payments on three items, namely, (i) running account bills, which were paid by the Defendants with delay, (ii) Escalation bills (labour, material, POL) paid with delay, and (iii) Escalation bills (star rate) paid with delay, and interest till filing of the suit on unpaid amounts.

3 The claims are contested by the Defendants on merits. So far as the unpaid items of work are concerned, it is the case of the Defendants that the amounts were not due or payable having regard to the terms of the contract. So far as the claim for amount of interest recovered from mobilisation advance is concerned, it is contested by the Defendants on merits on the basis of the relevant stipulation in the construction contract. As regards interest for delayed payments, it is the case of the Defendants that there was no stipulated date of payment save and except for the final bill; the period mentioned in the contract in respect of payment of running account bills was an approximate period, requiring simply payment within the indicated period, if possible.

4 The following issues were framed by this court by its order dated 10 September 2014:

- (1) Whether the Plaintiffs prove that they have carried out extra work under the contract and they were entitled to be paid for the extra work?
- (2) If the answer to issue no.1 is in the affirmative, then at what rate is the Plaintiffs entitled to be paid?
- (3) Whether the Plaintiffs prove that the Defendants delayed in paying the running account bills and therefore, the Plaintiffs are entitled to interest on those delayed bills?
- (4) If the answer to issue no.3 is in the affirmative, then at what rate interest is the Plaintiffs entitled to be paid?
- (5) Whether the Plaintiffs prove that the Defendants have deducted excess interest on the mobilisation advance and the amount of excess recovered has to be paid back to the Plaintiffs and if so, how much?
- (6) Whether the Plaintiffs are entitled to decree in the sum of Rs.1,09,78,024/-?
- (7) Whether the Plaintiffs prove that they are entitled to interest @ 19% p.a. and for what period?
- (8) What decree? What order?

5 Issue Nos.1 and 2 inter alia deal with two particular items of extra work, for which claim has been made by the Plaintiff. The extra works are said to be (i) additional depth of foundation constructed by the Defendants and (ii) excess quantities of pipelines laid by the Defendants for the work of gravity main. Both items are based on bills certified by the project management consultant of the Defendants and recommended for payment.

6 The foundation of the first claim, i.e. additional depth of foundation, is to be found in paragraph 108 of the plaint. It is the case of the Plaintiff that for such additional depth of foundation, it had submitted a revised bill for items above two metre depth as per general additional specification no.10.6.13 of the tender, amounting to Rs.8,58,619.77. The revised bill was submitted with letter dated 27 September 2000. There is no dispute between the parties as to the actual work carried out by the Plaintiff in this behalf. So also, it is not in dispute that the Plaintiff had duly raised a bill in respect of this extra work. The Defendants' submission is that the contract was a lumpsum contract and no separate payment was due for any extra work. It is submitted that the Plaintiff's claim for extra depth of foundation was rejected by the Defendants vide their letter dated 23 June 2000. The Defendants' letter dated 23 June 2000 (Exhibit D1/4) rejects the same purportedly on the ground that the Plaintiff had not considered natural ground levels as per tender clause no.10.6.13. Secondly, it is claimed that the Plaintiff had not submitted its claim for extra work within 30 days of occurrence of the event as per tender condition no.9 and that was one more reason why no payment was due in respect of the concerned extra work to the Plaintiff. The Defendants' objection concerning tender clause 10.6.13 seems to be an afterthought; it was never raised and, in fact, the record of the case, as mentioned below, shows that the claim was clearly tenable. The clause (clause 10.6.13) provides for average depth of excavation for foundation of 2.00 mtrs. with respect to average natural ground level of the plot; if the average depth exceeds 2.00 mtrs. from natural ground level, then excess quantities of excavation, concrete, etc. are required to be paid extra to the contractor. As clearly accepted by the project management consultant, the extra work of foundation claimed by the Plaintiff involved depth above 2.00 mtrs. The claim is, thus, very much

within the terms of the contract, in particular, in keeping with clause 10.6.13. So far as tender condition no.9 is concerned, namely, non-submission of the claim within 30 days of occurrence of the event, learned Counsel for the Defendants in terms accepts that the Defendants had waived this condition so far as both these items of extra work are concerned. There is also a contemporaneous record in the form of the Defendants' letter dated 10 November 2000 (Exhibit D-1/5) that the Defendants had waived the condition and called for information such as drawings for the extra works and authority for their execution. It is important to note that the project management consultant of the Defendants has, as noticed below in this judgment, not only recommended the Plaintiff's bill in respect of this extra item for payment, but there is evidence on record to show that even the Defendants did not dispute the item earlier.

