

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

CS/103/1999

M/S A. K. GHOSH AND SONS
VS
THE STATE OF WEST BENGAL

For the Plaintiff : Mr. Reetobroto Mitra, Adv.
Mr. Ashis Kr. Mukherjee, Adv.
Mr. Akash Munshi, Adv.
Mr. Sourabh Prasad, Adv.

For the Defendant : Mr. Dhruba Ghosh, Sr. Adv.
Mr. Rupak Ghosh, Adv.
Mr. Poritosh Sinha, Adv.
Mr. Altamas Alim, Adv.
Mr. Arindam Mondal, Adv.

Hearing concluded on : 18.09.2023

Judgment on : 10.10.2023

Sugato Majumdar, J.:

The instant suit is filed by the Plaintiff praying for decree for Rs.83,74,613/-, in the alternative an enquiry into costs and charges of the Plaintiff for works done and service rendered and/or compensation payable by the Defendant to the Plaintiff along with other prayers.

The sum and substance of the plaint case is that in response to an invitation to tender floated by the Superintendent Engineer, Project Circle, P.W. (CB) Directorate, Burdwan, the Plaintiff submitted tender for construction of new P.H.C with staff quarters including S & P works and two masonry wells at Udoypur under Rampurhat – I Block, in the district of Birbhum. The tender was accepted by the Superintending Engineer as evidenced by the letter dated 20.12.1998. The tender submitted by the Plaintiff was @ 4.85% above the departmental price schedule rates and as such the tender value of the work was Rs.22,77,981/-. Acceptance was followed by work order in favour of the Plaintiff in terms of the letter dated 30.12.1998 witnessed by the Executive Engineer Birbhum Division – I, P.W. (CB) Directorate. Formal tender was duly executed by and between the parties and the contract number was 29/SE, PCE of 1988 – 89/41/Birbhum Division – I of 1988 – 89.

After receiving the work order, the Plaintiff began to undertake the work. But works undertaken could not progress much owing to failure of the department to hand over finalized layout of all buildings in right time, failure to give necessary decisions and/or related drawing in proper time, failure to supply specified store materials like cement and steel as per requirements in right time and failure to make proper and timely on account payment as contemplated in the contract. Time for completion of the work had been extended from time to time. Finally time was extended till 29.11.1991. During progress of the works, the Plaintiff had to execute various extra works at the instance of the department. Because of delays attributable to the Defendant, the Plaintiff suffered loss and damage on numerous accounts and under different heads.

After completion of the work the Defendant prepared final bill which did not reflect all the dues payable to the Plaintiff. The Plaintiff raised objections at the time of receiving payments under the final bill on 29.02.1996. According to the Plaintiff a sum of Rs.32,56,903/- was payable to the Plaintiff by the Defendant detailed account of which is given in the Plaint. The Plaintiff, therefore, instituted the instant suit for recovery of Rs.32,56,903/- along with interest at a rate of 22 per cent per annum from 01.01.1992 till 29.02.1996 total amount of which stands at Rs.83,74,613/-.

The Defendant being the State of West Bengal contested the suit by filing written statement denying all the allegations contained in the plaint. Apart from raising disputes on preliminary issues like maintainability of the suit, territorial jurisdictions, cause of action and others, the Defendant took the plea that the Plaintiff accepted full payment of the work done without reservation for which the Plaintiff is estopped from raising any claim as set out in the plaint. The positive case of the defendant is that work was to be commenced on 16.01.1989 and was to be completed by 15.04.1990. In spite of co-operation from the Defendant, the Plaintiff even failed to commence work in time. By reason of defaults on the part of the Plaintiff, the later was compelled to seek extension of time. The Defendant accepted the prayers of the Plaintiff for extension of time on condition that such extension would not entitle the Plaintiff to any amount of compensation on account of such delay. The work was finally complete on 29.11.1991 after nineteen months and fourteen days from the stipulated date of completion. It is the Defendant who suffered loss and damage for delay attributable to the Plaintiff. Yet, the Defendant made full payment to the Plaintiff in the eleventh and final bill being Voucher No. 7 dated 29.02.1996 amounting to Rs.31,61,721/-. Full payment of all supplementary

