IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.408 OF 2011
WITH
CROSS OBJECTION NO.51 OF 2016

Dhanraj Harichandji Khandelwal
Aged 55 years, Occ. Business,
R/o New Congress Nagar, Amravati
Tq. And Dist. Amravati … Appellant

-vs-

1. State of Maharashtra,
   Thr. Collector, Wardha

2. Executive Engineer
   Public Works Division, Wardha

3. The Maharashtra State Road
   Transport Corporation,
   Nepian Sea Road, Priyadarshani Park,
   Mumbai … Respondents

Shri A. S. Jaiswal, Senior Advocate with Shri S. P. Palshikar, Advocate for appellant.
Smt Sangita Jachak, Assistant Government Pleader for respondents.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI JJ.
Date on which the arguments were heard : January 27, 2021
Date on which the judgment is pronounced : March 05, 2021

Judgment : (Per A. S. Chandurkar, J.)

The judgment dated 05/02/2011 passed by the learned Joint Civil Judge, Senior Division, Wardha in Special Civil Suit No.63 of 2005 directing the defendant Nos.1 and 2 to pay an amount of Rs.7,65,042/- with interest at the rate of 10% per annum from 10/06/2008 as well as further amount of

Rs.61,687/- with interest at the rate of 10% per annum from 27/02/2003 along with a direction to pay interest at 10% per annum on Rs.14,37,693/- from 28/02/2001 to 10/06/2008 is the subject matter of challenge in the First Appeal No.408/2011 at the instance of the original plaintiff to the extent the relief as sought in the plaint has been refused by the trial Court while the defendant Nos.1 and 2 have challenged the grant of aforesaid reliefs by filing cross-objection.

2. The facts in brief as per the pleadings of the parties are that it is the case of the plaintiff that he is a registered Class-I-A contractor engaged in doing various works of the Public Works Department. In September 1997 a public notice was issued inviting bids for undertaking widening of the carriage way on Arvi-Wardha road which was State Highway No.257. The bid of the plaintiff came to be accepted by the defendant No.1. In the tender notice the cost of the work was indicated to be Rs.1,39,50,662/-. However the defendant No.2 allotted the work to the plaintiff for an amount of Rs.1,39,04,116/-. After complying with all necessary requirements Work Order dated 25/06/1998 was issued to the plaintiff. The period for completion of the work was twelve months from the date of issuance of the Work Order. The necessary agreement was thereafter prepared and the plaintiff commenced the said work. According to the plaintiff in view of the financial difficulties faced by the defendants the cost of the work in question

was reduced to Rs.95,07,007/-. This reduction in the cost according to the plaintiff resulted in reduction of his profit margin. Though the work was to be completed within a period of twelve months the defendants on account of financial difficulties faced by them granted extension for completion of the work up to 31/03/2001. The work was however completed by the plainthiff on 28/02/2001. It is the further case of the plaintiff that price escalation as per Clause-54 of the contract was liable to be granted to the plaintiff. While the total expenses of the plaintiff came to Rs.1,05,22,254/- an amount of Rs.88,82,497/- was paid under four running bills. The balance amount unpaid for the completed work was Rs.16,35,757/-. In view of the delay in making payment the plant and machinery as well as equipment of the plaintiff remained idle. The final measurement of the work was undertaken on 28/02/2001 and the defect liability period was two years from the date of actual completion of the work. Since according to the plaintiff he had been put to loss in the process he lodged a claim with the defendants under various heads. Total claim of Rs.2,49,04,154/- was accordingly made by the plaintiff under various heads. Notice dated 14/05/2004 was served on the defendants which was replied to by the defendant No.2 on 03/07/2004. Though it was stated that the final bill submitted by the plaintiff had been processed and had been sent to the defendant No.3 for payment the same was not received by the plaintiff. Accordingly the plaintiff proceeded to file suit for recovery of an amount of Rs.2,49,04,154/- on 31/01/2005.

3. The defendant Nos.1 and 2 filed their written statement at Exhibit-9. Besides denying all adverse allegations as made in the plaint it was specifically pleaded that it was the plaintiff who did not complete the work within stipulated period. On account of the delay caused by the plaintiff in completing the work the financial planning of the department had suffered. By stating that all legitimate claims were already paid to the plaintiff the said defendants sought dismissal of the suit.

