



C.S.No.1070 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.01.2024

Pronounced on : 29.01.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.No.1070 of 2005

M/s.Chokhani International Ltd.,
D-3/2, Okhla Industrial Area,
Phase II, New Delhi - 110 020.

... Plaintiff

Vs.

1.Union of India,
Rep. by The Secretary,
Ministry of Defence,
New Delhi.

2. The Director General,
Coast-Guard Head Quarters,
National Stadium Complex,
New Delhi - 110 001.

3. The Commander,
Coast Guard Regional,
Head Quarters, East,
Fort St.George,
Chennai - 600 009.

... Defendants

Prayer: Complaint filed under Order IV Rule 1 of the Original Side Rules
and Order VII Rule 1 of the C.P.C. and Order VIII Rule 4 of Original



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Side Rules and Order XXXIII Rule 1 of C.P.C. to pass a decree in favour of the plaintiff against the defendants for Rs.2,71,97,987/- with interest on Rs.1,77,47,463/- at 18% p.a. from the date hereof until the date of payment in full and for the costs of the suit.

For Plaintiff : Mr.T.V.Badrinarayanan

For defendants : Mr.C.Samivel

JUDGMENT

This suit has been filed by the plaintiff as a quantum meruit action. Quantum meruit is a latin phrase and it means "what one has earned" or "as much as he has earned". In simpler terms, it refers to the actual value of the services rendered or performed. As per the quantum meruit principle, even if there is no specific contract, there is an implied promise to pay a reasonable amount for the labour and material furnished.

2. The plaintiff claims that, for the additional services rendered by them to the defendants, the defendants are liable to pay despite there being no specific promise made by the defendants under the contract to pay for the said services. According to the plaintiff, based on quantum



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meruit principle, there is an implied promise made by the defendants to pay the plaintiff for the additional services rendered by them as the defendants have benefited from the additional services.

3. The suit has been filed by the plaintiff based on quantum meruit principle for the recovery of the sums allegedly payable towards additional wharfage yard services amounting to a sum of Rs.2,71,97,987/- together with interest on Rs.1,77,47,463/- at 18% p.a. from the date of the plaint till the date of realisation.

4. The plaintiff is a ship repairer. On 20.06.1995, the defendants issued a refit order and entrusted the work of repairing its ship CGS Varaha to the plaintiff. The ship was entrusted on 04.07.1995. The special refit value as per the refit order dated 20.06.1995 was Rs.535 lakhs and the time limit for completion of the repair work by the plaintiff was fixed at 270 days. According to the plaintiff, there was a delay in completion of the work by the plaintiff only on account of the third defendant, as they had belatedly obtained sanction for purchase of spares and for additional work. According to the plaintiff, the third defendant,



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who was monitoring the refit work, insisted for additional works.

Thereafter, Additional Work Requisition Form (AWRF) was approved for Rs.129 lakhs. According to the plaintiff, this additional work was also done by them to the defendant's satisfaction. According to the plaintiff, even in this package, the defendants deducted maximum 10% towards liquidated damages from the plaintiff's bill without any fault on plaintiff's part. According to the plaintiff, they had no option but to suffer this unjust and unlawful deduction because of business expediency.

5. According to the plaintiff, the vessel CGS Varaha was delivered in perfect condition to the satisfaction of the defendants on 09.06.1998. However, according to them, despite several reminders, the defendants failed to pay the plaintiff towards additional days of docking and wharfage yard services which work has been additionally done by the plaintiff at the request of the third defendant which does not form part of the special refit order dated 20.06.1995 issued by the defendants in favour of the plaintiff.

6. Under the aforementioned circumstances, the suit has been filed for recovery of a sum of Rs.2,71,97,987/- together with interest on



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Rs.1,77,47,463/- at 18% p.a. from the date of the plaint till the date of realisation.

7. However, on the other hand, the defendants in their written statement have pleaded that the suit is neither maintainable in law nor on facts. According to the defendants, the suit claim is false, frivolous, vexatious and is an abuse of process of Court.

8. According to the defendants, the Coast Guard Ship CGS Varaha was entrusted to the plaintiff for repairs under a short refit order with effect from 26.07.1994. The first defendant had sanctioned a sum of Rs.136.50 Lakhs towards payment to the plaintiff in respect of the short refit order. According to the defendants, on 19.08.1994, the Coast Guard Ship viz., CGS Varaha caught fire and thereafter, the refit was suspended.