items of work as approved by the Superintendent Engineer, Project Construction Circle was made to the Plaintiff in terms of the Voucher No. 8 dated 29.02.1996 for Rs.1,03,003/-. Such payments were made as per bills duly made out on the basis of mutually recorded measurement and such payment was made by the Defendant and accepted by the Plaintiff without any reservation. It is further pleaded by the Defendant that the Plaintiff was required to submit bill each month in terms of Clause 8 of the contract. The Plaintiff failed to submit bills for which the Defendant's department prepared the bills on the basis of recorded measurements and payments were made to the Plaintiff on the basis of such bills. Thus eleven bills for contractual works and one bill for supplementary work was approved by the Superintending Engineer in terms of Clause 12 of the agreement and paid to the Plaintiff. Payment particulars are also mentioned into the written statement. In nutshell, the Defendant pleaded that the suit is false, speculative and should be dismissed with costs.

On the basis of rival pleadings the following issues were framed:-

1. *Was the execution and completion of the work under the contract between the Plaintiff and the Defendant delayed due to the fault or default on the part of the defendant or by reason of the laches and inability of the Plaintiff?*
2. *Was there any agreement between the Plaintiff and the Defendant to pay at different rates for additional items of works done by the Plaintiff?*

3. *Did the Defendant make payments for all items under the contract in question including additional items of work not mentioned in the contract?*
4. *Is the Plaintiff entitled to the claims preferred in respect of execution of extra item of works as mentioned in Paragraph 11 of the plaint?*
5. *Did the Plaintiff suffer any loss due to the fault on the part of the Defendant for prolongation of work beyond the date for completion of work mentioned in the contract in question?*
6. *If so is the Defendant liable to compensate the Plaintiff on account thereof as claimed by the Plaintiff?*
7. *Is the suit barred by limitation?*
8. *So what relief the Plaintiff is entitled?*

Both the parties adduced oral as well as documentary evidences. Soumitra Kumar Ghosh examined himself as P.W. 1 and on Pradip Kumar Mondal was examined as D.W. 1. Documentary evidences were exhibited and marked.

The **Issue No. 7** should be addressed first as it goes to maintainability of the suit. Admittedly payment was made to the plaintiff on 29.02.1996. The suit was filed on 25.02.1999 within three years from the date of payment made lastly and finally by the Defendant. Therefore, the suit was filed within time and is not barred by the law of limitation.

Issue No. 1 is whether the extension and conclusion of the work under the contract between the parties herein was delayed because of fault or default on the part of the Defendant or by reason of laches and inability of the Plaintiff.

Mr. Mitra, the Learned Counsel, appearing for the Plaintiff referred to the pleading of the Plaintiff delay was attributed five principle reasons :-

- a. Delay in supplying in time requisite quantum of steel and cement which was the Defendant obligation to supply.
- b. Delay on account of extra cost incurred in carriage of departmental material.
- c. Delay due to monetary constrain placed by the Plaintiff because of non-release of funds as per RA bill in time.

According to him delay was also attributable to the Defendant for belated handing over the site in a piecemeal manner and belated release of layout drawings. Mr. Mitra referred to evidence of P.W. 1 and various documents exchanged between the parties as correspondences. It is argued by Mr. Mitra that at the time of prayer for extension of contract till 31.09.1991, prayed for by the plaintiff in terms of letter dated 29.09.1991 and also evidenced by other correspondences (PD-46), it was mentioned by the Plaintiff that delay was caused for belated supply of departmental materials. The Learned Counsel also referred to (PD-39), letter dated 04.05.1991 in terms of which, addressed to the Executive Engineer, the Plaintiff expressed that requisitioned amount of cement was not supplied in time. Mr. Mitra further submitted that, referring to various other documents, delay in payment also was a constrain for the Plaintiff to complete work in time. Mr. Mitra althroughout relied on the site order book to substantiate his argument. According to him belated supply

of cement and belated issuance of drawings are evidenced by site order book. The Defendant did not produce the site order book although called for to produce. According to Mr. Mitra adverse inference should be drawn from such non-production and non-disclosure of the site order book. In nutshell, relying upon oral as well as documentary evidences it is contended that delay in completion of work was attributable to the Defendant.