7 So far as the extra item of laying and jointing CI pipeline for gravity main is concerned, there is evidence on record of Rs.73,925 being sanctioned by the office of Superintending Engineer of the Defendants vide letter No. PHC/107/444 dated 29 May 1999. As for the execution of the work itself, as in the case of additional depth of foundation, there is no dispute that the work was indeed carried out by the Plaintiff. Even the value of the work, claimed by the Plaintiff, was recommended for sanction by the project management consultant vide letter No. SHA/SRPF/650 AMT/8-E/295 dated 2 August 1999. There is in fact a clear admission on the part of the Defendants in their letter dated 23 June 2000 (Exhibit D1/4) that the work and its value were approved by the Defendants and the same was being put up for payment along with the final bill. Though learned Counsel for the Defendants submits that this amount was paid

along with the final bill, that fact is not borne out by the record of the case. The sanctioned final bill and the corresponding payment made by the Defendants do not show that the amount of Rs.73,925, being the value of the work of laying increased length of 200 mm dia CI pipeline, was paid by the Defendants.

8 The nature of these two works as extra items and their values have clearly been reflected in an admitted document, being a letter addressed by the project management consultant to the Superintending Engineer of the Defendants on 8 August 2000 (Exhibit P-56). The project management consultant has also submitted the justification/background and necessity for each extra item. The project management consultant has certified that the contractor, i.e. the Plaintiff herein, had not previously claimed these extra items as per provision no.9 of the detailed tender notice in the tender booklet, in anticipation of getting a post facto approval for the same. The project management consultant has also supported the Plaintiff's case that these extra items, which were recommended for payment by the consultant, were a result of instructions given at the time of visits of various authorities of the Defendants and their architect to the work site and were special and technical requirements of the project. There is, thus, adequate material on record to bear out that these extra works were ordered by the Defendants themselves during the course of inspection at site and there was no need for the Plaintiff to make any claim for extra work under condition no.9 in their behalf.

9 In any event, a contractual clause such as condition no.9 in the present case, which stipulates the time and manner within which the contractor has to intimate the employer about extra or additional work, has

never been considered as a statutory limitation or bar for a claim for extra/additional work. The purpose of such stipulation is to ensure that extra/additional work has actually been done; once it is established that the work has indeed been done, payment for it cannot be denied on a technical ground such as non-intimation according to the stipulation. (See, **Chandigarh Construction Company Pvt.Ltd. vs. State of Punjab**¹.) On the basis of this law and the evidence produced before the court, and which is noted above, the Plaintiff has clearly made out its case for payment of both extra works amounting to Rs.9,31,535.

10 Learned Counsel for the Defendants makes an attempt to question the authority of the project management consultant to certify or recommend payment of the contractor's bills. Under the contract, the project management consultant has been acknowledged as a representative of the Engineer-in-charge (clause 5.6 of "detailed tender notice to contractor"), who was the final authority insofar as completion of any particular work and the contractor's entitlement to payment for such work are concerned. The duties of the representative of the Engineer, mentioned in clause 5.6, include "to watch and superwise the work and to test and examine any material to be used or workmanship employed in connection with the works." The representative has a clear authority to approve any work or materials and, by logical extension, to recommend such work or materials for payment. It is another matter that failure to disapprove any work or materials by such representative was not to prejudice the power of the Engineer in charge to thereafter disapprove such work or materials and order their pulling down, removal or breaking up. There is nothing on record to show that the concerned works, approved by the project

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management consultant, were at any time disapproved or ordered to be pulled down or removed by the Engineer in charge. Under Clause 5.16, the project management consultant has the authority to certify the quality as well as quantity of the work and record the measurements/payment schedule in measurement book of the Defendants. The bill has to be processed for payment thereafter. The approval of the works and recommendation for payment made by the consultant for the same, thus, go a long way in justifying the contractor's claim for payment in relation to the concerned works. So far as the measurements/payment schedule in measurement book are concerned, the documents being in possession of the Defendants, it was for them to produce the same, if, according to them, there were no corresponding entries of measurement/payment schedule in the books. They have obviously not done so.

