IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

Coram

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

O.S.A.No.225 of 2013
and
M.P.No.1 of 2013

Tamil Nadu Electricity Board
No.800, Electricity Avenue,
Anna Salai, Chennai - 600 002.
represented by its Chairman ... Appellant

Vs.

M/s.Mirador Commercial Private Ltd.,
represented by its Director
Mr.Surinder Gupta
No.443, Guna Complex, 3rd Floor,
Annexure - I Building, Anna Salai,
Teynampet, Chennai - 600 018. ... Respondent

[Cause title substituted vide order of Court dated 07.10.2013 made in M.P.No.2 of 2013]

Original Side Appeal filed under Order XXXVI Rule 1 of O.S.Rules read with Clause 15 of Letters Patent praying to set aside the judgment and decree passed by learned Single Judge in C.S.No.766 of 2009, dated 06.08.2012.

For Appellant	: Mr.J.Ravindran Additional Advocate General assisted by Ms.M.Sneha
For Respondent	: Mr.R.Srinivas, Senior Counsel for Mr.M.Santhanaraman

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JUDGMENT

[Delivered by **R.SUBRAMANIAN, J**]

The Tamil Nadu Electricity Board now known as Tamil Nadu Transmission Corporation Limited [TANTRANSCO] has come up with this appeal challenging the judgment and decree of the learned Single Judge in C.S.No.766 of 2009 dated 06.08.2012.

2. The suit was filed by the plaintiff seeking a money decree for payment of a sum of Rs.4,50,16,757/- with subsequent interest at 24% p.a. from the date of plaint till the date of realisation.

3. The gist of the claim of the plaintiff is as follows:

3.1. The defendant Board had called for tenders for carrying out the work of erection, testing and commissioning of 230 KV DC Line of P.P. Nallur from Tiruvarur to Tanjore with LILO of one Circuit at Tiruvarur 230 KV SS of route length of 112 kms including the design, testing, fabrication and supply of 230 KV DC Towers and supply of all the required materials on Total Turnkey Basis.

3.2. The total value of the contract was fixed at approximately Rs.30 crores. The plaintiff accepted the offer and submitted its bid proposal on 06.07.1999. The plaintiff had quoted a sum of Rs.27,02,20,043/- for the entire project. However, after negotiation, the plaintiff by its letter dated 07.07.1999 offered unconditional discounts and had quoted a sum of Rs.19,77,72,978/- for design, fabrication and supply of materials and a sum of Rs.5,98,24,015/- for erection and commissioning of the line. Thereby, the total cost of the project offered was at Rs.25,75,96,993/-. The bid was accepted and two Letters of Award dated 25.11.1999 were issued by the defendant. Pursuant to the awards, two agreements were entered into between the parties on 10.12.1999. One agreement was for design, fabrication and supply of materials and another agreement for erection. The Letters of Award made it very clear that the project is on total turnkey basis. Though the contract was entered into on 10.12.1999, the site was handed over to the plaintiff only on 09.02.2000 and the route profile of the scheme was approved by the defendant only on 27.04.2000. Apart from that, there were several problems in carrying out the work including unprecedented rain and objections by the land owners on whose lands the towers were to be erected. In view of such unexpected hurdles, the plaintiff applied for extension of time and the defendant also extended the time periodically till 31.10.2001. These extensions were granted since the plaintiff was not responsible for the delay. The plaintiff had billed, till the date of completion, on account payments amounting to Rs.22,69,57,033/- out of which only a sum of Rs.21,25,60,241/- was paid on account and the remaining amount was retained as retention money as per the provisions of the agreement.

3.3. The plaintiff, thereafter, submitted its final bill and demanded payment of the balance amount. It is at that time, the defendant took a plea that extensions were granted without prejudice to its right to recover liquidated damages and therefore, it is entitled to retain a sum of Rs.1,43,76,797/- towards liquidated damages. It was further claimed that as per the footnote attached to the schedule of rates, the plaintiff is entitled only to the value of the work done and not the entire contract value. Relying on the fact that the final bill submitted by the plaintiff was only for a sum of Rs.22,71,67,461/-, the defendant claimed that it is liable only to pay the said amount and therefore, after deducting the amount paid and the money that it is entitled to retain towards liquidated damages, *viz.*, a sum of Rs.1,43,76,797/- , the balance payable is only Rs.2,10,427/-. Therefore, the defendant refuted the claim of the plaintiff for a sum of Rs.4,50,16,757/-. Contending that the contract being one on a turnkey basis, the plaintiff would be entitled to payment of the entire value of the contract and that since the plaintiff was not responsible for the delay and the entire project having been completed successfully to the satisfaction of the defendant within the extended period of contract, the defendant would not be entitled to deduct liquidated damages, the plaintiff has come up with the suit.