9. According to the defendants, after the suspension of the short refit order, the defendants had thereafter, converted the same into a special refit order. Accordingly, the Coast Guard Ship viz., CGS Varaha



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was handed over once again to the plaintiff under a special refit order issued by the defendants on 20.06.1995. According to the defendants, the refit commenced on 03.07.1995 and the duration for completion by the plaintiff was 9 months. According to the defendants, the Ministry of Defence (the first defendant) sanctioned an amount of Rs.535 lakhs by its sanction letter dated 27.04.1995 towards payment for the special refit in respect of the Coast Guard Ship viz., CGS Varaha.

10. According to the defendants, the ship CGS Varaha ought to have been handed over by the plaintiff to the defendants after completion of the repair work in April, 1996 itself. However, due to a payment dispute between the plaintiff and its sub contractors on account of non payment by the plaintiff to its sub contractors, the plaintiff committed delay in completing the repair work. According to the defendants, the plaintiff committed breach of contract of not completing the repair work as per the special refit order within a period of 9 months.

11. According to the defendants, if the plaintiff fails to complete the repair work within a period of 9 months, no wharfage charges for the



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extended period will have to be paid by the defendants. According to the defendants, on a request made by the plaintiff, the period for completion of the repair work by the plaintiff was extended by the defendants by another period of 5 months.

12. According to the defendants, on 24.09.1996, the first defendant sanctioned another sum of Rs.129 lakhs for the Additional Work Requisition Form (AWRF) which includes berthing and ancillary charges for the extended period of 5 months. According to the defendants, the additional sanction order dated 24.09.1996 issued by the first defendant, sanctioning an amount of Rs.129 lakhs for the additional work, makes it clear that the special refit should be completed within a period of 5 months from the issuance of the additional sanction order dated 24.09.1996.

13. According to the defendants, as per the sanction order dated 24.09.1996 issued by the first defendant, the plaintiff ought to have handed over the ship CGS Varaha to the defendants in February, 1997. However, according to the defendants, the plaintiff completed the repair



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work and handed over the ship CGS Varaha to the defendants only on 19.06.1998. According to the defendants, all legitimate payments due to the plaintiff were cleared as per the Ministry of Defence sanction.

14. According to the defendants, the plaintiff has been paid a total sum of Rs.8,37,27,450/- for the sanctioned refit duration of 420 days (9 months + 5 months) by the defendants. According to the defendants, the details of the payments made to the plaintiff by the defendants are as follows:

<i>Sl. No.</i>	<i>Date</i>	<i>Payments in Rs.</i>
1	26.07.1994 (Short Refit)	1,36,50,000
2	19.08.1994 (During the fire of ship)	46,84,849
3	27.04.1995 (Special Refit)	5,35,00,000
4	24.09.1996 (Additional Work for 5 months)	1,29,00,000
	Total	8,37,27,450

15. According to the defendants, the plaintiff claiming for additional 652 days (over and above the sanctioned duration of 420 days) is illegal and unjustified as the said payment cannot be claimed from the defendants as the delay is entirely on the part of the plaintiff. According to them, the delay in completion beyond sanctioned duration is attributed



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solely due to the financial insolvency of the plaintiff and not on account of the defendants. According to the defendants, all legitimate payments due to the plaintiff has been fully paid and no more amount is outstanding.

16. Based on the pleadings of the parties to the suit, the following issues were framed by this Court:

" I. Whether the plaintiff is entitled to a decree as prayed for?

II. Whether the plaintiff has done the additional work as stated in the plaint?

III. Whether the claim of the plaintiff has been fully settled with the payment of the amount for the additional work?

IV. Was there any delay in execution of work by the plaintiff as alleged by the defendants?

V. Whether the plaintiff is entitled to the suit claim for the alleged additional work in view of the bar on payment of additional amount due to the belated execution of the work?



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VI. Whether the plaintiff is entitled to 18% interest per annum on Rs. 1,77,47,463 as prayed for?

VII. To what other reliefs, the plaintiff is entitled to?"

17. On the side of the plaintiff, its General Manager Mr.S.Chellappa was examined as a witness (PW1). He has also filed a proof affidavit, reiterating the contents of the plaint. Through PW1, the following documents were marked as exhibits:

" Ex.P1 is the original order dated 20.06.1995.

