IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

206 **CWP-3553-2016 (O&M)**
Date of Decision: 17.08.2022

M/S SHARMA CONSTRUCTION CO.

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.
****

Present: Mr. Aman Bansal, Advocate
for the petitioner.

Ms. Sunint Kaur, Asstt. A.G., Punjab.
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VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been filed under Articles 226/227 of the Constitution of the India for issuance of a writ in the nature of Certiorari for setting aside the impugned order (Annexure P-18) dated NIL passed by Executive Engineer, Constructions Division No.3 PWD (B&R) Branch, Ludhiana (respondent No.2) being illegal and not sustainable in the eyes of law. Further prayer has also been made for issuing directions to the respondents to release the undisputed sanctioned/approved payment of the petitioner firm alongwith interest for the work awarded to and duly executed by the petitioner firm.

Learned counsel for the petitioner contends that the petitioner firm is engaged in the business of construction and was awarded the work of upgradation and maintenance of Babbarpur to Timberwal via Chommo, Maloud, Sohian up to Block Boundary Package No.PB-1018 under PMGSY

Scheme Phase VII of 2007-08 and routine maintenance of the work for five years for the contract price of Rs.6,07,04,095/-. The aforesaid tender was awarded in favour of the petitioner on 03.09.2008. He contends that the rates for the maintenance per year were duly incorporated in the work order and the same is reproduced as under:

For maintenance		
For 1st year	Per Km	Rs.42,000.00 (Rupees Forty Two Thousand only)
For 2nd year	Per Km	Rs.44,000.00 (Rupees Forty Four Thousand only)
For 3rd year	Per Km	Rs.46,000.00 (Rupees Forty Six Thousand only)
For 4th year	Per Km	Rs.48,000.00 (Rupees Forty Eight Thousand only)
For 5th year	Per Km	Rs.50,000.00 (Rupees Fifty Thousand only)

He further submits that after the completion of the construction, the petitioner firm used to submit the bill of maintenance as per the aforesaid tender awarded to it and the same was also duly verified and accepted by the respondent department/authorities. The execution and maintenance of the entire work was carried out to the complete satisfaction of the respondent authority and the performance was rated as 'very good'. Reliance in this regard is placed on the appreciation so recorded in the certificate (Annexure P-5). He further contends that the inspection of the work was undertaken by the Engineer-in-Charge from time to time and the deficiencies/defects pointed out by the Engineer upon inspection, conveyed to the petitioner, were duly redressed and rectified in a time bound manner and in accordance with the specifications of the contract. Attention was also drawn to the inspection note and the remedial actions taken by the petitioner as on 26.03.2012, appended alongwith the petition as Annexure P-6. A further reference is made to the communication dated 09.01.2013 (Annexure P-7), as per which the Executive Engineer, Construction Division No.3, PWD B & R Branch, District Ludhiana has returned the maintenance bills since the Sub Divisional Engineer had sent the annual bills for the three years viz. 2009-10, 2010-11 and 2011-12 instead of monthly bills. He has vehemently argued that the petitioner had sent successive reminders about having satisfactorily completed the work and that the department having failed to release the payment due without assigning any valid reason for non-release of the said payment.

When the efforts made by the petitioner failed to yield results, a legal notice dated 25.02.2015 was served upon the respondents. Thereafter, CWP No.6298 of 2015 was filed before this Court seeking release of the aforesaid amount which was disposed of vide order dated 07.05.2015 and a direction was given to the respondent No.2 to consider the claim of the petitioner within a period of six weeks and to pass a speaking order thereupon.

It was after the aforesaid order that the impugned order (Annexure P-18) dated 'nil' was passed by the Executive Engineer Construction Division No.3, PWD (B & R) Branch, Ludhiana. The claim of the petitioner was declined by giving the following reasons:

> *"As per Contract Agreement, the contractor has to maintain road for 5 years and submit the bill every month to Engineer for routine maintenance. The relevant clause 38.2 of Contract Agreement is reproduced as under:*

Clause 38.2 The Payment to the contractor will be as follows for routine maintenance of the works:

(a) The contractor shall submit to the Engineer a bill every month for the routine maintenance of the roads from the date the maintenance of period starts i.e. from completion of date as defined in Clause 1.1, it will be supported with a copy of the record of contractor's monthly inspection and other instructions received from the Engineer.