Mr. Ghosh, the Learned Counsel, appearing for the Defendant also relied upon oral and documentary evidences to argue that it is the Plaintiff who was unable to complete the work in time; extension of time was prayed for on different dates without explaining any proper reason for delay. The concerned engineer, in allowing extension of time repeatedly asked to boost up the progress of work. Therefore, it is the Plaintiff who himself is responsible for delay in completion of work.

Both the parties adduced oral as well as documentary evidences. Documentary evidences are more to be relied upon to decipher the existent circumstances at the time of subsistence and continuation of the contract and to decipher the dynamics of relationships.

In terms of the letter dated 20.12.1988 written by the Superintending Engineer, Project Construction Circle, P.W. (CB) department addressed to the Plaintiff (PD-1) the later was intimated that the tender was accepted. A subsequent letter being worked order dated 30.12.1988 (PD-2) was issued by the Executive Engineer. In terms of letter dated 04.01.1989 (PD-3) the Plaintiff intimated the Assistant Engineer that the Plaintiff had received the work order and was in a position to start work at an early date. This work is construction of new P.H.C. with staff quarters including sanitary, plumbing works and two members of masonry

walls etc. at Udaypur under Rampurhat – I Block, Birbhum and the same day the Assistant Engineer wrote a letter to the Plaintiff (PD-4) with a request to start work. The date of completion of work was fixed on 15.04.1990 (PD-5) in terms of letter dated 04.05.1989 written by the Assistant Engineer addressed to the Plaintiff. It was alleged that there was inspection of work and during inspection of work on 09.03.1989, 20.03.1989, 11.04.1989, 17.04.1989, 21.04.1989, 24.04.1989 and 03.05.1989, it was observed that no work in masonry well was done although the site representative of the Plaintiff was requested several times in this regard. It was also alleged that Plaintiff have wasted enough the dry season which was the best time for digging masonry well. Nothing is there to show that the allegations were denied. In his letter dated 28.06.1990 (PD-22) the Plaintiff prayed for extension of time till 30.09.1990. In this letter it was mentioned that cement was not available for two months from the end of March 1990. Even if this statement is taken as gospel truth, non-availability of cement was only for a limited period of two months. In another letter dated 29.06.1990 (PD-23) the Plaintiff explained that time was consumed in constructing masonry well by method of sinking and the considerable quantity of materials had to be carried by head load from about a distance of ½ km as the stretch of road became unportable for some months last.

It is only in terms of letter dated 12.02.1990 written by the Plaintiff addressed to the Assistant Engineer (PD-14) that the Plaintiff communicated that he had taken up construction of one masonry well at the site shown by the Assistant Engineer. The Assistant Engineer replied to this letter in terms of his letter dated 26.02.1990 (PD-16). It was stated that in the second week of January 1990 construction of one masonry well was started by the Plaintiff and on 20.02.1990, while the Assistant Engineer was inspecting, the Plaintiff wanted to know the exact location of the

second masonry well. It was shown to him on that date. Previously the Plaintiff or his representative did not ask for identification of the location. It is alleged in the letter that the Plaintiff wasted a whole dry season. This letter along with other correspondences were produced by the Plaintiff and adduced as evidence. These are rather Plaintiff's evidence. In terms of the letter dated 29.06.1990 (PD-23) the Plaintiff stated to the Executive Engineer that time was consumed in constructing masonry well by the "method of sinking". It was also stated in this letter that considerable quantity of materials had to be carried by head load from about a distance of 1/2 km as the said stretch of road became unmotorable. In this letter the Plaintiff prayed for extension of time till 30th September, 1990.