Ex.P2 is the copy of the letter dated 05.01.1996 from plaintiff to Defendants.

Ex.P3 is the copy of the minutes of meeting as furnished to originals of which must be with the defendants dated 10.01.1996.

Ex.P4 is the copy of the minutes of meeting as furnished to originals of which must be with the defendants dated 14.08.1996.



Ex.P5 is the copy of the letter dated 03.10.1996 issued by the 2nd defendant. (Subject to objection marked)

Ex.P6 is the copy of the minutes of meeting dated 04.02.1997. (Subject to objection marked)

Ex.P7 is the copy of flowchart Annexure II to the justification letter 21.08.1998 issued by the plaintiff. (Subject to objection marked)

Ex.P8 is the original certificate of Basin/Harbour trial issued by Commandant of CGS Varaha dated 21.05.1998.

Ex.P9 is the original work done certificates.

Ex.P10 is the original certificate for bilge pumping and crane services for the duration of 04.07.1995 to 09.06.1998.

Ex.P11 is the copy of minutes of meeting dated 02.06.1997 as furnished to plaintiff. (Subject to objection marked)



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*Ex.P12 is the copy of letter dated 04.09.1997.
(Subject to objection marked)*

*Ex.P13 is the copy of letter dated 04.09.1997 from
3rd defendant to plaintiff. (Subject to objection
marked)*

*Ex.P14 is the copy of letter dated 09.09.1997 from
3rd defendant to plaintiff. (Subject to objection
marked)*

*Ex.P15 is the copy of letter dated 09.09.1997 from
3rd defendant to plaintiff. (Subject to objection
marked)*

Ex.P16 is the original Challan dated 27.10.1997.

Ex.P17 is the original Challan dated 06.02.1998.

Ex.P18 is the original invoice dated 15.02.1998.

*Ex.P19 is the copy of minutes of meeting dated
17.06.1998. (Subject to objection marked)*

*Ex.P20 is the original justification letter dated
21.08.1998.*



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Ex.P21 is the original invoice dated 15.12.1998 by the plaintiff to third defendant.

Ex.P22 is the original remainder letter dated 27.07.2000 by the plaintiff.

Ex.P23 is the copy of remainder letter dated 16.08.2000. (Subject to objection marked)

Ex.P24 is the copy of lawyer's notice dated 05.10.2000.

Ex.P25 is the original letter dated 31.10.2000.

Ex.P26 is the original letter dated 19.09.2000.

Ex.P27 is the copy of the lawyer's notice dated 27.11.2000.

Ex. P28 is the original reply dated 08.01.2001.

Ex.P29 is the original Board resolution dated 14.11.2016."



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18. The plaintiff's witness (PW1) was also cross examined by the defendants' standing counsel.

19. On the side of the defendants, Mr.Vinod Sakharkar, the Deputy Inspector General, Chief Staff Officer (Technical) was examined as a witness. He has also filed a proof affidavit, reiterating the contents of the written statement. Through DW1, the following documents were marked as exhibits on the side of the defendants:

" Ex.D1 is the copy of the Sanction order for Rs.5.35 Crores for Special Refit - ICGS dated 27.04.1995.

Ex.D2 is the copy of the terms and conditions of Special Refit dated 20.06.1995.

Ex.D3 is the copy of the additional sanction for special refit - ICGS Varaha and terms of payment dated 24.09.1996."

20. The defendants' witness (DW1) was also cross examined by



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the plaintiff's counsel.

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21. Heard, Mr.T.V.Badrinarayanan, learned counsel for the plaintiff and Mr.C.Samivel, learned standing counsel for the defendants.

22. The learned counsel for the plaintiff drew the attention of this Court to the plaint averments, exhibits and the depositions and would submit as follows:

a) Only on account of the delay in issuing the sanction order as well as delay in supplying the spare parts by the defendants, the cause of action for the suit claim arose;

b) The suit claim of Rs.1,77,47,463/- as indicated in Ex.P9 is towards the value of the additional services / supplies made by the plaintiff.

23. According to the learned counsel for the plaintiff, the defendants have unilaterally restricted the payment to 420 days by citing the contracts viz., Ex.P1 and Ex.P5 and wrongly and unilaterally making the plaintiff responsible for the extended period of repair time.