(b) The payment will be made six monthly for the monthly bills received during the previous six months.

(c) If the bill for a month is not received from the contractor by the 10th day of the succeeding month or/and if the Engineer has not certified that the contractor has carried out the maintenance work for defects brought to his notice under Clause 32.2.4 within specified period, no payment will become due to the contractor for that month.

(d) If the contractor has failed to carry out the maintenance with in the period specified by the Engineer, no payment of any kind will be due to the Contractor for that month.

After going through all the records it is clear that M/s Sharma Construction Company did not do the routine maintenance work to the satisfaction of Engineer-in-Charge, inspite of repeated verbal and written instructions given to him vide letter no. 328 dated 18/05/2010, 593 dt. 24/05/2010, 1282 dt. 03/08/2010, to which he did not complied and never submitted monthly bills for routine maintenance as per terms and conditions of clause 38.2 of Agreement reproduced above. He was specifically instructed vide letter no. 3040 dated 25.01.2011 to submit the routine maintenance bills every month as per condition of Contract Agreement, but he did not submit bills every month.

The Contractor was required to submit the monthly bills but did not submit the same. Infact he submitted annual bills for the year 2009-10, 2010-11 and 2011-12, which are not as per conditions of the Agreement. Due to non submission of monthly bills by the contactor, this office could not arrange the funds for that financial year. The claim raised by the contractor M/S Sharma Construction Company for the payment of the routine maintenance for the years 2009-10, 2010-11 and 2011-12, is not payable to the Contractor as the Contractor did not maintain the road to the satisfaction of Engineer-in Charge and he did not submit the monthly bills, which forfeits his right to payment for routine maintenance as per clause 38.2 (c) and (d) of Contract Agreement."

Learned counsel contends that rejection of the entitlement of the petitioner for the amount due has been done on the basis of alleged non-compliance of Clause 38.2 and for the reason that the bills were not submitted on monthly basis as per the condition of the contract. It is submitted that on account of failure on the part of the petitioner to submit the monthly bills, the office of the respondents could not arrange funds for the concerned financial year(s). A further averment is made that the contractor did not maintain the road to the satisfaction of the Engineer-in-Charge and his failure to submit the monthly bills amounts to forfeiture of his right to payment for routine maintenance under Clause 38.2 (c) and (d) of the Contract Agreement.

The learned counsel has made reference to the aforesaid order and has submitted that the bills for the relevant years were duly forwarded by the petitioner to the Executive Engineer. The same were duly verified by the concerned Engineer. Even though as per the terms of the agreement, a bill so submitted was required to be forwarded by the concerned Engineer to the Engineer-in-Charge within a period of 45 days from the submission of the same, however, no such exercise was undertaken by the said Engineer. He contends that the petitioner cannot be held responsible for failure on the part of the Engineer (Sub-Divisional Engineer) in forwarding the bills to the Engineer-in-Charge.

While adverting to the mandate of Clause 38.2 of the Agreement and relying upon the respondent-State in its impugned order, it is contended that even though the requirement was to submit a monthly bill by the tenth of the succeeding month, however, the said Clause prescribed two conditions and satisfaction of either of the two would entitle the contractor to claim release of the payment. The second condition being the certification of the execution of the work by the Engineer, the contractor would be entitled to release of the payment due. It has been argued that the definition of 'Engineer' is distinct from 'Engineer-in-Charge'. The Sub Divisional Engineer who has verified the bill would be the 'Engineer' for the purposes of execution of work and that the Executive Engineer is the Engineer-in-Charge responsible for overall supervision and execution of the work in question. Hence, once the bill is verified by the Engineer, it is acknowledgement of the execution of the work and a mere failure on the part of the Engineer to seek approval of the Engineer-in-Charge would not deprive the petitioner of his entitlement to seek release of the payment due to him towards execution of the work. He contends that the inability on the part of the respondents to follow the procedure at their own level does not entitle them to retain the amount which is payable and due to a contractor. The same would amount to an unjust enrichment on the part of the respondent department.

Even otherwise, the provisions of the The Indian Contract Act, 1872 would operate against the respondents. Once the respondents have availed of the services for the period in question and the execution of the work is not disputed, the respondents are not entitled to retain the amount which is otherwise liable to be disbursed to the contractor towards execution of the work.