The defendant No.3 filed its written statement at Exhibit-28. It referred to the payments made to the plaintiff as per the final bill and the fact that the work in question was the responsibility of the Public Works Department. The said defendant therefore took the stand that as all due payments were already made to the defendant No.2 for being paid to the plaintiff and there were no dues remaining. Hence the suit was liable to be dismissed.

4. In support of the plaint averments the plaintiff examined himself at Exhibit-19 and his Engineer at Exhibit-50. The defendant examined the Engineer in-charge at Exhibit-114. Both the parties relied upon documentary evidence and the trial Court after considering the same proceeded to hold that some of the claims raised by the plaintiff were barred by limitation. Out of the claims that were filed within limitation the trial Court proceeded to award the sum of Rs.7,65,042/- and Rs.61,687/- which amounts were

payable with interest at the rate of 10% per annum. It is in these facts that the plaintiffs have sought to challenge the decree passed by the trial Court to the extent the relief has been refused to him while the defendants are aggrieved by whatever relief the trial Court has granted to the plaintiff.

5. Shri A. S. Jaiswal, learned Senior Advocate for the appellant-plaintiff submitted that the trial Court was not justified in holding that part of the claim as made in the suit was barred by limitation. Relying upon the provisions of Article 113 of the Limitation Act, 1963 (for short, the Act of 1963) it was submitted that the contract in question had to be seen as a whole. The same could not be split up by the plaintiff for the purposes of pursuing separate claims arising thereof. Under Article 113 of the Act of 1963 the suit was required to be filed within a period of three years when the right to sue accrued. The work in question was completed on 28/02/2001 and for the period of two years thereafter the defect liability period continued. The period of limitation would thus commence on 01/03/2003. On 14/05/2004 notice under Section 80 of the Code of Procedure, 1908 was given by the plaintiff pursuant to which part payment was made by the defendants on 19/06/2004. This payment was accepted under protest by the plaintiff on 01/07/2004. The communication between the parties continued with the plaintiff claiming his dues especially in relation to the final bills submitted by him. The suit was filed on

31/01/2005 and during pendency of the suit the defendants on 10/06/2008 made further part payment which indicated that even after filing of the suit the defendants were considering the entitlement of the plaintiff. The claims as made by the plaintiff with the defendants and not considered by them were the subject matter of the claim in the suit. On that premise it was clear that the suit as filed was clearly within limitation under Article 113 of the Act of 1963 and the trial Court erred in holding that part of the claim was barred by limitation. Placing reliance on the decisions in ***Rashtriya Ispat Nigam Ltd. vs. Prathusha Resources and Infra Pvt. Ltd. And anr. (2016) 12 SCC 405*** and ***Aries & Aries vs. Tamil Nadu Electricity Board (2018) 12 SCC 393*** it was submitted that in the light of averments in paragraph 12 of the plaint wherein the cause of action for filing the suit had been disclosed, no part of the claim was barred by limitation. The learned Senior Advocate also referred to the decision in ***Shakti Bhog Food Industries Ltd. vs. Central Bank of India and Anr. 2020 (5) Mh.L.J. 1*** in that regard. This finding therefore was liable to be set aside.

It was then submitted that though initially the Work Order was for the value of Rs.13,94,116/- the same was reduced to Rs.9,57,007/- without giving any notice to the plaintiff. Relying upon Clause-15 of the tender document (Exhibit-35) it was submitted that as a result of such alteration in the quantum of work, the plaintiff sustained loss. Further under Clause-10 of the tender document it was necessary for the Engineer of the defendants to measure the work done every month. This was not done for which the plaintiff could not be blamed. On the contrary the time to complete the work came to be extended as the defendants were facing financial difficulties. The time was extended to complete the work by the defendants till 31/03/2001 but prior to that date the plaintiff completed the work on 28/02/2001. There was neither any notice given at any point of time nor was any memo issued by the defendants alleging delay on the part of the plaintiff in completing the work. Mere fact that the running bills were not raised regularly by the plaintiff could not be a ground to hold that delay was caused by the plaintiff in completing the work. He further submitted that in view of the delay on the part of the defendants in making payments as per the running bills, the plaintiff was justified in claiming interest on such delayed payments. All the claims were rightly raised after completion of the work and there was no reason for the plaintiff to make such demands prematurely.