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According to the learned counsel for the plaintiff, the delay of 562 days in completing the repair work was entirely on account of the defendants' omission and commission in fulfilling their obligations under Ex.P1 (Order for special refit of CGS Varaha dated 20.06.1995) and Ex.P5 (Letter from defendants to plaintiff dated 03.10.1996). Only on account of the delay on the part of the defendants, the repair work could not be completed by the plaintiff on or before 02.03.1997 and the repair work could be completed and possession delivered only on 09.06.1998. Having benefited from the additional services rendered by the plaintiff in addition to the services stipulated in the special refit order dated 20.06.1995 (Ex.P1) and the letter from the defendants to the plaintiff (Ex.P5), the defendants are liable to pay the plaintiff for the additional services rendered by them.

24. To support his contentions, the learned counsel for the plaintiff drew the attention of this Court to various exhibits marked on the side of the plaintiff.

25. The learned counsel for the plaintiff also drew the attention of



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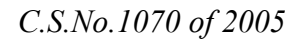
this Court to Section 70 of the Indian Contract Act and would submit that the defendants having got the benefit of the additional services from the plaintiff and the plaintiff having incurred cost for the same, the defendants are legally bound to pay for the additional services as claimed by the plaintiff. According to him, there is an implied promise made by the defendants to pay the plaintiff for any additional services rendered by them which has benefited the defendants. He would submit that the suit filed by the plaintiff is based on the principle of quantum meruit.

26. In support of his contention, the learned counsel for the plaintiff drew the attention of this Court to the following authorities:

a) A decision of the Honourable Supreme Court in the case of ***State of West Bengal Vs. B.K.Mondal and Sons reported in AIR 1962 SC 779;***

b) A decision of a Division Bench of this Court in the case of ***Madasami Nadar Vs. Virudhunagar Municipality reported in 90 L.W. page 72;***

c) A decision of the Honourable Supreme Court in the case of ***Piloo Dhunjishaw Sidhwa Vs. Municipal Corporation of the City of Poona reported in 1970 (1) SCC 213.***



28. On the other hand, the learned counsel for the defendants would reiterate the contents of the written statement filed by the defendants. According to him, the delay in completing the work was entirely on the part of the plaintiff. As per the sanction order issued by the Ministry of Defence by their letter dated 27.04.1995, the ship CGS Varaha should have been handed over to the defendants by the plaintiff in April, 1996 after completion of the refit. According to him, there was a payment dispute between the plaintiff and its sub contractors due to the plaintiff's financial insolvency which resulted in delay in completion of the repair work by the plaintiff.



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29. Learned standing counsel for the defendants would further submit that if the plaintiff commits delay in completion of the repair work, no wharfage charges is admissible. He would submit that an extension of 5 months was granted to the plaintiff only on their request and the defendants were never at fault. He would further submit that the contract makes it clear that if the plaintiff fails to show progress in the refit, no wharfage charges will be admissible, during the course of 9 months when the ship was not handed over to the Coast Guard (defendants). He would further submit that only on the request of the plaintiff, the period of 5 months was extended to deliver the ship and accordingly, on 24.09.1996, the first defendant sanctioned an additional amount of Rs.129 lakhs for the Additional Work Requisition Form (AWRF) which includes berthing and ancillary charges.

30. The learned standing counsel for the defendants also drew the attention of this Court to the sanction order dated 24.09.1996 and would submit that it has been made clear in the sanction order that the special refit should be completed by the plaintiff within 5 months from the date of issuance of the additional sanction order dated 24.09.1996. According



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to the learned standing counsel for the defendants, the ship CGS Varaha ought to have been handed over by the plaintiff to the defendants in February, 1997. However, the refit was completed by the plaintiff and the ship CGS Varaha was handed over to the defendants only on 19.06.1998.

31. According to the learned standing counsel for the defendants, the defendants have proved through their pleadings, oral and documentary evidence that all legitimate payments due to the plaintiff were paid. He also drew the attention of this Court to the payments made by the defendants to the plaintiff on various dates, totally amounting to a sum of Rs.8,37,27,450/-. He would submit that the suit claim is an abuse of process of Court and is false, frivolous and vexatious as the plaintiff is not entitled to claim for the additional 652 days (over and above the sanctioned duration of 420 days). He would submit that only on account of the financial insolvency of the plaintiff, there has been a delay in completion of the repair work by the plaintiff for which the defendants cannot be made liable. He would also submit that the suit is barred by limitation as, even according to the plaintiff, the cause of action arose in the year 1998, when the vessel CGS Varaha was delivered to the



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defendants and the alleged payments were not made for the additional work, but the suit has been filed only in the year 2005.

