

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Before:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Apurba Sinha Ray

FA 23 of 2018

Great Eastern Energy Corporation Limited

Vs.

M/s. D.S. Steel & Anr.

For the Appellant: Mr. Aniruddha Chatterjee, Sr. Adv.
 Mr. Piyush Agarwal, Adv.
 Mr. Debojyoti Das, Adv.

For the Respondents: Mr. Ajoy Krishna Chatterjee, Sr. Adv.
 Mr. Anant Kr. Shaw, Adv.
 Mr. Shreeman Mukherjee, Adv.
 Ms. Shohini Chakrabarty, Adv.
 Ms. Prajaaini Das, Adv.

Hearing concluded on: 3rd September, 2025.

Judgment on: 15th September, 2025.

Soumen Sen, J:

1. The instant appeal arises out of the impugned judgment and decree dated December 22, 2015, passed by the learned Civil Judge (Senior Division), Asansol, in Money Suit No. 33 of 2008 for a sum of Rs.80,13,865/- in favour of the plaintiff-respondent.
2. The defendant-appellant is a Public Limited Company having its registered office in Kolkata, engaged in the business of exploration and production of coal-bed methane gas. The plaintiff-respondent is a

sole proprietorship firm having its office in Durgapur with the credentials of doing all sorts of Civil, Mechanical jobs, including road construction.

3. According to the plaintiff-respondent, on November 12, 2005, the defendant issued a work order in favour of the plaintiff for the development of three sites (site nos. 13,14, and 16) in the Burnpur area for the operation of rig drilling of well holes for their methane plant. A concluded contract was entered into between the parties. The total value of the work order was Rs.51,00,000/- inclusive of taxes. The work was to be completed within 90 days from the date of handing over of sites, and any delay beyond that period would attract a penalty @ 0.5% per week, subject to a maximum of 5% of the work order. Additionally, in case of any major repair(s) required on account of substandard work or otherwise, till the 2006 monsoon or November 2006, whichever is later, the defendant-appellant would hold 2.5% work order price, which will be paid after the 2006 monsoon or November 2006, whichever is later. The defendant-appellant had made an advance payment of Rs.5,00,000/- along with the work order for the three wells, while the balance was to be paid within fifteen days of submitting the fortnightly progressive bills, to be adjusted prorata from the progressive bills. Each progressive bill was to be accompanied by a progress report duly signed by the defendant-appellant's site representative. The work order was turnkey in nature, and the progressive payments were to be regulated by 13 specific milestones. Except for the item at serial no. 2, the rate for each of the

other 12 work items was fixed and calculated on a lump sum basis. For the work against serial no. 2, it was specified by mentioning that it will be based on actual measurement. There was no whisper in the contract for the provision of extension of the contract to and for any additional sites. Although the nature and size of the three sites were different, the items and rates were the same for all. Several bills were raised by the plaintiff-respondent, being:

- A. On 17-01-06, a bill for an amount of Rs.10,87,625.00/- was raised for the development of the site for the well nos. 13 and 14, of which an amount of Rs.9,08,838.00/- only was paid.
 - B. On 11-02-06, again on 28-02-06 bill for an amount of Rs.15,44,270/- was raised pertaining to the well nos. 13,14, and 16, and a part payment of Rs.12,98,269.00/- only was made.
 - C. Bill dated 18-04-06 was raised for Rs.15,39,550.00/- only of which Rs.12,20,428.00/- was paid on several dates after constant requests.
4. Despite the contractual obligation, the defendant-appellant failed to make full payment, leaving a substantial amount unpaid. In the due course of the contractual period, the plaintiff-respondent completed the site development to the full satisfaction of the defendant-appellant. Thereafter, sometime in the month of April 2006, one existing contractor, M/s. Made & Trade, who was entrusted with the development work of a site at Shyamdihi (Site No. 11), finding the terrain extremely difficult and the compensation being incommensurate with the volume of work, left the site without

executing the job. This site was critical for the defendant-appellant, as they had an agreement with a foreign party for drilling operations there. At this juncture, when no other party was agreeing to do the job of a runaway contractor, the defendant verbally requested the plaintiff to do the job in line and tune according to the terms and conditions of the contract dated November 12, 2005. Acting on this verbal direction, the plaintiff-respondent commenced the work immediately, without receiving any advance payment. Thereafter, the appellants released a work order being No. GEECL/W-01/2006-07 dated April 7, 2006, which the respondent received by fax on April 18, 2006. Additionally, four other work orders were issued on different dates for the development of site nos. 12, 21, 23, and for filling up of air and mud pits pertaining to sites 11,12,13,14, and 16. But, upon receiving the work order, the respondent found out that certain clauses compared to the previous work order were changed, and certain clauses were not even mentioned at all. The plaintiff-respondent had done their job for the development of the sites nos. 11, 12, 21, and 23 satisfactorily with increasing overheads, but the appellant failed to appreciate such hard work done by the respondent and failed to make any payment for such work, although the bills submitted by the respondent were duly countersigned by the representative of the appellant, being satisfied with the work completed. Exploiting the financial distress of the plaintiff-respondent, the appellant no. 2 coerced him to sign on a blank white paper on 13th December 2006, which was subsequently manufactured as a receipt stating that Rs.17,28,764/- constituted a

full and final settlement of all dues. Thereafter, on December 16, 2006, the plaintiff-respondent lodged a police complaint asserting that the said receipt was a forged document, signed under coercion.