Clause 5 of the contract being Ext.A states that if the contractor desires for extension of time for completion of the works on the grounds of his having been unavoidably hindered in its execution, the contractor shall give immediate report of such hindrance to the Divisional Officer in writing. In this case the Plaintiff sought for extension of time for "reasons beyond control". No specific reason was mentioned. In the letter dated 28.06.1990 (PD-22) the Plaintiff sought for further extension of time to complete the contract till 30.06.1990. In this letter it was alleged that non-availability of cement from March 1990 till two months afterwards hampered progress of work. This letter indicates that progress of work right have been hampered for a limited period of time mentioned therein, but not for the whole tenure of the work.

In terms of letter dated 13.04.1990 (PD-32) the Assistant Engineer wrote to the Plaintiff that white wash, paint and other works are yet to be executed. It was alleged that the Plaintiff was not working in right earnest. Again in terms of letter dated 20.11.1990 (PD-33) written by the Assistant Engineer to the Plaintiff, it was

alleged that some defects in work were pointed out in terms of letter dated 04.05 1990, the Plaintiff and his representative were requested from time to time to rectify some of the defects but those rectifications were not done.

Delay in requisition of departmental materials, namely, steel and cement is pleaded to be one of the reasons for which the project could not be finished in time. Different documents, relied upon by the Plaintiff, shows that the Plaintiff had requisitioned specific amount of cement. It also appears from reply made by the Assistant Engineer dated 22.08.1990 (PD-27) that 15 metric tonnes of cement was said to be lying in the custody of the Plaintiff. Consumption statement of cement was called for the Plaintiff. On verification, 5 metric tonnes of cement only was allowed. Plaintiff is silent on submission of consumption statement. The contract contemplates optimal utilization of the materials like cement or steel. Clause 10 states that all the materials supplied to the contractor is government property. Concerned engineer of the governmental department may ask for consumption statement to check proper utilization of materials. It is not disclosed by the Plaintiff whether such consumption statement was filed by him or not. Clause 20 of the contract under heading “additional conditions of contract for departmental materials” indicates that it is in sub-clause (e) that materials shall be supplied to the contractor in such installments as may be decided by the Engineer in-Charge. Sub-clause (g) contemplates that materials issued or handed over to the contractor shall be deemed to be misused by him in case of excess materials are used. In view of this express provisions, it is not unreasonable that the department should issue materials like steel or cement on close scrutiny of the demand/requisition made by the Plaintiff (PD-27), namely, letter dated 22.08.1990 written by the Assistant Engineer to the Plaintiff shows that against intend for 10 metric tonnes of cement made by the Plaintiff, the concerned

department assessed the requirement, informed that 15 metric tonnes of cement is to be lying under the custody of the Plaintiff, asked for consumption statement of cement and conceded to the request by allowing 5 metric tonnes of cement. This letter does not show any unreasonableness in considering the claim of the Plaintiff. It is not that any requisition of material was to be conceded by the department without considering and examining the justification of such requisition. Nothing is there to show that consumption statement was furnished by the Defendant as required by the Defendant.

The Learned Counsel of the Plaintiff argued that absence of site order book and non-production of the site order book invokes and create scope of adverse inference against the Defendant on belated and delayed issuance of cement and steel. This argument does not stand good in view of documents filed by the Plaintiff do not leave room to conclude any delay on the part of the Defendant. Moreover the plaint is silent as to whether any consumption statement was furnished by the Plaintiff to the department. Evidences adduced by the Plaintiff himself does not establish that delay was caused by non-supply of steel and cement.

Documentary evidences adduced by the Plaintiff himself does not support the case of the Plaintiff himself; rather the Plaintiff's case that delay was caused by the Defendant it is not established or proved. Therefore, it is decided that delay is not attributable to the Defendant.