Discussion:

32. The special refit order dated 20.06.1995 (Ex.P1) placed on the plaintiff makes it clear that the plaintiff had submitted its quotation for repairing the defendants' ship CGS Varaha for a total value of Rs.535 lakhs. It is also clear from Ex.P1 that only based on the quotation submitted by the plaintiff, the defendants have placed the special refit order (Ex.P1) on the plaintiff. As seen from Ex.P1, there is a liquidated damage clause which makes it clear that the ship should be handed over to the defendants by the plaintiff duly refitted at the end of the contractual period.

33. The details of the repair work and the equipments to be repaired by the plaintiff are disclosed in the special refit order dated 20.06.1995 (Ex.P1) placed by the defendants with the plaintiff. It is also made clear under Ex.P1 that in case the plaintiff wants to deviate from the specifications disclosed in Ex.P2, they will have to seek the



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permission of the defendants with the prior approval of the Head
Quarters of the defendants.

34. Under Ex.P2 dated 05.01.1996, the plaintiff has requested the defendants (Coast Guard Head Quarters) to grant approval for revising the specifications disclosed in the special refit order dated 20.06.1995 (Ex.P1). Under Ex.P2, the plaintiff has disclosed the reasons as to why they were forced to revise the DCD to 12.05.1996. The reasons given by them are as follows:

a) 48 days delay in projection of spare parts by M/s.Koel (plaintiff's sub contractor) for D.A. routines;

b) Slight slip in delivery of capital equipment by the plaintiff's major O.E.M's since these items are of long lead type specifically made to order and having heavy import component contribution which are subjected to undergo stage wise ABS approval;

c) Partially due to the sanction from Government for spares procurement and AWRF's.

35. As seen from Ex.P2, even according to the plaintiff, the defendants' fault was minimal as they admit that the delay was only



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partially due to the delay in granting sanction by the Government for spares procurement and AWRF's.

36. In the minutes recorded in the review meeting of defendants, which was recorded in Ex.P3, it is clear that the plaintiff is having payment dispute with its sub contractor M/s.Koel. The review meeting held on 14.08.1996 and the minutes recorded (Ex.P4) also discloses that there is a dispute between the plaintiff and its sub contractors. The plaintiff has also undertaken to resolve the disputes.

37. Ex.P5 is the special refit order dated 03.10.1996 issued by the defendants to the plaintiff. The said order (Ex.P5) issued by the defendants was only based on the request of the plaintiff dated 31.05.1996. As seen from Ex.P5, the special refit order dated 03.10.1996 (Ex.P5), the defendants have accepted the plaintiff's quotation for the additional work for Rs.129 lakhs. Under the special refit order dated 03.10.1996 (Ex.P5), the defendants have agreed to pay to the plaintiff an additional sum of Rs.129 lakhs towards additional work to be done by the plaintiff. As seen from Ex.P5, the plaintiff has to complete the