Per contra, learned State Counsel contends that the petitioner-contractor has failed to submit the monthly bills. Resultantly, the procedure as stipulated in the contract would come into operation and that no payment remains due to be paid to the contractor for the particular period. It is further pointed out that there were certain defects in the correspondence sent to the petitioner, as such there was unsatisfactory execution of the work of maintenance. Consequently, he is not entitled for the payment towards the maintenance charges for the said period. Reference in this regard is made to the documents appended as Annexures R-2 to R-5.

An argument was raised to the effect that even for the subsequent years i.e. for the 4th and 5th year, no monthly bill was raised and only an annual bill was raised. Learned counsel appearing on behalf of the State was called upon to verify the same from the officials, who had to assist her in Court and were present during hearing.

It is, however, not disputed by the learned State counsel that the maintenance bills for the two years i.e. the fourth and fifth year already stand reimbursed, despite the said bills being raised at the end of the financial year and not as monthly bill as stipulated in Clause 38.2 of the Contract. He thus, contends that the respondent authorities have themselves by their action and necessary implication relaxed and diluted the mandate of Clause 38.2 that is now being relied upon by them. It is also not denied that the Sub-Divisional Engineer concerned had verified the bills and that the said bills had not been put forth for the approval of the Engineer-in-Charge. It also could not be disputed that even though the bills had been raised for a higher amount, however, the verification of the bill by the Engineer is for an amount lesser than the amount for which the bill in question has been raised. No explanation has been put forth as to under what circumstances the bill in question had been reduced. The Court thus has no option but to come to a conclusion that the same was invariably a deduction on account of the alleged defects not removed or not rectified to the satisfaction of the Engineer-in-Charge.

The same now leads this Court to advert to the contractual clause and the interpretation thereof. The same prescribes the bill to be submitted every month and uses the expression "or/and" – if the Engineer has not certified that the contractor carried out the maintenance work for defects brought to his notice under Clause 32.2.4 within specified period before a payment can be denied to a contractor for that month. The effect of use of the two words viz. "or/and" used in Clause 38.2 (c) of the terms and conditions. The aforesaid clause is subject to two possible interpretations being:

i) That both the conditions i.e. submission of bill by the 10^{th} day of every succeeding month and certification of bill by Engineer must exist before a payment can be made; and secondly,

ii) Secondly, either of the two conditions may be satisfied i.e. the bill is submitted before the 10^{th} day of every succeeding month or it is certified by the Engineer; the payment shall be released.

As per the cardinal rules of interpretation, the words used in a binding contract must be interpreted so as to assign a harmonious meaning to it as against an interpretation that the word is superfluous and does not carry any meaning. The Hon'ble Supreme Court had held in the matter of ***'The Member, Board of Revenue Vs. Arthur Paul Benthall'*** reported as ***AIR 1956 SC 35*** that when in relation to the same subject matter- different words are used, there is a presumption that they are not used in the same sense. The same view was further reiterated in the judgment of ***'Commission of Tax, New Delhi Vs. East East Import & Export (Pvt.) Ltd.'*** reported as ***AIR 1989 SC 836.*** The same was later also approved in the matter of ***'DLF Qutub Enclave Complex Educational Charitable Trust Vs. State of Haryana'*** reported as ***AIR 2003 SC 1648*** and also in the matter of ***'Sunil Kumar Kori & another Vs. Gopal Dass Kabra'*** reported as ***AIR 2016 SC 4664***, the Hon'ble Supreme Court observed as under:

> *"**22.** It is well-settled principle of interpretation that different words will have different meanings, depending upon the context...... **In Gibson v. Skibs A/S Marina and Orkla Grobe A/B and Smith Coggins, Ltd. [Gibson v. Skibs A/S Marina and Orkla Grobe A/B and Smith Coggins, Ltd., (1966) 2 All ER 476]** it was held that:*
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> > *"prima facie one would expect that when two different words, although practically synonymous in ordinary use, are employed in different parts of the same regulation dealing with the same kind of topic, they are intended to have some different meaning."*
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> ***23.** This Court held in **Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd. [Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd., (2003) 4 SCC 305]** that:*

"the general rule is that when two different words are used by the same statute, prima facie one has to construe these different words as carrying different meanings."

Even though the aforesaid observation was in relation to interpreting a statute, however, the aforesaid principle is universal in its application and would also be applicable to Contracts. Such a construction or interpretation is, however, subject to an exception i.e. when the construction assigning different meaning is likely to lead to an unreasonable or irrational result.