Issue No. 2 is that there was any agreement between the Plaintiff and the Defendant to pay at different rates for additional items of work done by the Plaintiff. Ext. A containing terms and conditions governs the contract between the parties. Clause 12 contemplates alteration and specification in denying this clause provides

that original specifications may be altered or substituted or there maybe addition to the original contract work. If the altered, additional or substituted work includes any class of work, for which no rate is specified in this contract, then such class of work shall be carried out at the rates entered in the schedule of rates of the district, which was in force at the time of the acceptance of the contract minus/plus the percentage which the total tendered amount bears to the estimated cost of the entire work put to tender, and if the altered, additional or substituted work is not entered in the said schedule of rates payment thereof shall be made by the Engineer-in-charge by determining rates on analysis worked out from (a) the basic rates of materials and labour provided in the current schedule of rates or (b) current market rates of materials and labour when basic rate for work are not available in the schedule. In cases when such rates are determined on analysis by the Engineer-in-charge under (a) above, the stipulated percentage above or below schedule of rates as provided in the contract schedule also apply and in case of rates worked out on analysis under (b) above payment shall be made at the rates so determined without application of the said stipulated percentage. It is specifically provided in the last sentence of Clause 12 that in the event of any dispute regarding rates determination of analysis for any altered, additional or substituted work under this clause, the decision of the Superintending Engineer of the Circle shall be final and binding. All the additional and substituted and altered works should be paid at rates as specified in Clause 12 since the contract is binding between the parties and there is no dispute regarding this contract.

The Learned Counsel for the Plaintiff referred to the decision of the Supreme Court of India in ***Hyderabad Municipal Corporation Vs. M. Krishnaswamu Mudaliar and Mudaliar & Anr. [(1985) 2 SCC 9]***,

Pannalal Vs. Dy. Commissioner, Bhandara & Anr. [(1973) 1 SCC 639] to fortify his argument when extra work, beyond the scope of contractual work was done, extra payment and compensation must have been paid. His argument is that because of delay caused by the Defendant, the Plaintiff is entitled to compensation for losses it has suffered including escalation in cost, additional establishment charges, additional expenses for prolongation of work and others. In the instant case there was a subsisting agreement between the parties. The agreement provided for mode of payment and mechanism for payment for extra-work. Neither the agreement nor the Clause 12 are in challenge in the suit. So this is the subsisting clause to decide on the issue of determination and calculation of cost of work for extra work. Cases referred to by the Learned Counsel for the Plaintiff were decided on the facts specific to those cases. None of the authorities, cited above, profess that Court can interfere into or modify existing contract between the parties without any allegation that there was unconscionable bargain; or that the Court may depart from the agreed terms of the parties to mould reliefs.

Issue No. 2 is decided accordingly.

(B) Issue No. 3 – 6 are taken up together for conjoint consideration.

The Plaintiff claimed payments on account of various items as mentioned in the plaint. Mr. Mitra, the Learned Counsel for the Plaintiff referred to a letter of the Plaintiff dated 17.7.1989 wherein the Plaintiff intimated that total quantity of work would exceed the actual quantity. Mr. Mitra, the Learned Counsel for the Plaintiff argued that when extra works, not contemplated originally, had to work out and when belated delivery of materials along with belated delivery of designs occasioned extra-time for completion of the work and when the project period was extended

from time to time, escalation of cost and other overheads are bound to occasion. In such situation for various reasons, as detailed in the plaint, loss and damage had to incur by the Plaintiff. The Learned Counsel referred ***Hyderabad Municipal Corporation Vs. M. Krishnaswamu Mudaliar and Mudaliar & Anr. [(1985) 2 SCC 9], Pannalal Vs. Dy. Commissioner, Bhandara & Anr. [(1973) 1 SCC 639]*** to fortify his argument. The Learned Counsel of the Plaintiff referred to Section 70 of the Indian Contract Act for claiming compensation.

Mr. Ghosh, Learned Counsel, for the Defendant in the notes of arguments, replied that every extension of time was granted at the instance of the Plaintiff on condition that no claim should be entertain of such extension. The Defendant further argued that accounts between the parties was settled finally and the Plaintiff was paid all his dues under the contract on 29.02.1996. In compliance with the order of the Superintending Engineer dated 28.05.1995. The claims of the Plaintiff were finalized and discussed in the minutes dated 27.06.1995, 14.07.1995 and 27.07.1995 and claims were finally settled and order was prepared on the basis of such discussion. The Plaintiff finally accepted the claim and withdrew its endorsement of under protest from the measurement. Therefore, Learned Counsel for the Plaintiff is estopped from raising any further dispute.