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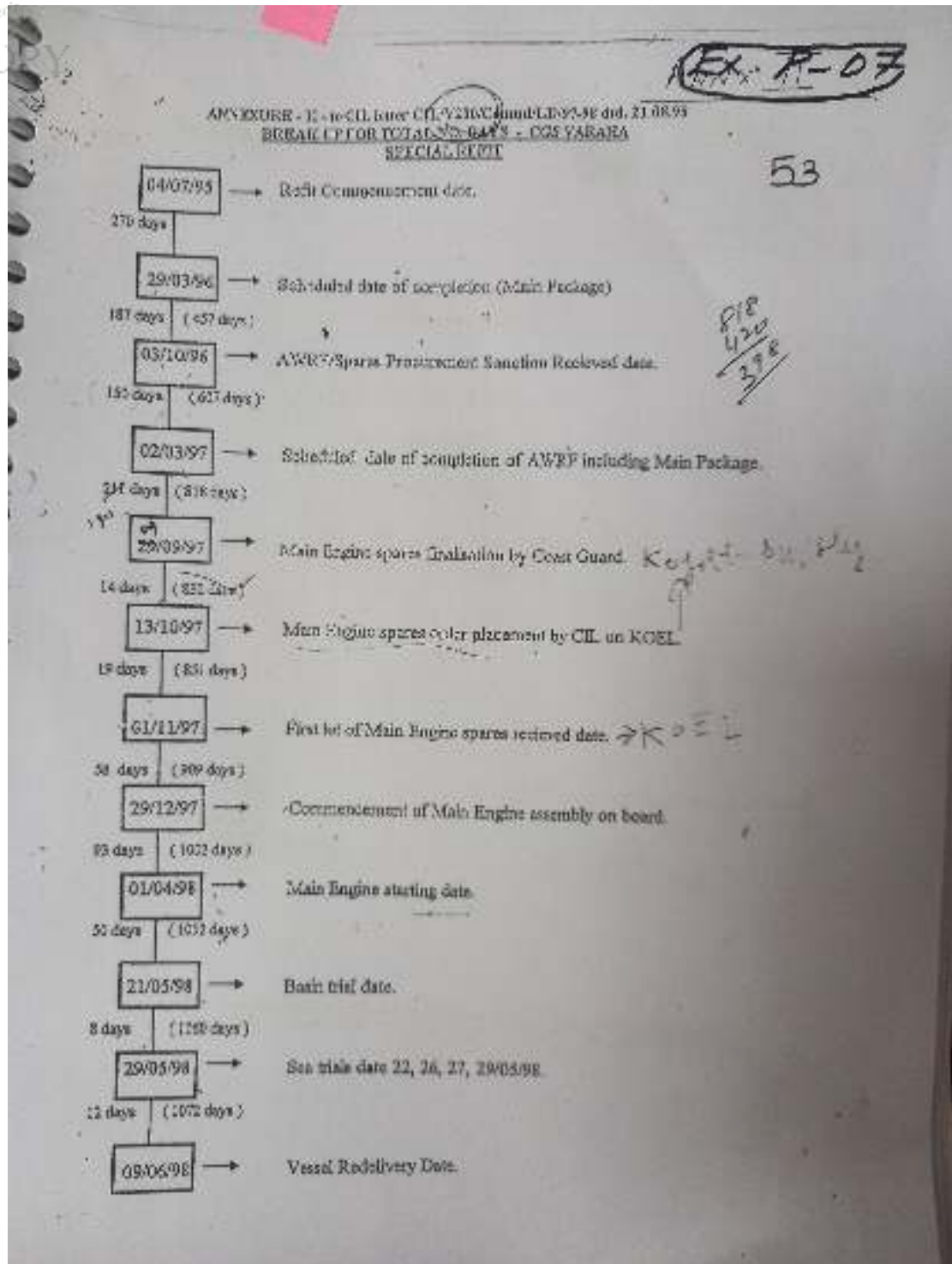
additional work within a period of 150 days from the issue of formal sanction. The details of the additional work to be done by the plaintiff is also listed in Ex.P5. In Ex.P5 also, there is a liquidated damage clause which makes it clear that liquidated damage upto 10% cost refit will be levied if the special refit is not completed within the period of 150 days from the date of issue of formal sanction for the additional work. It is noticed that due to the delay, one more meeting was convened by all the representatives, including the plaintiff and the defendants in the presence of the plaintiff's sub contractors. As per the minutes recorded in the joint meeting held on 07.02.1997, convened to resolve outstanding payment issues of the plaintiff's sub contractor M/s.Koel with the plaintiff, it is noticed that M/s.Koel, sub contractor of the plaintiff has been urged to commence the work.

38. Ex.P7 gives the details of the break-up for total number of days for completion of the repair work by the plaintiff. As seen from Ex.P7, there has been a delay on the part of the plaintiff in completing the repair work. The break up for the total number of days taken by the plaintiff for completing the repair work and date of delivery of the ship to the



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defendants is found in Ex.P7 and the schedule is as follows:





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39. Ex.P8 is the work done certificate. Though it has been signed by the Commandant of the defendant's ship, the said document does not prove that the defendants have agreed to pay the additional charges to the plaintiff. Ex.P8 is a certificate which only certifies that basin / harbour trial of the ship CGS Varaha was carried out on 21.05.1998 to the satisfaction of the ship staff. It has no bearing for proving the plaintiff's claim, which, admittedly, is an additional claim, which has not been agreed upon by the defendants.