11 Coming now to the claim for extra work, including compound wall type 5 quarters, GSR, transformer for extra load (Rs.2,82,484), for which there is no certification or recommendation for payment by the project management consultant, the Plaintiff's pleadings are to be found in para 109 of the plaint read with particulars in Exhibit YYYY. It is the Plaintiff's case that these works, which were not part of the original contract, were executed as requested by the Defendants. It is submitted that the works have very much been existing at site and their benefit was being enjoyed by the Defendants. There is no dispute between the parties as to the execution of these works. The particulars have been submitted by the Plaintiff vide its letter dated 30 May 2000 (Exhibit P-38). The total claim, originally formulated in the sum of Rs.4,77,139, was revised by the Plaintiff to Rs.2,82,484. The original claim of extra items included seven items including (i) compound wall type 5 quarters (item 1 in statement 'A')

to letter dated 16 January 2001 – Exhibit P-42), (ii) GSR of type 4 (item 3) and (iii) transformer for extra load (item 7). In the revised claim, the Plaintiff has claimed only for these three items, namely, item nos.1, 3 and 7 (of statement 'A' - Part of Exhibit P-42). The Defendants' witness, Sunil Marotrao Sambe (DW1), has not disputed the Plaintiff's construction of combined wall type 5 quarters, Ground Storage Reservoir (GSR) and transformer for extra load at site. The witness has simply feigned ignorance when asked to verify the Plaintiff's construction of these three items. Besides, there is nothing on record to show that the Defendants at any time objected to the value of the work claimed by the Plaintiff. Even at the hearing of this suit, no such submission was advanced by learned Counsel for the Defendants. The Plaintiff's witness, for his part, has deposed in extenso on the execution of these extra items of work (paragraph 112 of the affidavit of examination in chief of PW 1) and their values. Having regard to the oral and documentary evidence on record, on the principle of preponderance of probabilities, the Plaintiff can be certainly said to have made out its case for execution of this extra work as well as its value.

12 Coming now to the Plaintiff's claim concerning deduction of excess interest on mobilisation advance (Issue No.5), the Plaintiff's pleading is in paragraph 111 of the plaint. It is submitted by the Plaintiff that the Defendants deducted interest on mobilisation advance upto the date of payment of each concerned running bill. It is submitted that since there was a delay in making payment of such running bills, the Defendants were not justified in deducting interest on the mobilisation advance during such delay period and that the Plaintiff was entitled to reimbursement of this excess interest recovered by the Defendants. It is not in dispute that the Defendants were entitled to recover interest on every part of the

mobilisation advance till the date of its adjustment against a running bill. Since the Plaintiff's claim for interest on amounts paid towards running bills on account of delay in payment is being separately considered, there is no justification for considering this claim separately. After all, the Plaintiff had use of this money, namely, the component of mobilisation advance which was to be adjusted against payment of a particular running bill, the Defendants cannot be faulted for recovering interest till the date of actual payment. If the payment itself was delayed and interest was due and payable by the Defendants to the Plaintiff on account of such delay, such interest would be the real measure of compensation for the Plaintiff.

13 As for pre-suit interest (Issue Nos.3 and 4), the claim is broadly of two types, one by way of interest on the principal amounts of running bills and final bill already paid, though with delay, for the period of such delay and the other on the amounts which, though due, were not paid and which have been claimed in the suit by way of principal money claim (Issue Nos.1 and 2). As explained below, the two types call for different treatments. Coming to the first type, interest has been claimed on (i) running account bills and final bill paid with delay, (ii) Escalation bills (labour, material, POL) paid with delay and (iii) Escalation bills (star rate) paid with delay. So far as running account bills including bills for Escalation, both labour, material, POL and star rate, are concerned, the contractual stipulation for payment is to be found in clause 5.16 of the contract, which provides for payment in fifteen days of raising of a bill, if possible. As for final bill, the contract (also, clause 5.16) provides for payment within three months, disputed items or claims having to be excluded and settled separately. The submission of the Defendants on these stipulations (clause 5.16) is that there was no absolute liability on their

part to pay running bills within fifteen days; they had to do so only to the extent possible. It is, however, accepted by learned Counsel for the Defendants that so far final bill is concerned, its payment had to be made within three months to the extent of undisputed items or claims. Secondly, it is submitted that even in the event of delay, assuming such delay to be in breach of contract, there was no stipulation for any interest in the contract and no interest was payable in that case.