It has already been observed in considering Issue No. 1 that the delay was not attributable to the Defendant. Extra and/or additional work was ordered to be carried out and Clause 12 provides for extension of time in consequence of alternation. As observed above, a number of occasions Plaintiff himself defaulted in execution of the work which were pointed out by the department in terms of various letters referred to above. There is no denial by any written correspondence in this regard. Every extension of time was prayed for reasons beyond control and

extensions were allowed on condition that no extra claim would be allowed. The Plaintiff acted on that.

Time for completion of work was extended from time to time. As observed above, delay was not attributable to the Defendant. Additional and alternation of original specification necessitates extension of time consequent to such alteration. Clause 12 of the contract provides such contingency, provides for such situation rates are to be determined in accordance with Clause 12 provides for mechanism of determination of rates in such change circumstances. In case of any dispute regarding the rates decisions of the Superintending Engineer of the Circle shall be final in accordance with Clause 12. After completion of the work meeting was convened by the Superintending Engineer, minutes of the meeting are adduced in evidence. Minutes of the first meeting (PD-87), minutes of the second meeting (PD-82) and shows that Plaintiff participated in the meeting of preliminary discussion regarding claim for carriage of departmental material for distance beyond initial 20 kilometers in respect of the concerned work. It is noted in the first sitting of the meeting dated 27.06.1995 that the Plaintiff's claim was considered and discussed. In the second meeting on 14.07.1995 Plaintiff's case was discussed also and final order was issued by the Superintending Engineer (PD-89) on 28.08.1995 against the claim of the Plaintiff. In terms of Clause 12 of the contract, order of the Superintending Engineer is binding and final. There is no whisper in the plaint that order of the Superintending Engineer dated 28.08.1995 was not acceptable or that order of the Superintending Engineer dated 28.08.1995 was passed infringing any provision of the contract, or in breach of contract.

The Plaintiff is not entitled to claim anything on account of transportation cost of material as Clause 18 specifically provides that the contractor shall supply at

his own costs materials. Similarly, additional Clause 2 provides that contractor will have to make his own arrange for carriage of materials. Specific provisions of the contract negates the claim of the Plaintiff for carriage of materials. This apart claims under various heads were considered in the meetings as aforesaid and final order was passed by the Superintending Engineer which is binding on the parties.

In terms of the letter dated 13.12.1991, (PD-50) the Plaintiff intimated the Defendant that work had been completed and asked for refund of the security deposit. Then in terms of the letter dated 09.01.1992 (PD-52) the Plaintiff asked for reimbursement of extra expenditures. The Plaintiff disputed measurements of different items of works recorded in the measurement book in terms of his letter dated 02.03.1992 (PD-56). In a subsequent letter dated 16.03.1992 (PD-58), referring to the earlier letter dated 02.03.1992 (PD-56) in connection with preparation of final bill on the basis of measurements on 21.02.1992 which was protested on behalf of the Plaintiff, the words “under protest” was withdrawn by the Plaintiff. This fact and reference to various correspondences are suppressed in the plaint. Once accepted the measurements and withdrawing protest, the Plaintiff waived his objections and are estopped from raising any dispute in connection with all these measurements.

The Plaintiff raised his claim in terms of a letter dated 22.11.1993, addressed to the Chief Engineer (PD-22). Final bill was ready and the same was communicated to the Plaintiff in terms of letter dated 07.02.1994 (PD-75) by the Executive Engineer. Chief Engineer referred to the case of the Plaintiff to the Superintending Engineer, with a copy to the Plaintiff for taking decision in terms of Clause 12. The Superintending Engineer accordingly after holding successive meetings passed order as aforesaid. Documents disclosed and relied upon by the Plaintiff shows that in

particular, as appears from the letter dated 15.06.1998 by the Executive Engineer (PD-93) that all the claims of the Plaintiff were paid in T.O. Voucher No. 8 dated 29.02.1996 in compliance with the order of the Superintending Engineer Project Construction Circle final bill was paid in T.O. Voucher No. 7 dated 29.02.1996.