5. The case of the defendant-appellant is that, in the usual course of business, they engaged the plaintiff-respondent for the development of seven well sites at Samdihi, Kalajharia, and Denua, containing similar terms and conditions as the nature of the work, comprising civil and electrical work at a fixed value of Rs.17,00,000/-. The combined value of the seven orders was Rs.1,19,00,000/-. Additionally, on June 25, 2005, a separate work order was issued for the filling of air and mud pits for five wells for a total value of Rs.3,97,500/-. The payment of the bills was to be made within the time period as stipulated in each of the said work orders on an actual measurement basis in accordance with the rates specified in proportion to the lump sum rates mentioned in the specific work order for a specified measurement. The running bills raised by the plaintiff-respondent were processed by the appellant after certain adjustments, as the work was of poor quality. Some bills were kept on hold to be processed after a due inspection of the work done. On December 13, 2006, a meeting was convened between the representatives of both parties, and a settlement with respect to the pending dues was reached. Subsequently, it was decided that the defendant-appellant would pay Rs.17,28,764/- to the plaintiff-respondent. Pursuant to this settlement, the plaintiff-respondent accepted 75% of the agreed

amount and signed the same as an acknowledgment dated December 13, 2006.

Arguments on behalf of the appellant:

6. Mr. Anirudhha Chatterjee, learned Senior Advocate appearing on behalf of the appellant, submits that the respondents, from the issuance of the first work order, made an undue delay in the completion of the work, and most of the work performed by them was of poor quality and was below the established standards prevailing in the market. However, the appellant continued to process the running bills raised by the respondent after certain adjustments, as the work was of poor quality. Some bills were kept on hold to be processed after a due inspection of the work done.
7. Mr. Chatterjee submits that despite the cost to be paid for the well site work orders being capped at Rs.1,19,00,000/-, the respondents had raised bills amounting to Rs.1,23,04,780/-, against which the appellant had paid a sum amounting to Rs.69,41,295/-. Further, a separate bill of Rs.5,51,200/- was raised towards the work order of filling air and mud pits in the five well sites.
8. The learned Senior Counsel submits that after significant progress of the work, the appellant, through its representatives, made a qualitative and quantitative inspection of the work executed, and upon such inspection, a tabulation was prepared by them of the actual work being done by the respondent and the deductions that were to be made from the bills raised.

9. Mr. Chatterjee further submits that on December 13, 2006, a meeting was held between the representatives of the appellants and the respondents, wherein they reached a settlement with respect to the pending dues of the respondent. Subsequently, it was decided that the appellants were to pay a total sum of Rs.17,28,764/- to the respondents as full and final settlement for the works done. It was further decided that only 75% of the total settlement amount, being Rs.12,04,104/-, was to be paid immediately, whereas the balance 25%, being Rs.5,24,660/-, together with the payment for work to be done on an actual basis, would be paid upon the completion of all pending work as per the work order. The payment for the work done post the settlement reached between the parties was made by the appellant as and when the bills were raised.
10. Mr. Chatterjee submits that the respondents duly accepted the 75% payment of Rs.12,04,104/- vide Cheque No. 163452 on December 13, 2006, and the respondent no. 2 wrote and signed a letter dated December 13, 2006, acknowledging the said payment.
11. The learned Senior Counsel submits that, following the purported amicable settlement, the respondent, with an ulterior motive to further extort money from the appellant, lodged a police complaint on December 16, 2006, and subsequently filed a Money Suit on August 7, 2008. On December 22, 2015, the learned Civil Judge (Senior Division) passed a decree directing the appellants to pay a sum of Rs.59,14,685/- along with interest at the rate of 9% per annum from the date of filing of the suit until realization of the claim.

12. With regard to the impugned judgment, Mr. Chatterjee submits that the said judgment fails to take into account that the respondent filed the original plaint in the suit on August 7, 2008. The settlement document was executed on December 13, 2006, and the plaintiff-respondent, knowing the same, failed to challenge the settlement document in the original plaint and only by a subsequent amendment made to the plaint in the year 2011, challenged it and sought its cancellation. The learned trial court failed to take into account that the reliefs sought were time-barred, as 3 years had passed from the date on which the cause of action had arisen.
13. Mr. Chatterjee strenuously argues that the learned trial court could not have decreed the suit against the defendant-appellant by disregarding the fact that a settlement with regard to the sum due had already been reached and acted upon, and that the respondents failed to challenge the settlement document within the limitation period as provided under Articles 58 and 59 of the Schedule to the Limitation Act, 1963. Furthermore, owing to the execution of the settlement document between the parties, the respondent had no cause of action to file the money suit. The learned trial court has failed to appreciate the facts of the case by allowing the prayers made in the amended plaint while exercising its power under Order 6 Rule 17 of the Code of Civil Procedure, 1908, as the same has changed the nature of the suit.