4. The plaintiff also sought to blame the defendant for the delay and contended that it was due to the inaction on the part of the defendant in handing over the site, in approving the route map, in solving the access problem and the protest made by the land owners, the delay had occurred and therefore, the plaintiff cannot be mulcted with liquidated damages.

5. The aforesaid claim was resisted by the defendant contending that the total contract period was only nine months. The plaintiff was very well aware that the work has to be completed within a period of nine months. Since the plaintiff was not able to complete the work within nine months, the defendant had extended the period without prejudice to its right to recover liquidated damages. Therefore, the defendant would be entitled to recover liquidated damages. The defendant also sought to place reliance on the footnote attached to the schedule of rates, which, according to the

defendant, would form part of the contract document, to contend that the plaintiff would be entitled only to the actual cost of the work done immaterial of the contract value and therefore, the claim based on the contract value of Rs.25,75,96,993/- cannot be sustained.

6. It is the further claim of the defendant that the plaintiff alone was responsible for the delay and the defendant had taken all steps to aid the plaintiff to complete the contract. While admitting the fact that the site was handed over on 09.02.2000 and the route profile of the scheme was approved on 27.04.2000, the defendant would contend that nine months period was fixed taking into account the possibility of such delays. Therefore, according to the defendant, it was not responsible for the delay and it was the plaintiff, who could not complete the contract within the contract period.

7. Relying upon the language in the extension documents, which were filed as Exs.P9, P10 and P11, it was contended by the defendant that since

the extensions were granted without prejudice to its right to recover liquidated damages, it was entitled to retain the liquidated damages. The defendant also contended that it had taken all steps to clear all objections made by the land owners at every point of time. On the above pleadings, the following issues were framed for trial:

> " 1. *Whether the suit is liable to be dismissed as not maintainable ?*
>
> 2. *Whether the payments made by the defendant were "on account" basis or towards the quantity of work actually done ?*
>
> 3. *Whether the footnote in the Rate Schedule would override the contract itself ?*
>
> 4. *Whether time for completion of project by the plaintiff was extended by the defendant without prejudice to the right of the defendant to levy liquidated damages for the delayed completion of project as per Clause 18 of the General Condition of Contract ?*
>
> 5. *Whether the defendant can levy liquidated damages contrary to Clause 18 of the Contract ?*
>
> 6. *Whether the suit claim excepting Rs.2,10,427/- is unsustainable and barred by limitation ?*
>
> 7. *Whether the plaintiff is entitled to a balance of Rs.2,10,427/- alone and not as claimed in the plaint ?*
>
> 8. *To what other relief the plaintiff is entitled to ? "*

8. At trial, one Mr.W.P.Vijayaraghavan, Senior Manager (Finance) of the plaintiff company was examined as PW-1 and Exs.P1 to P24 were marked on the side of plaintiff. Mr.E.Dinakaran, Assistant Executive Engineer of the defendant Board was examined as DW-1 and Exs.D1 to D4 were marked.

9. Learned Single Judge, upon consideration of the evidence on record, both oral and documentary, concluded that the plaintiff would be entitled to the entire contract value since it was a turnkey contract and the footnote to the schedule of rates cannot form the basis for altering the contract price when the agreements entered into between the parties are clear and categorical to the effect that the contractor would be entitled to the firm price of the contract as evidenced by the agreement. On the question of liquidated damages, the learned Single Judge found that liquidated damages under Clause 18 of the General Conditions of Contract could be deducted only in the event when there is default on the part of the defendant in performing the contract within the time fixed or extended. Since it was not

the case of any of the parties that there was delay in completion of the contract beyond the period of extension, the defendant cannot claim liquidated damages on the ground that extensions were granted without prejudice to the right of the defendant to recover liquidated damages. Learned Single Judge also took note of the fact that Clause 41.3 of the General Conditions of Contract provides for extension of contract only when the Board is responsible for the delay.

10. Learned Single Judge also took note of the contents of Exs.P10 and P11 - letters extending time to conclude that the contractor, *viz*., plaintiff was not responsible for the delay. On the aforesaid findings, the learned Single Judge decreed the suit as prayed for with interest at 24% p.a. from the date of plaint till the date of realization. Aggrieved, the defendant is on appeal.