14 Learned Counsel for the Plaintiff submits that his client had duly given notices under the Interest Act and under Section 3 of that Act, interest was due and payable by the Defendant to the Plaintiff with effect from the respective dates mentioned in that behalf in the notices. Learned Counsel submits that the words “if possible” in clause 5.16 do not imply that the running bills (whether regular or Escalation related) could be paid at any time; the employer had to keep to the timeline provided under clause 5.16, for both running account bills and final bill.

15 Based on these submissions, the first question which arises is whether there was any time-line provided for payment so far as running account bills are concerned. To be sure, there was one, namely, fifteen days of submission of the bill. Did it then make a difference to that stipulation due to the use of the qualifying words “if possible”. I think not. The words “if possible” may introduce a concession in the sense that the employer could get away from consequences of not paying in time by claiming that processing of a particular bill and its payment within the stipulated time was “not possible”. If that is his claim in a court of law, he must plead and prove the same. It cannot be that the words “if possible” bring about an element of tentativeness to the stipulation. That would make no

commercial sense. We are, after all, in the realm of a commercial contract – a contract for construction of a housing complex. A clause providing for a tentative time-line would make scarce sense in such a contract. A better construction, which in all probability would have been intended by the parties, would be to treat these words as an exception. This aspect of the matter, however, is not really determinative, since, anyway, the Plaintiff's case, argued at the bar, is really based on clause (b) of Sub-section (1) of Section 3 of the Interest Act and not clause (a).

16 The second question is, what is the consequence of non-payment within time. The contract does not provide for any. It has been an established principle of our law that interest (that is, pre-suit interest) can be allowed on delayed payment (i) in terms of the agreement entered into between the parties, or (ii) where it is permissible by statute, or (iii) by reason of usage of trade having the force of law. The agreement between the parties does not provide for interest and there is no usage of trade. The Plaintiff claims under a statute, i.e. the Interest Act, 1978. It is submitted that the Plaintiff has given notices from time to time for claiming interest on delayed payments at 21 per cent per annum from dates mentioned in that behalf in such notices. No doubt the Interest Act applies where interest is not otherwise payable by law. Section 3 of that Act provides as follows :

“3. Power of court to allow interest.— (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,

—

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in sub-section (1),

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death,

then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the Court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section,

(a) shall apply in relation to

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement;
or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

- (b) shall affect
 - (i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or
 - (ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);
- (c) shall empower the court to award interest upon interest.”

As is obvious from the very text of Section 3, interest is applicable under it in two contingencies, namely, (i) where proceedings relate to recovery of any debt or damages, or (ii) where a claim for interest in respect of any debt or damages **already paid** is made. The first contingency is where the principal debt or claim of damages is outstanding and interest is claimed on such debt or damages along with the principal in the proceedings, whereas the second is where the principal has already been paid and what is claimed in the proceedings is simply interest.

17 As we have noted above, the Plaintiff's claim for interest in this suit is of both types. As for the extra items and wrongly recovered interest on mobilisation advance, interest is claimed on the principal sums which themselves are outstanding. On the other hand, the other claims of interest (which really form the bulk of the decree for interest prayed for) are for interest due on the principal amounts of the bills, which have been paid, but at a delay, and such interest is claimed for the period of delay. What is submitted is that there have been notices under Section 3 of the Interest Act for both claims, and accordingly, interest is payable under Clause (b) of Sub-section (1) of Section 3.