In nutshell, all the claims of the Plaintiff must be considered within the periphery of the subsisting contract which is binding on both the parties. No case made out that any of the authority either the Assistant Engineer or the Superintending Engineer or the Chief Engineer infringed or violated the terms of the contract in making any payment or considering any claim of the Plaintiff. In the absence of anything else, therefore, and once receiving the amount under the contract, although under protest, the Plaintiff cannot claim anything more. The plaint is althroughout silent on extension of time on prayer of the plaintiff; the plaint is also silent on the order passed by the Superintendent Engineer after giving the Plaintiff opportunity to represent his case, in two or more sittings. There is nothing in the plaint that the order of the Superintendent Engineer is contrary to the contract or in Committal of breach of contract.

It is settled law that when there is a subsisting contract between the parties containing detailed terms and conditions there cannot be any departure from that whatever claim the aggrieved party may raise specially when there is specific pleading that the same contract has been infringed by the other party. Therefore, claim of the Plaintiff beyond the scope of the contract is not entertainable.

It is settled law that Court has no jurisdiction to change the terms of the contract or substitute any of the terms with its own without anything more.

As stated above work was prolonged but it is not established that prolongation of work was attributable to the Defendant. It is rather the Plaintiff who prayed for extension of time which was granted on condition that no extra claim would be entertained. Therefore, the Plaintiff cannot be said to be entitled to any compensation for delay.

Issue No. 3 - 6 are, therefore, decided against the Plaintiff.

In view of the discussion made above, it is clear that claim raised by the Plaintiff cannot be sustained. In view of decision and discussion mentioned above in respect of Issue No. 1 - 6 the Plaintiff is not entitled to any relief as prayed for.

Issue No. 8 is whether the Plaintiff is entitled to any damages. Mr. Mitra referred to *P.M. Paul Vs. Union of India [1989 Supp (1) SCC 368]* to sinuate his point that when there is delay on account of the Defendant, the Plaintiff is entitled to damages. Mr. Mitra also relied upon the observation of the Hon'ble Supreme Court of India in *K.N. Sathyapalan Vs. State of Kerala [(2007) 13 SCC 43]* that where the failure of one of the parties to fulfill its contractual obligations has a direct bearing on the work to be executed by the other party, the arbitrator can compensate such other party for the extra cost incurred by it consequent to such failure of the first party. Observations of the Hon'ble Supreme Court of India in *M/S Associated Construction Vs. Pawanhans Helicopters Pvt. Ltd. (AIR 2008 SC 2911)* were also referred to by Mr. Mitra.

Mr. Ghosh although harped on the point that delay was caused by the Plaintiff himself and it is at the instance of the Plaintiff extension of time was allowed. Therefore, according to him, the Plaintiff is not entitled to any damages as prayed for.

As observed above in discussing with the previous issues, delay in completion of the project is not attributable to the Defendant. P.M. Paul's case (supra) and K.N. Sathyapalan's case was decided on the premises of different facts and circumstances. As it is observed that delay was not attributable to the Defendants, ratio and observations of the two cases are not applicable in the instant case. Similarly, ratio of the other cases referred to by Mr. Mitra is not applicable here because of specific facts and circumstances of this case.

For reasons discussed above, it is concluded that the claim of the Plaintiff is not sustainable and Plaintiff is not entitled to relief as prayed for. Accordingly the Issue No. 8 decided against the Plaintiff.

Accordingly it is ordered that the instant suit is dismissed on merit without any cost, along with pending applications, if any.

Original documents may returned to the parties after appeal period is over and on furnishing authenticate copies of such documents as well as of undertaking that the originals shall be produced as and when required.

(Sugato Majumdar, J.)