6. The claim for the machinery and labour of the plaintiff remaining idle was wrongly rejected by the trial Court. On account of paucity of funds on the part of the defendants the completion of the work was delayed. The plaintiff was required to maintain the labour and keep his machinery at the site idle. Referring to the evidence brought on record by the plaintiff it was submitted that the loss on account of the labour and machinery remaining

idle had been rightly claimed by the plaintiff. He also referred to the deposition of the witness examined by the defendants to substantiate his contention as regards entitlement of the plaintiff. The interest awarded on the decreetal amount at 10% per annum was on a lower side. Considering the fact that there was a commercial transaction between the parties the trial Court ought to have awarded higher interest on the decreetal amount. It was thus submitted that on proper consideration of the entire evidence on record the trial Court ought to have decreed the suit in its entirety and the impugned judgment to the extent relief was refused to the plaintiff was liable to be set aside.

7. Smt S. Jachak, learned Assistant Government for the respondents opposed aforesaid submissions and in support of the cross-objection filed by the defendants submitted that the trial Court was justified in holding that part of claim made by the plaintiff was barred by limitation. The claim as made ought to have been agitated when the cause of action first accrued and it was not necessary for the plaintiff to have waited till the entire work in question was completed. Reference was made to Article 58 of the Act of 1963 to urge that the respective claims ought to have been raised by the plaintiff when the right to sue first accrued. It was submitted that the trial Court committed an error in directing refund of the security deposit especially when there were no pleadings whatsoever in the plaint seeking

such refund. She referred to the pleadings of the parties as well as evidence on record to submit that the delay was on the part of the plaintiff in completing the work in question. The defendants could not be blamed for the same and the time to complete the work was extended at the instance of the plaintiff. It was further submitted that there was no evidence on record to indicate that the machinery and labour of the plaintiff were lying idle at the site and the said claim was rightly disallowed by the trial Court. The plaintiff by failing to have the work done measured every month was himself guilty of breach of the terms of the agreement. The delay in submitting the running bills was also by the plaintiff and hence there was no basis for the plaintiff to claim interest on the delayed payment of the running bills. The finding recorded that most of the claims made by the plaintiff were barred by limitation was legally correct in the light of the fact that though the work in question was completed on 28/02/2001, the notice under Section 80 of the Code was given on 14/05/2004 and the suit was filed on 31/01/2005. It was thus submitted that the decree as passed by the trial Court directing refund of the security deposit was without any legal basis and it was liable to be set aside. The cross-objection thus ought to be allowed.

8. In the light of the rival submissions of the learned counsel for the parties, the following points arise for adjudication :

(a) Whether the suit has been filed within limitation ?

(b) *If point (a) is answered in the affirmative, what is the entitlement of the plaintiff towards the claims as made in Annexures A to E of the plaint ?*

(c) *Whether the judgment of the trial Court requires to be interfered with ?*

9. We have heard the learned counsel for the parties at length and with their assistance we have also perused the records of the case.

As to point (a) :

In the impugned judgment the trial Court after completion of the plaintiff's argument was pleased to frame an additional issue as to whether the suit as filed was within limitation. According to the defendants the work in question was completed on 28/02/2001 and the payment for that work became due from 28/02/2001. Since the notice under Section 80 of the Code was issued on 14/05/2004 and the suit was filed on 31/01/2005 it was barred by limitation. On the other hand according to the plaintiff after completion of the work on 28/02/2001 the final bill was not immediately prepared by the defendants. The plaintiff was required to make various demands in writing till filing of the suit. On 02/11/2004 the defendant No.2 had acknowledged in writing that an amount of Rs.14,67,034/- was due and payable to the plaintiff towards the final bill. During pendency of the suit an amount of Rs.6,72,651/- was paid. Hence according to the plaintiff the suit was filed within limitation.

The learned Judge of the trial Court after considering the documentary material on record was pleased to hold that the claim for interest on account of non-payment of the first, second and third running bill was barred by limitation. For that purpose the learned Judge of the trial Court applied the provisions of Article 25 of the Act of 1963. He further held that for the claim for interest due to non-payment of the final bill, the provisions of Article 113 of the Act of 1963 were applicable and hence said claim was within limitation. It was further held that the claim made for loss suffered on account of the machinery remaining idle as well as the loss suffered on account of reduction in the cost of work under contract was also barred by limitation, the same having been made after a period of three years from the cause of action first accruing.