14. To buttress his submissions, Mr. Chatterjee places reliance on ***Dahiben v. Arvinbhai Kalyanji Bhanusali***¹ at paragraphs 25, 26, 27, and 28. The relevant paragraphs have been reproduced below:

“25. *The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article.*

26. *Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under:*

<i>“Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
58. <i>To obtain any other declaration.</i>	Three years	When the right to sue first accrues.
59. <i>To cancel or set aside an instrument or decree or for the rescission of a contract.</i>	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.”

The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

27. *In Khatri Hotels (P) Ltd. v. Union of India [Khatri Hotels (P) Ltd. v. Union of India, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484] this Court held that the use of the word “first” between the words “sue” and “accrued”, would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed,*

¹ (2020) 7 SCC 366 : (2020) 4 SCC (Civ) 128 : 2020 SCC OnLine SC 562

if it is beyond the period of limitation counted from the date when the right to sue first accrued.

28. A three-Judge Bench of this Court in *State of Punjab v. Gurdev Singh* [State of Punjab v. Gurdev Singh, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082] held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.”

15. Further reliance has been placed on the case of **Asian Hotels (North) Ltd. v. Alok Kumar Lodha**² at paragraph 36, which has been reproduced below:

“36. The High Court while allowing the amendment application in exercise of powers under Order 6 Rule 17 of the Code of Civil Procedure has not properly appreciated the fact and/or considered the fact that as such, by granting such an amendment and permitting the plaintiffs to amend the plaints incorporating the prayer clause to declare the respective charges/mortgages void ab initio, the nature of the suits will be changed. As per the settled proposition of law, if, by permitting the plaintiffs to amend the plaint including a prayer clause nature of the suit is likely to be changed, in that case, the Court would not be justified in allowing the amendment. It would also result in misjoinder of causes of action.”

16. The learned Senior Counsel further argues that the agreement dated 2006 was a concluded contract, and since the respondents had accepted its execution, they cannot be allowed to resile from the said document on the ground of coercion, especially when they have failed

² (2022) 8 SCC 145 : (2022) 4 SCC (Civ) 126 : 2022 SCC OnLine SC 844

to adduce any sort of evidence to that effect. Once they have accepted the document and have also accepted the payment, it is fraudulent on the part of the respondent to now blow hot and cold at the same time.

17. It was further argued on behalf of the appellants that the respondents had, at no point in time, pleaded undue influence, nor did the learned trial court render any finding on undue influence. Accordingly, the respondents could not, at the appellate stage, raise a point which does not amount to a pure question of law. It was contended that there is a distinction between proof of coercion and proof of undue influence. Since the respondents had chosen to take the plea of coercion, they could not be allowed to substitute their stance for one of undue influence.

18. Mr. Chatterjee submits that the burden of proof lies squarely on the party alleging coercion. It is a well-settled principle of contract law that a contract is presumed to have been entered into voluntarily, and any allegation that consent was obtained by coercion must be specifically pleaded and strictly proved by the person making such a claim. The standard of proof required is akin to that of beyond a reasonable doubt, particularly because coercion amounts to an allegation of wrongful or unlawful conduct. It was submitted that the respondents have failed to prove any act of coercion on the part of the appellants. Neither the Examination in Chief nor the Cross Examination of PW-1 has any ingredient showing coercion on the part of the appellant.

19. To buttress his submissions, Mr. Chatterjee places reliance on ***Shanti Budhiya Vesta Patel v. Nirmala Jayprakash Tiwari***³ and ***Bishundeo Narain & Another -vs- Seogeni Rai & Others***⁴. The relevant paragraphs have been reproduced below:

“34. In the present case, the appellants have, however, failed to furnish the full and precise particulars with regard to the alleged fraud. Since the particulars in support of the allegation of fraud or coercion have not been properly pleaded as required by law, the same must fail. Rather the affidavits-cum-declarations executed by the appellants indicate that no coercion or fraud was exercised upon the appellants by Respondents 8 or 9 at any point of time and thus the consent decree cannot be said to be anything but valid.

33. *In Bishundeo Narain v. Seogeni Rai [1951 SCC 447 : AIR 1951 SC 280 : 1951 SCR 548] it was held thus: (AIR p. 283, paras 24-25)*

“24. We turn next to the questions of undue influence and coercion. Now it is to be observed that these have not been separately pleaded. It is true they may overlap in part in some cases but they are separate and separable categories in law and must be separately pleaded.

25. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion. [See Order 6 Rule 4 of the Civil Procedure Code.]”

32. *It is a plain and basic rule of pleadings that in order to make out a case of fraud or coercion there must be (a) an express allegation of coercion or fraud, and (b) all the material facts in support of such allegations must be laid out in full and with a high degree of precision. In other words, if coercion or fraud is alleged, it must be set out with full particulars.*

31. *It is a settled position of law that the burden to prove that a compromise arrived at under Order 23 Rule 3 of the Code of Civil Procedure was tainted by coercion or fraud lies upon the party who alleges the same. However, in the facts and circumstances*

³ (2010) 5 SCC 104

⁴ 1951 SCC 447

of the case, the appellants, on whom the burden lay, have failed to do so. Although, the application for recall did allege some coercion, it could not be said to be a case of established coercion. Three criminal complaints were filed, but the appellants did not pursue the said criminal complaints to their logical end.” (emphasis supplied).