In light of the above, it cannot be held that the use of both the words i.e. "or/and" actually have one and the same meaning.

Apart from above, the second principle that would come into operation as an aid to interpretation is on the basis of ascertaining from the conduct of the parties as to what they understand of the same. The consensus *ad-idem* is a cardinal principle of a valid agreement. The fact that the bills for the 4th and 5th years have been paid by the respondents, although submitted annually shows that the contracting parties to the agreement understood it in the said manner. Hence, the ordinary meaning assigned and understood through conduct of the parties is a valid aid to interpretation of the contract.

Besides, the Hon'ble Supreme Court in the matter of ***Adani Power (Mundra) Limited Vs. Gujarat Electricity Regulatory Commission and others*** reported as ***(2019) 19 SCC 9*** has held:

"21. Recently, this Court had an occasion to consider the issue with regard to interpretation of certain clauses of PPA, in ***Nabha Power Ltd. v. Punjab SPCL reported as (2018) 11 SCC 508,*** *The Court referred to various English and Australian judgments as well as the*

judgments by this Court on the issue. We do not wish to burden this judgment with all the English and Australian judgments reproduced in the said judgment. However, it will be relevant to refer to the following passage of the decision of the Privy Council in Attorney General of Belize v. Belize Telecom Ltd. reproduced in Nabha Power Ltd"

> *"45. ... '17. The question of implication arises when the instrument does not expressly provide for what is to happen when some event occurs. The most usual inference in such a case is that nothing is to happen. If the parties had intended something to happen, the instrument would have said so. Otherwise, the express provisions of the instrument are to continue to operate undisturbed. If the event has caused loss to one or other of the parties, the loss lies where it falls.'*

22. We may also gainfully reproduce certain judgments which have been reproduced in Nabha Power Ltd. reported as (2018) 11 SCC 508 (SCC pp. 538-40, paras 46-48)

> *"46. There were, once again, parallel developments in India during this period in various High Courts but the views of this Court can be found expressed in Dhanrajamal Gobindram v. Shamji Kalidas & Co. reported as AIR 1961 SC 1285,*
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>> *'19. …. Commercial documents are sometimes expressed in language which does not, on its face, bear a clear meaning. The effort of courts is to give a meaning, if possible. This was laid down by the House of Lords in Hillas & Co. Ltd. v. Arcos Ltd. and the observations of Lord Wright have become classic, and have been quoted with approval both by the Judicial Committee and the House of Lords ever since. The latest case of the House of Lords is Adamastos Shipping Co. Ltd. v. Anglo-Saxon Petroleum Co. Ltd. There, the clause was "This bill of lading", whereas the document to which it referred was a charter-party. Viscount Simonds summarised at AC p. 158 all the rules applicable to construction of commercial documents, and laid down that effort should always be made to construe commercial agreements broadly and one must not be astute to find defects in them, or reject them as meaningless.'*

47. ***In Union of India v. D.N. Revri & Co. reported as (1976) 4 SCC 147, P.N. Bhagwati, J.*** *(as he then was), speaking for the Bench of two Judges said in para 7 as under:*

> *'7. It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation.'*

48. Lastly, in Satya Jain v. Anis Ahmed Rushdie (2013) 8 SCC 131, Ranjan Gogoi. J.. elucidated the well-established principles of the classic test of business efficacy to achieve the result of consequences intended by the parties acting as prudent businessmen. It was opined as under:

> *'33. The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen. Business efficacy means the power to produce intended results. The classic test of business efficacy was proposed by Bowen. L.J. in The Moorcock. This test requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. But only the most limited term should then be implied the bare minimum to achieve this goal. If the contract makes business sense without the term, the courts will not imply the same. The following passage from the opinion of Bowen, L.J. in The Moorcock (1889) LR 14 PD 64 (CA) sums up the position: (PD p. 68)*
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> > *" .....In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are businessmen; not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as*

> *much at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of those perils or chances."*

34. Though in an entirely different context, this Court in United India Insurance Co. Ltd. v. Manubhai Dharmasinhbhai Gajera (2008) 10 SCC 404 had considered the circumstances when reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by and between the parties thereto. Certain observations in this regard expressed by courts in some foreign jurisdictions were noticed by this Court in para 51 of the Report. As the same may have application to the present case it would be useful to notice the said observations:

> *"51... '... "Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement, they would testily suppress him with a common "Oh. of course!" Shirlaw v. Southern Foundries (1926) Ltd (1939) 2 KB 206, (KB p. 227)."*
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> *'... An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, formed part of the contract which the parties made for themselves." Trollope & Colls Ltd. v. North West Metropolitan Regional Hospital Board (1973) WLR 601, WLR p. 609 C-D: All ER p. 268a-b.' "*

35. The business efficacy test, therefore, should be applied only in cases where the term that is sought to be read as implied is such which could have been clearly intended by the parties at the time of making of the agreement."

23. After reproducing the paragraphs from the earlier judgment, this Court through Sanjay Kishan Kaul, J. observed thus: (Nabha Power Ltd. Case (2018) 11 SCC 508.

> *"49. We now proceed to apply the aforesaid principles which have evolved for interpreting the terms of a commercial contract in question. Parties indulging in commerce act in a commercial sense. It is this ground rule which is the basis of The Moorcock test of giving "business efficacy" to the transaction, as must have been intended at all events by both business parties. The development of law saw the "five condition test" for an implied condition to be read into the contract including the "business efficacy" test. It also sought to incorporate "the Officious Bystander Test" [Shirlaw V. Southern Foundries (1926) Ltd. This test has been set out in B.P Refinery (Westernport) Proprietary Ltd. v. Shire of Hastings requiring the requisite conditions to be satisfied: (1) reasonable and equitable; (2) necessary to give business efficacy to the contract; (3) it goes without saying i.e. the Officious Bystander Test; (4) capable of clear expression; and (5) must not contradict any express term of the contract. The same penta-principles find reference also in Investors Compensation Scheme Ltd. v. West Bromwich Building Society and Attorney General of Belize V. Belize Telecom Ltd, Needless to say that the application of these principles would not be to substitute this Court's own view of the presumed understanding of commercial terms by the parties if the terms are explicit in their expression. The explicit terms of a contract are always the final word with regard to the intention of the parties. The multi-clause contract inter se the parties has, thus, to be understood and interpreted in a manner that any view, on a particular clause of the contract, should not do violence to another part of the contract."*

24. It could thus be seen that it is more than well settled that the clauses in the agreement ought to be given the plain, literal and grammatical meaning of the expression used in the same. No doubt, that the courts will also try together as to what intention the parties wanted to give them. As has been held by Ranjan Gogoi, J. (as his Lordship then was) the principle of business efficacy could be invoked only if by a plain literal interpretation of the term in the agreement or the contract, it is not possible to achieve the result or the consequence intended by the parties acting as prudent businessmen. This test requires that a term can only be implied, if it is necessary to give business efficacy to the contract, to avoid such a failure of *consideration that the parties cannot as reasonable businessmen have intended. If the contract makes business sense without the term, the courts will not imply the same: It is amply clear that courts can imply a clause only if it is found that the plain and literal meaning given to the expression used in the terms is not in a position to make out the intention of the parties. Reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by and between the parties thereto. An unexpressed term can be implied if and only if the Court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. It must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract. As held in Nabha Power Ltd., for invoking the business efficacy test and carving out an implied condition, not expressly found in the language of the contract, the following five conditions will have to be satisfied:*

(1) Reasonable and equitable;

(2) Necessary to give business efficacy to the contract;

(3) It goes without saying i.e. the Officious Bystander Test;

(4) Capable of clear expression; and

(5) Must not contradict any express term of the contract."

Hence, considering it from the perspective of the Rules of interpretation, the consensus amongst the parties and the business efficacy test, I have no hesitation to hold that the second interpretation favouring the Contractor needs to be accepted in the facts and circumstances of the present case and that "or/and" have to be assigned different meanings.