10. The present suit is one filed for recovery of the amounts due to the plaintiff from the defendants under Work Order dated 25/06/1998. The tender conditions at Exhibit-35 and especially Clauses-8, 10 and 20 thereof are material for the present purpose. Under Clause-8 the contractor was permitted to submit monthly bill and receive proportionate payment for part of the work done as approved by the Engineer in-charge. All such intermediate payments were to be referred as payments by way of advance against the final payment and whenever the final bill was to be submitted by the contractor the payments made towards the running bills were to be

adjusted. Clause-10 of the tender conditions permits such monthly bills to be submitted by the contractor which the Engineer in-charge is entitled to verify. If such monthly bills were not submitted by the contractor within the time stipulated, the Engineer in-charge could depute a subordinate to measure the work done in presence of the contractor or his authorised agent. As per Clause-20 the defect liability period was of twenty four months on the expiry of which the amount of security deposited was liable to be returned to the contractor.

The aforesaid Clauses thus indicate that the contractor had to submit his monthly bill indicating entitlement to the amount approximately due for the work done. Payments made were subject to settlement of the final bill by the Engineer in-charge. Defects if any occurring within twenty four months of completion of the work were liable to be removed. In the present case the final measurement after completion of the work was undertaken on 28/02/2001. A period of two years was prescribed as the defect liability period which ended on 28/02/2003. On 14/05/2004 notice under Section 80 of the Code was issued by the plaintiff to the defendants and on 19/06/2004 part payment was made by the defendants to the plaintiff. This part payment was accepted by the plaintiff under protest on 01/07/2004. The defendants on 03/07/2004 replied to the notice issued by the plaintiff under Section 80 of the Code and thereafter on 02/11/2004 addressed a communication to the plaintiff with regard to settlement of the final bill. It is thereafter that on 31/01/2005 the present suit came to be filed. It is also to be noted that on 10/06/2008 during pendency of the suit the defendants paid an amount of Rs.6,72,651/- to the plaintiff.

11. Article 25 of the Act of 1963 prescribes the period of limitation of three years from the date when interest is due on the money due from the defendant to the plaintiff. Article 58 prescribes the period of limitation of three years for obtaining any other declaration when the right to sue first accrues. Article 113 prescribes the period of limitation of three years for any suit for which no period of limitation is provided in said Schedule and the time begins to run when the right to sue accrues.

While determining the period of limitation the Work Order dated 26/05/1998 will have to be taken as a whole. It would not be permissible to split the Work Order into separate parts while determining the period of limitation. The work that was allotted to the plaintiff was completed by him on 28/02/2001. Though it is true that as per Clause-8 of the tender conditions the plaintiff was required to submit running bills, it would not mean that on the date when such running bill was submitted the plaintiff was required to pursue the same within a period of three years of such submission. The first running bill was submitted on 11/06/1998, the second running bill was submitted on 21/10/1999, the third running bill was submitted on 08/02/2000 while the fourth running bill was submitted on

29/01/2001. It is an admitted position that part payment on the basis of these running bills were made by the defendants to the plaintiff. It would however not mean that from the date of issuance of the respective running bill the period of limitation would start to run qua each running bill. The work in question was completed thereafter on 28/02/2001 on the basis of which the plaintiff was entitled to submit his final bill. Insofar as the claim of the plaintiff as based on submission of the final bill, the trial Court has found the suit to have been filed within limitation. As observed herein above the entire Work Order was required to be treated as a composite one for the purposes of reckoning the period of limitation and the period of limitation would not start to run from the issuance of each running bill. The amount that remained outstanding after submission of each running bill would be the balance carried forward. All this would be taken into account while preparing the final bill and the defendants while adjudicating the claim of the plaintiff would naturally deduct the amounts paid against the earlier running bills.

12. Reference in this regard can be made to the decision in ***Food Corporation of India vs. Ratanlal N. Gandhi AIR 2004 MP 215***. A similar contention was raised that claims due under various running bills were barred by limitation. Repelling the same it was held that unless and until the final bill was finalised which would also include the running bills of the work

done, no cause of action would accrue to the plaintiff to file any suit nor could the period of limitation be reckoned earlier to it.