20. Reliance is also placed on paragraph 7 of **State of Kerala and Another -vs- M.A. Mathai**⁵. The relevant paragraph has been reproduced below:

“7. As noted above, the trial court proceeded on the basis as to whether the plaintiff was entitled to damages and if so what is the amount and quantum is to be fixed. It was noted that being a suit for damages, the plaintiff was claiming so many items of damages in terms of money involving many calculations. This is contrary to the respondent's plea before us. Their stand is that the amount was not for damages but for extra work done. As noted above, it was only a suit for damages. In G.M., Northern Rly. v. Sarvesh Chopra [(2002) 4 SCC 45] it was inter alia observed as follows : (SCC p. 55, para 15)

“15. In our country question of delay in performance of the contract is governed by Sections 55 and 56 of the Indian Contract Act, 1872. If there is an abnormal rise in prices of material and labour, it may frustrate the contract and then the innocent party need not perform the contract. So also, if time is of the essence of the contract, failure of the employer to perform a mutual obligation would enable the contractor to avoid the contract as the contract becomes voidable at his option. Where time is ‘of the essence’ of an obligation, Chitty on Contracts (28th Edn., 1999, at p. 1106, para 22-015) states

‘a failure to perform by the stipulated time will entitle the innocent party to (a) terminate performance of the contract and thereby put an end to all the primary obligations of both parties remaining unperformed; and (b) claim damages from the contract-breaker on the basis that he has committed a fundamental breach of the contract (“a breach going to the root of the contract”) depriving the innocent party of the benefit of the contract (“damages for loss of the whole transaction”).’

If, instead of avoiding the contract, the contractor accepts the belated performance of reciprocal obligation on the part of the employer, the innocent party i.e. the contractor, cannot claim

⁵ (2007) 10 SCC 195

compensation for any loss occasioned by the non-performance of the reciprocal promise by the employer at the time agreed, 'unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so'. Thus, it appears that under the Indian law, in spite of there being a contract between the parties whereunder the contractor has undertaken not to make any claim for delay in performance of the contract occasioned by an act of the employer, still a claim would be entertainable in one of the following situations : (i) if the contractor repudiates the contract exercising his right to do so under Section 55 of the Contract Act, (ii) the employer gives an extension of time either by entering into supplemental agreement or by making it clear that escalation of rates or compensation for delay would be permissible, (iii) if the contractor makes it clear that escalation of rates or compensation for delay shall have to be made by the employer and the employer accepts performance by the contractor in spite of delay and such notice by the contractor putting the employer on terms.””(emphasis supplied).

21. Lastly, reliance is placed on ***Alva Aluminium Ltd. v. Gabriel India Ltd.***⁶, to submit that the burden of proof lies on the person alleging coercion.
22. Mr. Chatterjee submits that the principle of accord and satisfaction serves as a bar to further claims when a dispute is settled by agreement and the agreed consideration is accepted. In the present case, the respondents, having executed an acknowledgement letter and having accepted and encashed the cheque issued pursuant to that agreement, are estopped from raising any further claims or disputes. The respondents voluntarily executed and signed the acknowledgment letter, accepting the sum of Rs. 17,28,764/- as the final amount that is to be paid by the appellant to the respondent for all the work done as of December 13, 2006. This indicates a conscious and informed decision to resolve the underlying disputes and claims

⁶ (2011) 1 SCC 167

through mutual compromise. The letter of acknowledgement constitutes the accord. Subsequent to the execution of the letter dated December 13, 2006, the respondents have received and encashed the cheque issued in lieu of the settlement. This unequivocal act constitutes satisfaction. By encashing the cheque, the respondents accepted the consideration and thereby completed the performance under the settlement. There is no evidence to show that the respondent protested the settlement terms at the time of encashment or that they treated the acceptance as conditional. In law, acceptance without protest is presumed to be final and binding.

23. The learned Senior Counsel places reliance on ***British Russian Gazette and Trade Outlook Limited -vs- Associated Newspapers Limited***⁷ to submit that accord and satisfaction is the purchase of a release from an obligation arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged, and the satisfaction is the consideration which makes the agreement operative. It is not necessary that the consideration should be executed; the consideration on each side may be an executory promise, the two mutual promises making an agreement enforceable at law. Further, our attention was drawn to certain paragraphs of the said precedent which have been set out hereunder for better appreciation:

⁷ 1933 2 KB 616

“Serjeant Sullivan, with great earnestness, almost vehemence, insisted that it was elementary that accord without satisfaction was useless; if there was no satisfaction, that is to say performance of the accord, the accord by itself was perfectly useless and devoid of legal consequences. Of course, the point of the counterclaim was that there had been no satisfaction because Mr. Talbot had broken his warranty of authority to promise satisfaction, and there would have been satisfaction if his warranty had been complied with.

Lord Atkinson's statement in Morris v. Baron (3), a case on the Statute of Frauds, having a very remote connection with accord and satisfaction, is to the same effect. "If, however, it can be shown that what a creditor accepts in satisfaction is merely his debtor's promise and not the performance of that promise, the original cause of action is discharged from the date when the promise is made.”