40. Ex.P11 is the minutes of the meeting dated 02.06.1997 which confirms that the payment issue between the plaintiff and their sub contractors still exists. As seen from the said minutes, an attempt was made to resolve disputes between the plaintiff and its sub contractors. Therefore, it is clear that the payment issue between the plaintiff and its sub contractors continued to exist even as on 02.06.1997. Therefore, it is clear that the plaintiff was facing financial difficulties and were unable to pay its sub contractors.



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41. Ex.P9 is the work done certificate (Job card / Work order).

Though it has been signed by the Commandant of the defendants, it does not stipulate that the defendants have directly or impliedly agreed to pay for the additional services if any rendered by the plaintiff. Similarly, the other documents, which are marked as exhibits on the side of the plaintiff does not disclose that the defendants had agreed to pay the plaintiff for the alleged additional services rendered by them over and above the sum of Rs.8,37,27,450/-, which the defendants have agreed to pay and have also made the said payment.

42. It is also clear from Ex.D2 viz., the terms and conditions of special refit dated 20.06.1995 that the defendants are not liable to pay any additional charges to the plaintiff. Though, the plaintiff may contend that only due to the non supply of spare parts on time, there was a delay, there is no evidence available on record to prove the same. Hence, there is no merit in the said contention. The plaintiff's witness (PW1) has also admitted during the course of his cross examination that prior sanction was not obtained from the defendants for doing the additional works. The plaintiff's witness has also admitted that the work done certificate under



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Ex.P9 was obtained after completion of the work under AWRF-II.

AWRF-II is the additional services alleged to have been rendered by the plaintiff for which the present suit claim has been made. The plaintiff's witness has also admitted during the course of his cross examination that though a request was made for sanctioning all the additional claim, the said request was not conceded in the meeting under Ex.P19. As seen from Ex.P19, in paragraph No.7, it has been admitted by the plaintiff that there is a delay on their part. However, the defendants have never admitted any delay on their part either in the pleadings or in their deposition.

43. The plaintiff has also not disputed the earlier deduction made by the defendants towards liquidated damages in respect of the payments paid by them to the plaintiff under the special refit order dated 20.06.1995 (Ex.P1) and under Ex.P5 dated 03.10.1996. Having not disputed the deductions which were made on account of the delay on the part of the plaintiff in completing the repair work, the question of payment for the alleged additional services said to have been rendered by the plaintiff, which has been categorically disputed by the defendants,



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cannot be allowed.

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44. Section 70 of the Indian Contract Act reads as follows:

"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."

45. To apply the principle of quantum meruit under Section 70 of the Indian Contract Act, only when a person lawfully does anything for someone and does so with intention to do non gratuitously and the latter enjoys the benefit of it, the latter is bound to compensate the former. In the case on hand, therefore, the plaintiff must prove that they have lawfully done the alleged additional services to the defendants and has done it with intention to do non gratuitously and the defendants have benefited from the alleged additional services. Only then, the defendants are bound to compensate the plaintiff for the additional services rendered



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by them, which is the suit claim. The plaintiff had not proved that there has been an implied consent given by the defendants for doing the additional services, but, on the contrary, it is clear from the oral and documentary evidence available on record, that the defendants never agreed, either directly or indirectly, to pay for the alleged additional services for which the suit claim has been made in the suit.

46. All the decisions relied upon by the learned counsel for the plaintiff are cases where the plaintiff therein has proved and satisfied the ingredients of Section 70 of the Indian Contract Act and only under those circumstances, the quantum meruit principle was applied and compensation granted to the plaintiffs therein.

47. In the case on hand, as observed earlier, the plaintiff has not satisfied the requirements of Section 70 of the Indian Contract Act and therefore, they are not entitled for the suit claim.

48. For the foregoing reasons, the issues framed by this Court are answered in the following manner:



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Issue No.1: Ans: The plaintiff is not entitled for a decree as prayed for in the suit.

Issue No.2: Ans: The plaintiff has not proved that they are entitled for the suit claim which has been made towards the alleged additional work said to have been done by the plaintiff.

Issue No.3: Ans: The claim of the plaintiff has been fully settled by the defendants as per the Contracts. No further sums are payable by the defendants as neither directly nor indirectly have the defendants promised to pay any additional sum to the plaintiff.