Article 113 would therefore be applicable to the entire contract and the period of limitation would commence when right to sue accrued. The trial Court committed an error in applying the provisions of Article 25 of the Act of 1963 while holding the claims made by the plaintiff for grant of interest on the delay in satisfying the running bills to be barred by limitation. It is therefore held that when the suit as filed after completion of the entire work was found to be within limitation in the light of the final bill, there was no reason for the trial Court to separately determine the period of limitation insofar as the earlier running bills are concerned.

Moreover the fact that the claim of the plaintiff was not settled prior to filing of the suit and that an amount of Rs.6,72,651/- was paid by the defendants on 10/06/2008 after filing of the suit itself indicates that even the defendants acknowledged their liability to satisfy the plaintiff's claim based on the work undertaken by him and continued determining the amounts so due. The decisions relied upon by the learned Senior Advocate for the plaintiff in ***Rashtriya Ispat Nigam Ltd. vs. Prathusha Resources and Infra Pvt. Ltd. And anr. (2016) 12 SCC 405*** and ***Aries & Aries vs. Tamil Nadu Electricity Board (2018) 12 SCC 393*** (supra) support his contention in that regard. Thus treating the contract as a whole it is held that all claims made by the plaintiff based on the Work Order and the contract in question were within limitation. The finding recorded by the trial Court against Issue No.8 that part of the claim raised by the plaintiff was barred by limitation is set aside and point (a) is answered by holding that the entire claim of the plaintiff was within limitation.

13. **As to point (b)** :

As point (a) has been answered in the affirmative it would be necessary to consider the entitlement of the plaintiff towards the claim as made in Annexures-A to E of the plaint.

As per Annexure-A the plaintiff claims the balance amount payable for the work done under the contract. It is the case of the plaintiff that work to the extent of Rs.16,39,757/- was done by the plaintiff. While Rs.10,15,247/- was the amount due towards escalation in the cost, Rs.6,24,510/- was the amount due towards the actual work done as per the Work Order. This claim of the plaintiff has been held to be within limitation by the trial Court and we do not find any reason to take a different view of the matter insofar as this aspect is concerned. It is also to be noted that insofar as the value of the work done by the plaintiff to the extent of Rs.6,24,510/- is concerned, the entitlement of the plaintiff is not disputed by the defendants. The defendants however dispute the amount claimed towards escalation. According to the defendants the value of escalation is only Rs.8,42,524/- while according to the plaintiff it is Rs.10,15,247/-. The trial Court has thereafter in paragraphs 38 and 39 found that the plaintiff did not lead evidence nor did he bring on record details as to the manner in which the entitlement towards escalation of Rs.10,15,245/- was determined by him. The manner in which the amount of escalation was to be calculated is indicated in Clause-54 of the tender conditions (Exhibit-35). In absence of necessary details the trial Court had no option but to accept the figure given by the defendants towards escalation in price being Rs.8,42,524/-. Even before this Court it has not been demonstrated as to how the plaintiff arrived at the figure of Rs.10,15,247/- that is being claimed as amount of escalation in price. We therefore are left with no option but to affirm the finding recorded by the trial Court in this regard by accepting the amount of Rs.8,42,524/- being the escalation in the price of work that was due under the final bill. Accordingly the plaintiff is held entitled to an amount of Rs.14,67,034/- towards dues of the final bill. The claim as made in Annexure-A is accordingly granted to the aforesaid extent.

14. In Annexure-B the plaintiff has claimed an amount of Rs.1,88,32,800/- as the amount of loss incurred by the plaintiff on account of the machinery remaining idle at the site during the period of execution of the work. The trial Court has held this claim made under Annexure-B to be barred by limitation. However while answering point (a) it has been held that the suit has been filed within limitation and hence it would be

necessary to consider the entitlement of the plaintiff to this amount.

The plaintiff in his affidavit at Exhibit-19 and especially paragraph 7 thereof has stated about the manner in which he has determined the amount of loss sustained due to the plant and machinery remaining idle during the period of Work Order. The total working days in a month have been taken to be 26 days and it is the claim of the plaintiff that for a period of 546 days the plant and machinery remained idle. The plaintiff was required to pay wages of Rs.100/- per day to three guards each. Rs.10,000/- per month were required to be paid to the site Engineer and Rs.4,000/- per month were required to be paid to two Supervisors each. After including other miscellaneous expenses the figure in question was arrived at. In his cross-examination the plaintiff admitted that while undertaking the work under the present contract he had no other work in hand. He was owning two hot mixing plants of which one was at Wardha and other one was at Amravati. He was also utilising his own truck and other machinery and the same were never given on rent. The machinery required used to be kept at the site till the completion of the work. He denied the suggestion that payments were not made to the staff employed by him.