24. Further reliance is placed on ***Payana Reena Layana Saminathan Chetty and Anr. -vs- Pana Lana Pana Lana Palaniappa Chetty***⁸ to argue that once parties have entered into an accord and satisfaction, the original rights are extinguished and replaced with the new agreement. The relevant part is reproduced below:

“The "receipt" given by the Appellants, and accepted by the Respondent, and acted on by both parties proves conclusively that all the parties agreed to a settlement of all their existing disputes by the arrangement formulated in the "receipt." It is a clear example of what used to be well known in Common Law Pleading as "Accord and Satisfaction by a Substituted Agreement" No matter what were the respective rights of the parties inter se they are abandoned in consideration of the acceptance by all of a new agreement. The consequence is that when such an accord and satisfaction takes place the prior rights of the parties are extinguished. They have in fact been exchanged for the new rights; and the new agreement becomes a new departure, and the rights of all the parties are fully represented by it.”

⁸ (1913-14) 41 IA 142

25. The learned Senior Counsel places reliance on ***Dipchand Golencha v. M/s. M. Abhechand and Co.***⁹ to submit that if accord is an agreement, then there must be two minds *ad idem*. He further submits that the true emphasis lies not merely in the acceptance of a lesser sum when a larger sum is due, but rather on the acceptance of the debtor's condition that such payment, if at all accepted, must operate as a full and final discharge of the entire debt. Where a creditor accepts the tendered amount subject to the express condition that it constitutes full settlement of the debt, the creditor is thereafter estopped from demanding any balance. The acceptance, under such terms, precludes any subsequent claim for the remaining amount, as it constitutes accord and satisfaction binding upon the parties.

Arguments on behalf of the respondents:

26. Per contra, Mr. Ajoy Krishna Chatterjee, learned Senior Advocate, appearing on behalf of the plaintiff-respondents, submits that the respondent, as per the contract dated November 12, 2005, had completed their work of drilling the wells given by the appellant within the stipulated time period. The work order issued by the appellant was for the development of three wells, and the total value of the work order was Rs. 51,00,000 for three sites. It was further agreed between the parties that an advance payment of Rs. 5,00,000 would be made to the respondent for the development work of the three sites, and the balance amount would be paid within fifteen days of

⁹ AIR 1962 Cal 166

submission of fortnightly bills, which were to be duly signed by the appellant's representatives present at the site. It is contended that the respondent regularly raised bills for the development work, but even after repeated requests, full payment was never made by the appellant, although the said bills were signed by the appellant's representative and the development work was completed to the full satisfaction of the appellant.

27. The learned Senior Counsel submits that although there was neither any contract with the appellant nor any work order issued by the appellant in favour of the respondent, even then, in April 2006, the appellant verbally requested the respondent to complete the development work of the well site no. 11 that was left incomplete by one existing contractor, namely M/s. Made and Trade. The work order for developing site nos. 11, 12, 22, and 23 were issued after the respondent commenced with their development work, but no payment for such extra work was given to the respondent, although the appellant assured due payment of the same. The respondent, in a diligent manner, completed by working extra hours and by making payments from their end with the expectation that the appellant would pay them their due amount, but the appellant failed to keep their promise.

28. Mr. Chatterjee submits that after the completion of the development work of the well site nos. 11, 12, 22, and 23, the respondent raised bills which were duly signed by the representative of the appellant, but such payment was never made by the appellant

on the grounds that the development work was not satisfactory and not executed properly. It is further submitted that the respondent has done their work with utmost care and in a responsible manner, and on appreciating the work of the sites no. 13, 14, and 16 and being satisfied with the respondent's work, allotted the unfinished work of M/s. Made and Trade.

29. Mr. Chatterjee argues that, taking advantage of the financial starvation of the respondent, the respondent was made to sign on a blank paper at the instance of the appellant on December 13, 2006, with coercive motive and malafide intention. All letters of the respondent addressed to the appellant earlier were always on the respondent's letterhead and not on white paper. It is clear from the act of the appellant that the appellant coerced the respondent to sign the letter dated December 13, 2006, on white paper, agreeing thereby to receive lesser amount than what was payable at the relevant point of time and also wrongly withheld further amounts against work executed upon verbal order and also extra works, all certified by the appellant's representative.

30. Mr. Chatterjee emphasizes that the allegations of coercion and fraud, ascribed to the plaintiff-respondent No. 2 by the defendant-appellant Nos. 2 and 3, pertain to facts within their personal knowledge, and they were in the best position to rebut the evidence led by the plaintiff-respondent No. 2 on this aspect. However, none of them chose to appear and give evidence, nor did they sign the Written Statement and/or Additional Written Statement. Consequently, the

evidence of plaintiff-respondent No. 2 remains unchallenged and stands deemed admitted by the defendants.

31. To buttress the amendments of pleadings, Mr. Chatterjee places reliance on paragraph 11 of **Dinesh Goyal alias Pappu v. Suman Agarwal (Bindal) and Others**¹⁰. The relevant paragraph has been reproduced below for better appreciation:

“11. At this juncture, before proceeding to the merits of the case, let us consider the law relating to the amendments of pleadings.

11.1 The settled rule is that the Courts should adopt a liberal approach in granting leave to amend pleadings, however, the same cannot be in contravention of the statutory boundaries placed on such power. In North Eastern Railway Administration, Gorakhpur v. Bhagwan Das⁶ it was held as under:

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. [Also see Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar (1990) 1 SCC 166.]”