Issue No.4: Ans: There is a delay in the execution of the work by the plaintiff.

Issue No.5: Ans: The plaintiff is not entitled to the suit claim for the alleged additional work in view of the bar on payment of the additional amount due to the belated execution of the work.

Issue No.6: Ans: The plaintiff is not entitled to any additional amount and is also not entitled to any interest.

49. In the result, there is no merit in the suit. The suit filed by the plaintiff is an afterthought and is a preemptive action to avoid any claim



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being made by the defendants against the plaintiff for the delay on the part of the plaintiff in completing the repair work. The suit claim is an abuse of process of Court and is a false claim.

50. Accordingly, the suit is dismissed with cost.

29.01.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
ab



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List of Witness examined on the side of the Plaintiff:-

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Mr.S.Chellappa (PW1)

List of the Exhibits marked on the side of the Plaintiff:-

" Ex.P1 is the original order dated 20.06.1995.

Ex.P2 is the copy of the letter dated 05.01.1996 from plaintiff to Defendants.

Ex.P3 is the copy of the minutes of meeting as furnished to originals of which must be with the defendants dated 10.01.1996.

Ex.P4 is the copy of the minutes of meeting as furnished to originals of which must be with the defendants dated 14.08.1996.

Ex.P5 is the copy of the letter dated 03.10.1996 issued by the 2nd defendant. (Subject to objection marked)

Ex.P6 is the copy of the minutes of meeting dated 04.02.1997. (Subject to objection marked)



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Ex.P7 is the copy of flowchart Annexure II to the justification letter 21.08.1998 issued by the plaintiff. (Subject to objection marked)

Ex.P8 is the original certificate of Basin/Harbour trial issued by Commandant of CGS Varaha dated 21.05.1998.

Ex.P9 is the original work done certificates.

Ex.P10 is the original certificate for bilge pumping and crane services for the duration of 04.07.1995 to 09.06.1998.

Ex.P11 is the copy of minutes of meeting dated 02.06.1997 as furnished to plaintiff. (Subject to objection marked)

Ex.P12 is the copy of letter dated 04.09.1997. (Subject to objection marked)

Ex.P13 is the copy of letter dated 04.09.1997 from 3rd defendant to plaintiff. (Subject to objection marked)



Ex.P14 is the copy of letter dated 09.09.1997 from 3rd defendant to plaintiff. (Subject to objection marked)

Ex.P15 is the copy of letter dated 09.09.1997 from 3rd defendant to plaintiff. (Subject to objection marked)

Ex.P16 is the original Challan dated 27.10.1997.

Ex.P17 is the original Challan dated 06.02.1998.

Ex.P18 is the original invoice dated 15.02.1998.

Ex.P19 is the copy of minutes of meeting dated 17.06.1998. (Subject to objection marked)

Ex.P20 is the original justification letter dated 21.08.1998.

Ex.P21 is the original invoice dated 15.12.1998 by the plaintiff to third defendant.

Ex.P22 is the original remainder letter dated 27.07.2000 by the plaintiff.



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Ex.P23 is the copy of remainder letter dated 16.08.2000. (Subject to objection marked)

Ex.P24 is the copy of lawyer's notice dated 05.10.2000.

Ex.P25 is the original letter dated 31.10.2000.

Ex.P26 is the original letter dated 19.09.2000.

Ex.P27 is the copy of the lawyer's notice dated 27.11.2000.

Ex. P28 is the original reply dated 08.01.2001.

Ex.P29 is the original Board resolution dated 14.11.2016."



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List of Witness examined on the side of the Defendant:-

WEB COPY

Mr.Vinod Sakharkar, the Deputy Inspector General, Chief Staff Officer
(Technical) (DW1)

List of the Exhibits marked on the side of the Defendant:-

*" Ex.D1 is the copy of the Sanction order for Rs.5.35
Crores for Special Refit - ICGS dated 27.04.1995.*

*Ex.D2 is the copy of the terms and conditions of
Special Refit dated 20.06.1995.*

*Ex.D3 is the copy of the additional sanction for
special refit - ICGS Varaha and terms of payment
dated 24.09.1996."*

29.01.2024

ab



WEB COPY



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ABDUL QUDDHOSE, J.

ab

Pre-delivery judgment in

C.S.No.1070 of 2005

29.01.2024