18 Going by the facts of our case, one more important point falls for consideration so far as the second category of interest claim has been concerned. In case of many running bills for which interest has been claimed by the Plaintiff, the relevant notices under Section 3 of the Interest Act appear to have been issued after the principal amounts of the bills were already paid. Interest under Section 3 can always be awarded, as noticed above, even in a case where the principal amount has been paid and the proceedings are for recovery of only interest. The question, however, is whether the notice provided under Section 3 can be issued after payment of the principal. On first principles, as the provision stands, from a contextual point of view that appears to be impermissible. After all, the purpose of a notice under Section 3 is to caution the debtor that interest will be charged if the principal amount is not paid; that such charge will be made from a date mentioned in that behalf in the notice. If the principal amount has already been paid, though with a delay, the creditor cannot unilaterally bring about a cause of action for recovery of interest by issuing a notice under the Interest Act. The legislative history of Section 3 of the Interest Act also supports this view. The statutory enactment on interest before the present Act, namely, the Interest Act, 1839, contained only one section, titled “power of court to allow interest”. It provided for the power of the court, before which any debt or sum certain payable at a certain time or otherwise could be recovered, to allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debt or sum certain was payable, if they were payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand for payment shall have been made in writing, giving notice to the debtor that interest would be claimed from the date of such demand until the time of payment. The provisions of Interest Act, 1839 were

examined by the Law Commission of India in its sixty-third report. The commission was of the view that almost every phrase used in the Act had given rise to problems of interpretation and judicial decisions had disclosed divergence of views in respect of the same. The Law Commission accordingly proposed revisions in the Act comprehensively so as to make its provisions more precise, specific, unambiguous and juristically satisfactory. The revised draft bill was accordingly presented to the Parliament on the basis of the recommendations of Law Commission. As regards the starting point of interest, the commission was of the view that the original provision (of the Interest Act, 1839) had provided for the starting point differently in two cases. In the case of a debt or a sum certain payable at a certain time by virtue of a written instrument, the interest ran from the date on which the debt or a sum certain was payable and in all other cases, interest could run from the date mentioned in the notice of demand for interest. These other cases, according to the commission, required some discussion. After a careful consideration, the commission came to a conclusion that except in a case where the debt was payable by virtue of written instrument at a certain time, it was the notice of written demand of interest which would be crucial as in the case of existing Interest Act (Interest Act of 1839). The commission was of the view that justice required that a person who had failed to perform a monetary obligation (whether in debt or in damages) should be given notice by the creditor or a person entitled to damages of the intention to claim interest, so that the person liable may stop the negotiation which he might have undertaken or examination of the facts of the case or legal consultation, and pay the principal amount, if he so chooses. Such notice of demand, according to the commission, served two purposes, namely, (a) re-asserting the claim to claim principal and (b) notifying the desire of the claimant to claim interest. The commission was

also of the view that there was a practical advantage in giving such notice of demand; it avoided disputes as to the date of breach of contract or the date of commission of tort where the claim for principal amount was relatable to such breach of contract or tort. That is how the present provision, namely, Section 3 of the Interest Act, 1978, was brought into effect. This legislative history particularly shows that it was imperative that the claim for principal amount should be outstanding as on the date of the notice of demand for interest. It could not be that the principal amount had already been paid and a fresh claim for interest was made thereafter under Section 3. That would turn the law of interest proposed by the legislature on its head. Learned Counsel for the Plaintiff is unable to produce any authority to support his case that interest could be claimed by a notice of demand issued after payment of the principal amount and based on such notice, a suit for recovery of only interest could be filed in a court of law. Thus, neither on principle nor on authority could a notice issued under Section 3 of the Act after payment of the principal sustain a claim for interest thereunder.

19 On the basis of the law discussed above, let us now consider the facts of our case so far as the Plaintiff's claim on the basis of a notice of demand under Section 3 of the Interest Act is concerned. In the first place, so far as running account bills are concerned, the very first notice of demand under Section 3 was purportedly issued in respect of RA bill nos.10, 12 , 13 and 14 and Escalation bills comprised of Escalation (labour, material, POL) RA bill nos.2 to 4. It is important to note that RA bill nos.1 to 10 had already been paid by this time. So also, was the first and second RA bills for Escalation (labour, material, POL). What was outstanding as of the date of this notice (notice dated 9 January 1998 – Exhibit P-8) were RA