11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd.⁷, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:—

(i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

¹⁰ 2024 SCC OnLine SC 2615

(ii) *In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.*

(iii) *Amendments, while generally should be allowed, the same should be disallowed if -*

(a) *By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.*

(b) *The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)*

(c) *The amendment completely changes the nature of the suit;*

(d) *The prayer for amendment is malafide,*

(e) *By the amendment, the other side should not lose a valid defence.*

(iv) *Some general principles to be kept in mind are -*

(I) *The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.*

(II) *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.*

(III) *The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint."*

32. Reliance is also placed on **Nedunuri Kameswaramma v.**

Sampati Subba Rao¹¹ wherein it was held that although no specific issue was framed, or that the issue as framed could have been more elaborately worded, yet if the parties proceeded to trial with full knowledge of each other's case and adduced evidence not only in support of their respective contentions but also in rebuttal of the case of the adversary, the absence or defect in the framing of an issue would not be fatal to the proceedings, nor would it amount to such a

¹¹ AIR 1963 SC 884

mistrial as would vitiate the same. It was further observed that the mere construction of documents produced by parties for the purpose of proving a question of fact does not give rise to an issue of law, unless it is demonstrated that the Court of fact had misunderstood or misapplied material evidence contained therein.

33. Further reliance is placed on **Durg Singh v. Mahesh Singh**¹² at paragraph 14:

“14. It has been contended by Shri K.N. Agrawal, learned senior counsel that on the question of readiness and willingness, no specific issue has been framed. The argument though appears to be attractive but on deeper scrutiny found to be devoid of any substance. True, no specific issue in that regard has been framed by the Trial Court but issue No. 4 has been framed that whether plaintiff is entitled for decree of specific performance which would also include the readiness and willingness. Even otherwise, if the parties are aware that what they have to face in the trial and they led their evidence accordingly, merely non-framing of a particular issue would not be fatal.”

34. Mr. Chatterjee argues that the defendant/appellant had a dominant position over the plaintiff/respondent and had therefore exerted undue influence. Reliance is placed on **S.P. Chengal Varaya Naidu v. Jagannath**¹³ to draw our attention to the principle of “finality of litigation” which cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. A litigant who approaches the court is bound to produce all documents executed by him that are relevant to the litigation.

¹² AIR 2004 MP 146

¹³ (1994) 1 SCC 1

35. Mr. Chatterjee cites **Bhola Ram Lieri v. Peari Devi**¹⁴ to submit that the party seeking the ground of undue influence should also establish that the other party has used the dominant position to obtain some unfair advantage. The relevant portion has been reproduced below:

“11. It will be noticed that the ingredient of using the dominant position contained in sub-section (1) is absent from the proposition laid down by Lindley, L.J. In Poosathurai v. Kannappa Chettiar, 47 Ind App 1 : (AIR 1920 PC 65) the Privy Council explained the provisions of Section 16 of the Indian Contract Act thus:

“When a party to a contract seeks to set it aside on the ground of undue influence, it is not sufficient for him under Section 16 of the Indian Contract Act, 1872, to establish that the other party was in a position to dominate his will. He must also prove that the other party has used that position to obtain an unfair advantage over him. It is only if the transaction appears to be unconscionable that, by sub-section (3), the burden of proving that the contract was not induced by undue influence is thrown upon the person who was in a dominating position. He, in that case must prove affirmatively that no domination was practised, but that the person seeking to set aside the contract was scrupulously kept separately advised in the independence of a free agent”.”

36. To buttress his submission that the defendant was in a dominant position to exert undue influence and to emphasize on ingredients of it, Mr. Chatterjee places reliance on **Subhas Chandr Das Mushib v. Ganga Prasad Das Mushib and ors**¹⁵. The relevant portion has been reproduced below for better appreciation:

7. The three stages for consideration of a case of undue influence were expounded in the case of Raghunath Prasad v. Sarju Prasad [51 IA 101] in the following words:

“In the first place the relations between the parties to each other must be such that one is in a position to dominate the will of the

¹⁴ AIR 1962 Pat 168

¹⁵ AIR 1967 SC 878

other. Once that position is substantiated the second stage has been reached — namely, the issue whether the contract has been induced by undue influence. Upon the determination of this issue a third point emerges, which is that of the onus probandi. If the transaction appears to be unconscionable, then the burden of proving that the contract was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other.

Error is almost sure to arise if the order of these propositions be changed. The unconscionableness of the bargain is not the first thing to be considered. The first thing to be considered is the relations of these parties. Were they such as to put one in a position to dominate the will of the other?"

10. Before, however, a court is called upon to examine whether undue influence was exercised or not, it must scrutinise the pleadings to find out that such a case has been made out and that full particulars of undue influence have been given as in the case of fraud. See Order 6 Rule 4 of the Code of Civil Procedure. This aspect of the pleading was also given great stress in the case of *Ladli Prasad Jaiswal* [(1964) 1 SCR 270 at 300] above referred to. In that case it was observed (at p. 295):

"A vague or general plea can never serve this purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised, the manner of use of the influence, and the unfair advantage obtained by the other."