11. We have heard Mr.J.Ravindran, learned Additional Advocate General assisted by Ms.M.Sneha, learned counsel for appellant/defendant

and Mr.R.Srinivas, learned Senior counsel assisted by Mr.M.Santhanaraman, learned counsel appearing for respondent/plaintiff.

12. Mr.J.Ravindran, learned Additional Advocate General would vehemently contend that the interpretation placed on the clauses in the contract by the learned Single Judge is wholly incorrect. On the first issue, *viz.*, the issue relating to payment of contract value, the learned Additional Advocate General would invite our attention to the footnote to the schedule of rates, which has been marked as Ex.P3, which reads as follows:

> *"1. The quantities indicated are tentative and bidders shall quote for the above quantities, works and materials only. However, payment will be made to the SUCCESSFUL Bidders based on quantities of work actually executed."*

13. Learned Additional Advocate General would also draw our attention to the agreement between the parties, which were marked as Exs.P7 and P8, to contend that the proposal dated 06.07.1999, *viz.,* Ex.P3 forms part of the contract document relying upon clause 2.1(iii) which provides that the proposal dated 06.07.1999 along with the proposal sheets,

data requirements, payment terms and work schedule would form part of the contract document. Learned Additional Advocate General would also submit that as per the General Conditions of Contract, the schedule of rates would also include the contract document. Therefore, according to learned Additional Advocate General, *de hors* the total value fixed for the contract, the contractor would be entitled only for the work done by him and not the total value of the contract. On the question of extensions, learned Additional Advocate General, would submit that extensions were granted because the plaintiff was unable to complete the work within the prescribed period and the defendant was not responsible for the delay. The extensions were granted conditionally without prejudice to the right of the defendant to recover liquidated damages. Therefore, according to learned Additional Advocate General, the right of the defendant to recover liquidated damages was not affected by the fact that extensions were granted. Therefore, the defendant was justified in deducting liquidated damages. On the question of delay, learned Additional Advocate General would submit that the delay had occurred only due to the failure on the part of the plaintiff to complete the project within the time. The plaintiff having applied and obtained extension cannot be heard to complain that it shall not be mulcted with liquidated damages.

14. Learned Additional Advocate General would also contend that the interest awarded by the learned Single Judge is excessive.

15. Contending contra, Mr.R.Srinivas, learned Senior Counsel appearing for the respondent/plaintiff would submit that this being a turnkey project where the contractor is responsible for the entire project including design, supply of material as well as erection of the project, the contractor would be entitled to the entire contract value, which is a fixed price. Learned Senior Counsel would contend that the very concept of turnkey project is to entrust the entire work with a particular contractor and make him responsible for doing everything from the beginning till the end and the schedule of rates is only a mechanism adopted by the parties to enable part payments or payments in instalments to enable the contractor to complete

the work. According to learned Senior Counsel, the schedule of rates could only be taken as a guide and not as a concluded contract between the parties. Therefore, according to the learned Senior Counsel, the footnote to the schedule of rates cannot override the subsequent concluded agreements between the parties.

16. On the delay, Mr.R.Srinivas, learned Senior Counsel, would contend that in the written statement itself, the defendant had admitted that the site was handed over on 09.02.2000 and the route profile plan was approved on 27.04.2000 and therefore, the delay of about four months was occasioned due to the inaction on the part of the defendant. Learned Senior Counsel would also take us through the letters granting extension, *viz.,* Exs.P9 to P11 to contend that the reasons assigned for the delay, *viz.,* the unprecedented rain, objections by the land owners on whose land the towers were to be erected, the problems faced by the contractor in accessing the area where the towers were to be erected were all accepted by the Board and extensions were granted thereafter. Acknowledging the fact that extensions

were granted without prejudice, it is the contention of learned Senior Counsel that the very concept of 'without prejudice' is that if the contract is not completed within the extended period also, the principal, *viz.,* the defendant would be entitled to levy liquidated damages *de hors* the fact that the extensions were granted, from the original date of completion. Once the work is completed within the extended period, the right to levy liquidated damages will not arise. To buttress his submission on this ground, learned Senior Counsel would draw our attention to Clause 18 of the General Conditions of Contract, which provides for liquidated damages. The said clause reads as follows:

> *"18.0 LIQUIDATED DAMAGES*
>
> *If the handing over of the work fully completed in all respects is delayed beyond the* ***scheduled date or extension thereof*** *for commissioning as given under the contract, the contractor shall pay to the Board an amount calculated at the rate of half of one percent per completed week of delay of the value of the contract price as liquidated damages subject to a maximum of 10% on unexecuted portion of the contract."*

17. Relying upon the above clause, learned Senior Counsel would submit that liquidated damages can be levied only if there is an unexecuted portion of the contract. Since it is an admitted case of the parties that the entire contract was completed within the extended time that is by 31.10.2001 and the line was also commissioned on 16.11.2001, the very right to levy liquidated damages is lost to the defendant.

18. Learned Senior Counsel would also draw our attention to Clause 41.3 of the General Conditions of Contract wherein the right to extend the time is vested with the principal, *viz.*, the defendant and it also provides that extension of time will be given if the delay is on account of the principal, *viz.*, the defendant. Clause 41.3 of the General Conditions of Contract which contemplates for 'extension of time for completion' reads as follows:

> *"41.3 <u>EXTENSION OF TIME FOR COMPLETION</u>*
>
> *No extension of time for services to be rendered including procurement of necessary materials granted to the contractor shall affect or prejudice the right of the Board against the contractor or relieve the contractor of his obligations for the due payment of damage whether duly ascertained or certified or not or any sum against the*

payment of which he is bound to indemnify to the Board. ***Extension of time will be given if the delay is on the account of Board.***

Should the amount of extra or additional work of any kind or any cause of delay referred to in these conditions or other special circumstances of any kind whatsoever which may occur, other than through a default of the Contractor, be such as fairly to entitle the contractor, to an extension of time for the completion of the works, the engineer shall determine the amount of such extension and shall notify the employer and contractor accordingly provided that the engineer is bound to take into account any extra or additional work or other special circumstances unless the contractor has within 28 days after such work has commenced, or such circumstances have arisen, or as soon thereafter as is practicable, submitted to the Engineer/Engineer's representative full and detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time."

19. Relying upon the above clause, learned Senior Counsel would submit that the very fact that the Board has extended the time would lead to a presumption that the Board was responsible for the delay. Once it is conceded that the Board is responsible for the delay, levy of liquidated damages by a party at fault, according to learned Senior Counsel, is opposed to the very principle of contract.

20. Learned Senior Counsel would draw our attention to Section 55 of the Contract Act, 1872, to contend that once the delayed performance is accepted, the promisee cannot claim the compensation for such delay after having accepted the performance. According to learned Senior Counsel the fact that the defendant extended the time for performance itself would show that it had accepted the delayed performance and therefore, in engineering contracts, where time cannot be considered to be the essence of the contract, the contractor cannot be held liable for liquidated damages.

21. We have considered the rival submissions.

22. On the submissions of learned counsel for the parties, the following points emerged for consideration in this appeal:

(1) Whether the contractor/plaintiff would be entitled to the entire value of the contract *de hors* the footnote appended to the schedule of rates in Exs.P3 and P4 ?

(2) Whether the defendant Board would be entitled to retain liquidated damages in view of the reservation made by it in Exs.P9 to P11 ?

(3) Whether the Court was justified in awarding 24% interest from the date of plaint till the date of realisation ?

23. **Point No.1:**

The crux of the argument of learned Additional Advocate General is based on the footnote appended to Exs.P3 and P4. We have already extracted the said footnote. Exs.P3 and P4 are schedule of rates submitted by the plaintiff prior to the contract. As per Ex.P3, the total value of the contract for erection is Rs.6,42,23,312/-. This was not accepted by the defendant Board. There was subsequent negotiations and the total contract value for erection was reduced to Rs.5,98,24,015/- and the total contract value for supply was Rs.20,59,96,731/- and the same was reduced after negotiations to Rs.19,77,72,978/-. Thus, the original offer of the plaintiff which was at Rs.27,02,20,043/- on the date when the schedule of rates, *viz.,* Exs.P3 and P4 were entered into was reduced to Rs.25,75,96,993/-

subsequently and thereafter, the agreements were entered into. The Letters of Award dated 25.11.1999 which were produced as Exs.P5 and P6 would show that the defendant had accepted the offer of the plaintiff for a total value of Rs.19,77,72,978/- for supply of materials indicated in Schedule A2 of the Specification and Rs.5,98,24,015/- for design, fabrication of towers and erection. The agreements entered into between parties were marked as Exs.P7 and P8.