The trial Court in paragraph 56 of its judgment has observed that without giving further details about the manner in which particular machinery was utilised and was necessary at different stages of the work, it was not be possible to conclude which machinery was being utilised for a particular period and which machinery remained idle. The evidence adduced by the plaintiff was found to be insufficient to calculate the losses as claimed by the plaintiff. On a re-consideration of the evidence led by the plaintiff it is difficult to determine which machinery remained idle for a particular period while some other machinery was under use. There is no specific evidence led by the plaintiff to indicate the period for which a particular machine was put to use while other machines remained idle during that period. The evidence on record is not sufficient to determine the actual loss suffered by the plaintiff as alleged due to his machinery remaining idle. We therefore find that the plaintiff has not been able to prove his claim for loss sustained on account of the machinery remaining idle. The claim as made against Annexure-B stands adjudicated accordingly.

15. As per Annexure-C the plaintiff claims loss suffered on the amount of interest for the period of delay in making payment towards the running bills. According to the plaintiff the measurement for the first running bill was taken on 11/06/1998 and amount of Rs.2,44,549/- under that bill was paid on 20/05/1999. The measurement for the second running bill was taken on 21/10/1999 and amount of Rs.10,86,173/- was paid on 31/01/2000. The measurement for the third running bill was taken on 08/02/2000 and amount of Rs.28,39,815/- was paid on 16/05/2000. The measurement for the fourth running bill was taken on 29/01/2001 and

amount of Rs.47,11,960/- was paid on 07/03/2001. The trial Court has held the claim made with regard to aforesaid four running bills to be barred by limitation but as held while answering point (a) these claims are also within limitation. The trial Court has awarded interest at the rate of 10% per annum on the delayed payment of the final bill. This direction does not call for any interference whatsoever. We find that the plaintiff would be entitled to interest at the rate of 10% per annum on the delayed payments made while satisfying the aforesaid four running bills. Thus for the period taken by the defendants in making payment towards each running bill, the plaintiff would be entitled to be paid interest at the rate of 10% per annum for the number of days taken to make the payment after the respective measurements were taken.

16. In Annexure-C the plaintiff has also sought refund of the amount of security deposit. In this regard Clause-20 of the tender conditions indicates that for a period of 24 months after commencing of the work it was to be the responsibility of the contractor to rectify any defect in the work done as pointed out by the Executive Engineer. For the said period of 24 months the amount of security deposit was to be retained by the defendants and after completion of the period of 24 months the amount of security deposit was liable to be paid/refunded to the contractor. The trial Court has held this claim made by the plaintiff to be within limitation in view of the

fact that the work in question was completed on 28/02/2001 and the period of two years expired on 28/02/2003. As held earlier the suit itself having been filed within the prescribed period of limitation the claim as made for refund of security deposit can be considered. In this regard after completion of the entire work the defendants on 08/11/2001 (Exhibit-104) brought to the notice of the plaintiff some defects in the said work. The plaintiff removed those defects and accordingly informed the defendants by his letter dated 17/01/2002 (Exhibit-99). Under the terms of the contract the defendants were entitled to deduct 90% of the amount of security deposit from the running bills submitted by the plaintiff and the remaining 10% amount of security deposit was to be paid as stipulated in Clause-20 of the agreement. It is not in dispute that besides the defects pointed out by the defendants on 08/11/2001 no other defects remained to be removed by the plaintiff. It thus becomes clear that after expiry of period of 24 months the plaintiff was entitled to receive the 10% amount from that security deposit. The amount due was Rs.61,687/- and the same became due on completion of period of two years from 28/02/2001. Thus on 28/02/2003 the balance amount of security deposit of Rs.61,687/- became due and payable to the plaintiff.