37. Further reliance has been placed on **Dubash D.K. Ahmad Ibrahim Sahib v. A.K.R.M.K. Meyyappa Chettia**¹⁶ to argue that when there are evidences of overpowering influence and the transaction brought about is immoderate and irrational, proof of undue influence is complete. The relevant paragraph has been set out:

"11. Such being the situation of the parties at the time when defendant 3 executed Ex. A, there can be very little doubt on the authorities that Ex. A cannot be held to be binding on defendant 3 or his interest in the properties. It is not necessary to refer to the authorities at any length; they have been collected in the notes to *Hugenin and Basley in White and Tudor's Leading Cases*. They have also been referred to at some length in 53 MLJ 842 [*Narayan Doss v. Bucharaj*, (1928) 15 AIR Mad 6 : 106 IC 315 : 53 MLJ 842.] and 58 Mad 454. [*Rama Pattar and Bros. v. Manikkam*, (1935) 22 AIR Mad 726 : 158 IC 485 : 58 Mad 454 :

¹⁶ AIR 1940 Mad 285

69 MLJ 104.] It is not necessary in a case like the present that defendant 3 should prove by direct evidence that defendants 1 and 2 exercised undue influence on him. Defendants 2 and 3 who undoubtedly are competent to speak to this matter have given their version of what happened at the time and in our opinion that evidence corroborated by that of D.W. 2 is substantially true, except as to the portion relating to the assurance given by the Chetties. The exercise of undue influence might in the circumstances be fairly presumed, in view of the relationship of the parties and the nature of the transaction. Under Ex. A, defendant 3 has made himself and his property liable as security for a heavy debt for which he was not in law liable at all. That this transaction must have been entered into by him at the instance and for the benefit of defendants 1 and 2 who till recently had been his guardians and under whose influence he was admittedly living at the time can scarcely be doubted. It was contended by the learned counsel for the respondents that it is one thing to prove the existence of the relationship making undue influence possible but it is another thing to ask the Court to hold that undue influence has been exercised. But as observed by Lord Macnaghten in 1911 AC 120 [Bank of Montreal v. Stuart, (1911) AC 120 : 80 LJ PC 75 : 103 LT 641 : 27 TLR 117.] at p. 137:

It may well be argued that when there is evidence of overpowering influence and the transaction brought about is immoderate and irrational, proof of undue influence is complete."

38. Mr. Chatterjee strenuously argues by placing reliance on **Ladli Parshad Jaiswal v. Karnal Distillery Co. Ltd. and Others**¹⁷ that a decision of the first appellate court is not conclusive if it is based on a wrong placement of onus, or no evidence, or where there has been a substantial procedural defect resulting in an error on the merits. In such cases, a second appeal lies to the High Court. Under Order VI Rule 4 of the Code of Civil Procedure, when a party relies on misrepresentation, fraud, breach of trust, wilful default, or undue influence, full particulars with necessary details must be specifically pleaded. The rationale is that pleadings must narrow the controversy

¹⁷ 1962 SCC OnLine SC 38

to precise issues and give notice of the evidence required, ensuring that the trial is conducted fairly. In cases of fraud, coercion, and undue influence, the Court can decide only on the particulars pleaded. The doctrine of undue influence, evolved under English common law, protects against transactions where one party secures an unfair advantage by dominating the will of another. This doctrine was incorporated into Indian law under Section 16 of the Indian Contract Act, 1872. Sub-section (1) lays down the general principle, while sub-section (2) provides a presumption of dominance in cases of authority, fiduciary relationship, or weakened mental capacity due to age, illness, or distress. Sub-section (3) creates a rebuttable presumption of undue influence where it is shown that (i) one party was in a position to dominate the will of the other, and (ii) the resulting transaction appears unconscionable. To avoid a transaction on the ground of undue influence, both conditions—dominance of will and unfair advantage—must ordinarily be established. Once these are shown, the burden shifts to the benefiting party to prove that the transaction was not induced by undue influence. However, if either of these conditions is not fulfilled, the presumption does not arise, and the burden does not shift.

39. Mr. Chatterjee submits that in a commercial contract of this nature, it is absurd even to suggest that contractor who had executed the work with all devotion to accept the such reduced sum. In support of his contentions, Mr. Chatterjee has placed reliance on ***Shyamnagar Tin Factory Private Ltd. v. Snow White Food***

Product Company¹⁸. The relevant paragraphs have been reproduced below:

“18. Where a creditor sends a cheque to the debtor and the amount of the cheque is smaller than the amount due and the debtor sends the cheque in full and final payment of the dues it is a question of fact whether the cheque is accepted in satisfaction of the entire debt or merely as a payment on account leaving a balance due. Counsel for the defendant contended that the payment in the present case along with the letter dated November 5 indicated that it was a payment on the condition contained in the letter and the plaintiff was bound by such condition. Two questions are to be ascertained; first, did the defendant send the cheque on the condition that it was to be accepted in discharge of the entire debt? Secondly, did the plaintiff accept the cheque on the condition or was the plaintiff entitled to accept and appropriate it towards the plaintiff's dues leaving the plaintiff free to prefer claim for the balance? Where a creditor keeps a cheque which has been sent to him by the debtor in discharge of the amount due it is a question of fact whether the cheque is taken in satisfaction of the debt or merely as a payment on account leaving a balance due.