23.1. Clause 3.2 of the agreement provides that the scope of the work will also include supply of all such items which are not specifically mentioned in the Contract Documents, but, which are needed for successful, efficient, safe and reliable operation of the equipment unless otherwise specifically excluded in the specifications under "exclusions" or in the Letter of Award.

23.2. Clause 3.5 of the agreement specifies the contract price at Rs.5,98,24,015/- for the erection contract and at Rs.19,77,72,978/- for the supply contract.

23.3. Clause 3.8 of both the agreements reads as follows:

"3.8 This agreement constitutes full and complete understanding between the parties and terms of these presents. ***It shall supersede all prior correspondence to the extent of inconsistency or repugnancy to the terms and conditions contained in the agreement.*** *Any modification of the agreement shall be effected only by a written instrument signed by the authorised representatives of both the parties."*

23.4. While Mr.R.Srinivas, learned Senior Counsel for respondent/plaintiff, relied upon the above Clause 3.8 and would contend that this clause would imply and mean that all earlier arrangements between the parties would stand effaced and it is this agreement that would prevail, Mr.J.Ravindran, learned Additional Advocate General, would submit that since the schedule of rates also forms part of the contract document that is deemed to be a part of the document and it should prevail over the contract.

23.5. Before elaborating further on this, we think that it will be better to have a peep into the origin on the term called 'Turnkey Contract'. The Honourable Supreme court has dealt with the meaning that could be attached to the term 'Turnkey Contract' in ***Ishikawajma - Harima Heavy Industries Ltd. v. Director of Income Tax, Mumbai*** **[*(2007) 3 SCC 481*]** and it concluded as follows:

> *"48. ..... "The concept of turnkey execution of the project involves total and complete responsibilities of the persons undertaking the contracts for commissioning the project and they are accordingly required to furnish performance guarantees for timely completion."*

23.6. The Honourable Supreme Court has also observed that a turnkey contract will involve supply of materials used in the execution of the contract for price as also for use of the materials by work and labour. The concept of 'Turnkey Contract' is explained thus by Michael E. Schneider in the book called 'Turnkey Contracts Concept, Liabilities, Claims':

> *"According to the most widely accepted definition, a turnkey contract is one "under which the contractor is responsible for both design and construction of a facility" (A.I.D. Handbook I1, pp.2-19; for further references see Schneider, p.310, n.98). However, occasionally one finds the term used also for other types of arrangements - for instance, for the construction of a complete facility according to drawings and specifications prepared prior to the conclusion of the contract. This article deals primarily with design and build contracts, but does not altogether exclude certain aspects of such other contractual arrangements."*

23.7. To put it simply, a turnkey contract or a turnkey project is a contract or a project where the owner or the principal entrusts the entire work including design, erection and operation of the project with a particular contractor and upon completion of such contract, the owner can straight away turn the key to switch on the project and as a practice, international turnkey contracts are always made for a firm price, which is not alterable or negotiable. No doubt, the contention of learned Additional Advocate General based on the footnote to Exs.P4 and P5 is very attractive at the first blush, but, we do not think that we can accept the said contention. We have extracted the footnote in the earlier part of our judgment. It requires the bidders to quote for the quantities as per the schedule of rates and it also qualifies it by saying that payments will be made based on the quantity of work actually executed. This schedule of rates dated 06.07.1999 is in respect of works contract only, which was valued at Rs.6,42,23,312/- on 06.07.1999. The same was altered subsequently and it was replaced by another schedule of rates as evidenced by Ex.P4, which is dated 07.07.1999 and the value of the contract under that schedule of rates is Rs.5,98,24,015.42. No doubt, this also contains a similar footnote. But, this document dated 07.07.1999 is not made a part of the contract document under Clause 2.1 of the agreement. Therefore, as rightly pointed out by learned Senior Counsel for respondent/plaintiff Clause 3.8 of the agreement will definitely supercede the schedule of rates dated 07.07.1999 since it is inconsistent with the terms of agreement where there is an agreement for payment of the entire amount of Rs.5,98,24,015/- as the contract value. Further, as rightly pointed out by learned Single Judge a footnote appended to communication prior to the contract would be naturally overridden by a subsequent contract between the parties. Hence, we are unable to accept the submission of learned Additional Advocate General to the effect that the footnote should be applied and the plaintiff would be entitled to only a sum of Rs.22,71,67,461/- *de hors* the value of the contract. Hence, Point No.1 is answered against the appellant.