Though the learned Assistant Government Pleader for the respondents-defendants submitted that the plaintiff was not entitled to refund of security deposit on the ground that the defects pointed out to the plaintiff were not removed, the learned counsel was not in a position to indicate any such defect remaining to be rectified on the part of the plaintiff. The trial Court has found that the defects as communicated by the defendants vide Exhibit-104 were removed by the plaintiff by his communication at Exhibit-99 and thus the plaintiff was held entitled to refund of the amount of security deposit. There is no reason to take a different view of the matter and that finding recorded by the trial Court is accordingly confirmed. The claim made against Annexure-C is adjudicated accordingly.

17. Vide Annexure-D the plaintiff has claimed loss alleged to be sustained by him on the ground that amount of Rs.16,39,757/- which was due on 01/04/2001 and was withheld by the defendants. The plaintiff claims that on account of withholding that amount the plaintiff suffered loss of Rs.29,08,800/-. In the plaint the plaintiff has sought to rely upon the audit report prepared by his Chartered Accountant and he has also referred to the Income Tax Returns for the year 2003-2004. It is however seen that this audit report on which the plaintiff seeks to rely for contending that he suffered loss due to withholding of the aforesaid amount is not placed on record. In absence of that audit report and in absence of the Chartered Accountant being examined by the plaintiff, the defendants were not in a position to effectively object to the aforesaid claim. In view of the aforesaid

the trial Court was pleased to hold that there was no basis to grant the aforesaid claim of the plaintiff. It found absence of necessary details being furnished about the manner in which the plaintiff allegedly suffered losses. By holding the claim to be vague coupled with the fact that even the Income Tax Returns were not placed on record the trial Court did not grant any amount as claimed in Annexure-D. This finding recorded by the trial Court is justified in view of the fact that except bare averments in the plaint there is no documentary evidence whatsoever placed on record by the plaintiff to prove his entitlement to the aforesaid amount. The finding recorded by the trial Court in this regard thus cannot be faulted. It is held that the plaintiff is not entitled to any amount as claimed by him vide Annexure-D.

18. As per Annuxure-E the plaintiff claimed an amount of Rs. 1,68,478/- which according to him is the amount of loss of net profit on account of reduction in the value of the work allotted by the defendants. According to the plaintiff initially the work under the agreement was valued at Rs.1,39,04,116/-. However the value of the work was reduced to Rs.95,07,007/-. On account of reduction in the value of the work by Rs.43,97,109/- the plaintiff claimed that he was required to sustain loss. In other words, the plaintiff has calculated net profit at the rate of 4.18% and by referring to the audit report prepared by his Chartered Accountant the amount of loss of profit of Rs.1,68,478/- has been claimed. Again it is found

that the plaintiff has failed to prove the aforesaid claim in view of the fact that neither was the audit report placed on record nor was the Chartered Accountant examined by him. The basis on which net profit at the rate of 4.18% was claimed has also not been indicated. The trial Court therefore refused to grant such claim and there is no reason to disregard this finding in absence of any evidence whatsoever. It is thus found that the plaintiff is not entitled to any amount whatsoever as claimed by him under Annexure-E.

Point (b) is answered accordingly.

19. Thus in the light of aforesaid discussion it is found that the suit as filed by the plaintiff was within limitation. Various claims made by the plaintiff by relying upon the terms of the agreement were made within limitation. The finding recorded by the trial Court holding the claims made under Annexure-A, Annexure-B, Annexure-C and Annexure-E to be barred by limitation has been held to be not in accordance with law. To that extent the judgment of the trial Court is liable to be set aside. Further it is found that the plaintiff is entitled to grant of interest on the delayed payments made against various running bills which claim was denied by the trial Court by holding it to be barred by limitation. The finding to that regard as recorded by the trial Court is also liable to be set aside. However the claim denied by the trial Court as against Annexure-D and Annexure-E is liable to be confirmed. While the plaintiff is entitled to partly succeed in the appeal

filed by him, the cross-objection filed by the defendants is liable to be dismissed.

Point (c) stands answered accordingly.

20. It is thus held that the judgment in Special Civil Suit No.63/2005 decided on 05/02/2011 is liable to be partly modified. Besides the amounts granted by virtue of the decree passed by the trial Court the plaintiff is held entitled to interest at the rate of 10% per annum on the delayed payments made against running bill Nos.1 to 4 in the manner stated in paragraph 15 of the judgment.

First Appeal No.408/2011 is partly allowed to the aforesaid extent. Cross-objection No.51/2016 stands dismissed. The parties to bear their own costs.

JUDGE **JUDGE**