bill nos.12, 13 and 14 and RA bill Nos.3 and 4 of Escalation (labour, material, POL). The Plaintiff appears to have addressed thereafter various reminders for further RA Bills, particularly RA bills nos.20 to 34 and RA bill no.35, which was in effect the final bill and also Escalation RA bills (labour, material/POL) nos.5 to 9 and RA bill no.10, which was the final bill for Escalation (labour, material, POL) and Escalation (star rate) RA bill nos.1 to 3 and RA bill no.4, which was a final bill (Exhibits P-13, P-14, P-17 to P-19, P-21 to P-23, P-25, P-27, P-28, P-31, P-33 and P-34). In none of these notices was there any demand for interest in relation to any outstanding bill. The first demand of interest after the notice of 9 January 1998 (Exhibit P-8) was in the Plaintiff's letter dated 27 March 2000 (Exhibit P-35). At that stage, all regular running account bills upto RA bill no.33, Escalation bills of star rate and labour/material, respectively, upto RA bill no.3 and RA bill no.9, had already been paid. What was outstanding was regular RA bill nos.34 and 35 (which was a final bill) and Escalation (star rate) (fourth and final bill) and Escalation (labour/material/POL) (tenth and final bill). The Plaintiff appears to have annexed a statement of interest payable by the Defendants on delayed payment of bills to this particular notice (notice of demand dated 27 March 2000 - Exhibit P-35). The statement includes claims for delay in respect of all regular RA bills, namely, RA bill nos.1 to 34 and 35 and final bill as well as RA bills of labour, material, etc. from nos.1 to 9 and 10th and final bill and RA bills of Escalation (star rate) (being nos.1 to 3 and fourth and final bill). As noticed above, this was the only demand after the first demand of 9 January 1998 (Exhibit P-8), which was for RA bill nos.10 and 12 to 14 and RA bills of Escalation (labour, material, POL) nos.2 to 4. On the basis of the law discussed above, no demand for interest in the event of concluded payments of principal can sustain a suit for recovery of interest under Section 3 of the Interest Act,

1978. Accordingly, the Plaintiff can have a valid claim under Section 3 of the Interest Act only in respect of regular RA bill nos.12 to 14 and Escalation RA bills nos. 3 and 4 (labour/material/POL) (notice for demand dated 9 January 1998 - Exhibit P-8) and for bill no.35 (regular final bill) and Escalation final bills (i.e. bill no.10 for Escalation (labour/material) and bill no.4 for Escalation (star rate) (notice of demand dated 27 March 2000 - Exhibit P-35).

19 As for rate of interest, referred to in Section 3 of the Interest Act, from the material produced by the Plaintiff comprising of official banking communications (which are not matters of contest), 9 per cent per annum appears to be the average or maximum interest payable on deposits by scheduled banks for the relevant period. Both pre-suit and pendente lite interests can be awarded accordingly.

20 Accordingly, there will be a decree in favour of the Plaintiff for the following sums:

(i) A sum of Rs.9,32,544 (Rupees Nine Lakhs Thirty-two Thousand Five Hundred Forty-four only) being the total amount due towards the extra work of additional depth of foundation (Rs.8,58,619) and for the extra work of excess quantities of 200 mm CI pipeline for gravity main (Rs.73,925), as claimed in para 108 read with Exhibit XXXX to the plaint;

(ii) A sum of Rs.2,82,484 (Rupees Two Lakhs Eighty-two Thousand Four Hundred Eighty-four only) towards the extra work of compound wall Type 5 quarters, GSR of Type 1 quarters, transformer

for extra load, as claimed in para 109 read with YYYY of the plaint;

(iii) A sum of Rs.1,47,871/- (Rupees One Lakh Fourty-seven Thousand Eight Hundred Seventy-one only) towards interest on RA bill nos.12, 13 and 14 and bill no.35 (final bill) till the date of the suit;

(iv) A sum of Rs.2,65,441/- (Rupees Two Lakh Sixty-five Thousand Four Hundred Fourty-one only) towards interest on bill no.10 (final bill) of Escalation (labour, material and POL);

(v) A sum of Rs.27,351/- (Rupees Twenty Seven Thousand Three Hundred Fifty-one only) towards interest on bill nos.3 and 4 (final bill) of Escalation (star rate) upto the date of the suit;

(vi) A sum of Rs.22,18,507/- (Rupees Twenty Two lakhs Eighteen Thousand Five Hundred Seven only) towards interest on the sums of Rs.9,32,544 and Rs.2,82,484 decreed in terms of Clauses (i) and (ii) above upto the date of the decree;

(viii) The Defendants shall pay costs of the suit. Such costs as may be taxed by the Taxing Master.

(S.C. GUPTE, J.)