Perusal of the Clause 38.2 regarding terms and conditions of payment to the contractor thus gives rise to the liability of the department to make the payments once verification of the execution and maintenance work is done by the Engineer concerned. Bills which have been appended with the petition as Annexures P-2 to P-4 have not been disputed. Further, the signature of the Sub Divisional Engineer verifying the amount has also not been denied. Still further, the right of the department to deny the payment accrues when a defect is pointed out through notice under Clause 32.2.4 and the Contractor does not carry out the work for maintenance within the specified period. The notices served upon by the respondent State, though refer to invocation of Clause 32.2.4, however, there is nothing on record to show that the defects pointed out in the notice under Clause 32.2.4 were not rectified. There can be no presumption of the said fact and the burden lies upon the State to establish the same. The letter/correspondence would have been in possession of the State, if the same was not removed. Having withheld the best document in their possession, if any, this Court has no option but to draw a presumption against the respondents and to hold that the defects pointed were satisfactorily removed. Consequently, the respondents cannot be justified in declining the reimbursement of the amount due to the petitioner only on the premise that monthly bills had not been raised.

Still further, Section 70 of the Indian Contract Act, 1872 creates an obligation in favour of the recipient of a service to make compensation to the service provider in respect of any benefit received by them on account of an act undertaken by the service provider not intended to be done gratuitously. The relevant statutory provision reads thus:

> "***Section 70 of The Indian Contract Act, 1872.***
> *70. Obligation of person enjoying benefit of non-gratuitous act.—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof,*

the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

The aforesaid Section deals with the principles of restitution.

The principles of Section 70 of the Contract Act, 1872 are wider than the principles of *Quantum meruit* - as laid down by the Hon'ble Supreme Court in the matter of ***'Food Corporation of India and others Vs. Vikas Majdoor Kamdar Sahkari Mandli Limited'*** reported as ***(2007) 13 SCC 544***. The relevant extract of the said judgment reads thus:

> *"19. The principle of quantum meruit is often applied where for some technical reason a contract is held to be invalid. Under such circumstances an implied contract is assumed, by which the person for whom the work is to be done contracts to pay reasonably for the work done, to the person who does the work. The provisions of this section are based on the doctrine of quantum meruit, but the provisions of the Contract Act admit of a more liberal interpretation; the principle of the section being wider than the principle of quantum meruit. The principle has no application where there is a specific agreement in operation. A person who does work or who supplies goods under a contract, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the goods supplied. If the work is outside the contract, the terms of the contract can have no application; and the contractor is entitled to be paid a reasonable price for such work as was done by him.*
>
> *20. If a party to a contract has done additional construction for another not intending to do it gratuitously and such other has obtained benefit, the former is entitled to compensation for the additional work not covered by the contract. If an oral agreement is pleaded, which is not proved, he will be entitled to compensation under Section 70. Payment under this section can also be claimed for work done beyond*

the terms of the contract, when the benefit of the work has been availed of by the defendant."

The basis of the Section is to prevent unjust enrichment. The conditions for the application of Section 70 can be summarized as under:

(i) the goods are to be delivered lawfully or something has to be done for another person lawfully.

(ii) the thing done or the goods delivered must be done or delivered without intention to do so gratuitously;

(iii) the person to whom goods are delivered enjoys the benefit thereof.

When all the above three ingredients are pleaded and established in a case, Section 70 can be invoked.

Thus, where a person merely derives benefit without the person seeking compensation having done anything for him, or having delivered anything to him, the section will not come into play. There need not be a pre-existing obligation on the claimant to supply or to serve."

It is not disputed that maintenance of project in question had been duly undertaken by the petitioner. The verification of the bills by the Engineer establishes the same. Furthermore, there is nothing to assume that the defects were not removed. The right to claim payment accrued on certification of the work by the Engineer. The verification of the bill by the Engineer is a certification of the work. No document has been appended to show that defect was not removed despite the notice. The deduction with regard to maintenance work not undertaken or executed may be within the scope of the department and they have seemingly exercised their jurisdiction while verifying the bills submitted by the petitioner.

It is evident from a consideration and combined reading of the provisions that even though the provision is couched in mandatory terms, however, the same was made directory in its application by the parties to the Contract.

Consequently, the respondent department cannot take shelter of the clause by assigning it a meaning which has not been given effect to by the respondents themselves to deny and deprive the petitioner of the payment that has become due to him.

The present petition is accordingly allowed. The amount as has been verified by the concerned Engineer to be due to the petitioner for the work of maintenance executed by him for the period of first three years shall be released to him forthwith within a period of three months from the date of receipt of certified copy of this order. In the event the same is not released, it shall carry interest at the rate of 6% per annum from the period after three months of receipt of this order till actual realization.

(VINOD S. BHARDWAJ)
JUDGE

17.08.2022
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No