24. **Point No.2:**

24.1. Adverting to the delay and the right of the defendant to recover liquidated damages, the main contention of learned Additional Advocate General is that since extensions were granted without prejudice to the rights of the defendant, the defendant would be entitled to recover liquidated damages for the delay period. At this juncture, we will have to refer to the evidence of DW-1 in his cross-examination wherein he has admitted that the defendant had not disclosed the basis of calculation of liquidated damages in its written statement. Again, in his cross-examination, DW-1 had admitted that liquidated damages is levied from the due date to the actual completion of work and 'there is no unexecuted portion'. Though he has produced Exs.D3 and D4 where the Chief Engineer [Transmission] had claimed liquidated damages and has rejected the plea of the plaintiff to waive liquidated damages, he has, in his cross-examination, admitted that worksheet for calculation of liquidated damages has neither been produced nor has been explained by the defendant. The clause relating to levy of liquidated damages in the General Conditions of Contract reads as follows:

"18.0 <u>LIQUIDATED DAMAGES</u>

If the handing over of the work fully completed in all

> *respects is delayed beyond the scheduled date or extension thereof for commissioning as given under the contract, the contractor shall pay to the Board an amount calculated at the rate of half of one percent per completed week of delay of the value of the contract price as liquidated damages subject to a maximum of 10% on unexecuted portion of the contract."*

24.2. A reading of the above clause would show that liquidated damages are leviable only in the event of delay beyond the extended period of the contract and it is leviable only on the value of the work that is left unperformed. Neither of the contingencies are available in the case on hand. The plaintiff had completed the work within the extended period and there is no work left unperformed. Both these facts are admitted by the defendant. Neither of the contingencies which entitle the defendant to levy liquidated damages exists in the case on hand. No doubt, Exs.P9 to P11, the letters by which the defendant had extended the period for performance of the contract read that the time is extended without prejudice to the right of the defendant to levy liquidated damages. This term 'without prejudice' has a very wide connotation. If time is extended for performance of contract without prejudice to the rights of the principal that would only mean that if the contract remains unperformed beyond the extended period also, the principal would be entitled to recover damages from the date fixed for original performance. It cannot mean that despite performance within the extended period, the principal would be entitled to claim damages for non-performance. That is the precise reason as to why Clause 18 of the General Conditions of Contract provides for fixation of liquidated damages on the work that is left unperformed and not on the work that had already been performed with a delay. Further more, Clause 41.3 of the General Conditions of Contract [extracted above] which provides for extension of time presupposes that extension would be granted only when there is delay on the part of the defendant. A perusal of Exs.P10 and P11 would clearly demonstrate that the delay was not on the part of the contractor. Three extensions have been granted one after the other and at least two of them, *viz.,* Exs.P10 and P11 show that the delay was due to various reasons like increased ground water table, the right of way and litigation problem *etc.* and none of them can be attributed to the contractor.

24.3. We are, therefore, of the considered opinion that the learned Single Judge was right in rejecting the contention that the defendant would be entitled to retain liquidated damages despite having extended the contract. The evidence on record also demonstrates that the defendant had not chosen to disclose the basis on which liquidated damages was arrived at Rs.1,43,76,797/-. Therefore, we conclude that the action of the defendant in recovering or retaining the liquidated damages from the 10% retention amount cannot be accepted. Hence, Point No.2 is also answered against the appellant.

25. **Point No.3:**

Adverting to the interest portion, we find that there is no agreement for grant of interest between the parties. Learned Single Judge has granted 24% interest since it is a commercial contract. We find that the interest is excessive. No doubt, it is a commercial contract, but, at the same time when there is no agreement between the parties, interest at 24% p.a. would be really excessive and onerous. We, therefore, find that grant of interest at

24% p.a. cannot be sustained. However, considering the facts and circumstances of the case, we are of the opinion that the plaintiff would be entitled to interest at 12% p.a. from the date of suit till the date of decree and thereafter, 6% p.a. till the date of realisation.

In fine, the appeal is partly allowed and the rate of interest is reduced as indicated above. In other respects, the decree of learned Single Judge is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J] **[N.S., J]**
18.10.2023

Index: No
Speaking Order
Neutral Citation : No
gm

R.SUBRAMANIAN, J
and
N.SENTHILKUMAR, J

gm

O.S.A.No.225 of 2013

18.10.2023