19. In order to ascertain whether there has been imposition of any condition it has to be found as to what the debtor did exactly state to the creditor. The root authority which illustrates this principle is Day v. McLea reported in (1889) 22 QBD 610. That was an action to recover damages for breach of contract. The defence was that the plaintiff had agreed to accept and had accepted a certain sum in full satisfaction of all demands in respect of the breach. The plaintiff there made a claim on the defendants who thereupon sent them a cheque for a sum less than the amount claimed and stated that it was “in full of the demands” and enclosed a receipt in that form for signature by the plaintiff. The plaintiff wrote in reply that they took the cheque on account, and had placed it to the defendant's credit, at the same time enclosing a receipt on account, and asking for a cheque for the balance of the claim. In answer to that letter the defendant wrote stating that the payment was made in full of all demands, and asked for a receipt in full. It was contended on behalf of the defendant that the keeping of the cheque by the plaintiff was in law an accord and satisfaction of the claim. Charles, J. held that there was no accord and satisfaction and gave judgment for the plaintiff. In the Court of Appeal consisting of Lord Esher M.R., Bowen L.J. and Fry L.J., Lord Esher M.R. said:

“This very question, however, came before this Court in Miller v. Davies (not reported). In that case the action was upon

¹⁸ 1964 SCC OnLine Cal 46

solicitor's bill of costs for pound 50 and there was a plea of accord and satisfaction. Before action the defendant sent the plaintiff a cheque for pound 25, with a letter stating that, in order to put an end to the matter, he sent cheque for pound 25, on the terms that the plaintiff would receive it in settlement. The plaintiff kept the cheque and cashed it, and wrote to the defendant that he declined to accept it in settlement and that he required a cheque for the balance. The defendant thereupon wrote in reply requesting the plaintiff to return the cheque if he would not accept it in satisfaction. The Jury found that there was no accord and satisfaction. It was contended there as in the present case that the fact of the plaintiff keeping the cheque was conclusive in law that he had taken it in accord and satisfaction of the claim, inasmuch as it had been sent in satisfaction and the plaintiff was bound either to keep it upon the terms on which it had been sent or to return it. This Court, however, held that the fact of keeping the cheque was not conclusive in law, that the question was one of fact, and that the Jury having found that there was no accord and satisfaction the Court would not interfere."

20. This decision brings to the forefront the legal principle that the sending of a cheque for a smaller amount than the amount claimed by creditor along with a letter to the effect that it was in full settlement does not amount to a discharge of the entire debt, nor does it amount to payment or tender of the amount on any condition that acceptance of that amount is in full and complete discharge of the entire debt. Further, the fact of keeping the cheque is not conclusive in law. The entire matter is a question of fact. The Court has to find out the true character of the transaction, the real intention of the parties and the correct and essential transaction between the parties. In the case of (1889) 22 QBD 610, Bowen L.J. said that if the money was kept it would be a question of fact as to the terms upon which it was so kept. Accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it was sent. In the present case the specific defence was accord and satisfaction and issues were framed and the defendant did not lead any evidence. The defendant in the present case failed to establish that there was any accord and satisfaction. The contention of the defendant was that keeping the cheque by the plaintiff amounted to acceptance of the money in full discharge because the defendant had paid the money on condition that it was in entire discharge of the debt.

25. Counsel for the plaintiff also relied on the decision in *Basdeo Ram Sarup v. Dilsukh Rai Sewak Ram*, reported in ILR 44 All 718 : (AIR 1922 All 461) in support of the same proposition that where the debtors, knowing that the creditors claimed a certain amount, sent them a cheque for a smaller sum, that it was to be taken as in full satisfaction of the claim and the creditor cashed it and then wrote intimating that they did not agree to the condition, it was

held that the acceptance of the cheque by the creditors was not a conclusive proof of acceptance of the condition and did not preclude them from suing for the balance of their claim. The decision in (1889) 22 QBD 610 was relied upon in the Allahabad decision. In the Allahabad case the plaintiff brought a suit to recover a sum of money on the allegation that the plaintiff sold to the defendant certain quantities of Kerosene and the defendant paid a part of the amount leaving the balance sum due and owing. The defendant contended that the sum alleged by the plaintiff to have been paid by the defendant had been in full payment of the plaintiffs claim and they accepted the amount and the plaintiffs were not entitled to claim any balance. The defendant in that case sent a cheque with a condition that the same was being paid in full discharge of the total amount due to the plaintiff. The plaintiff retained the cheque and ultimately cashed it and then sent a letter to the defendant intimating the encashing of the cheque but they did not agree to receive the amount in full discharge of the payment. It was held:

“We are, however, of opinion that the mere fact that the plaintiffs retained the cheque and cashed it and at the same time refused to receive the amount in full discharge of the payment of their debt does not raise any conclusive presumption that they had accepted it as a conditional offer made by the defendants. Every case is to be adjudged on its special circumstances and in this particular case the lower appellate court has come to a finding that the plaintiffs did not really agree to accept the amount in full discharge of their debt. This is really a question of fact.””

40. Reliance is placed on ***Oriental Insurance Co. Ltd. v. Dicitex Furnishing Ltd.***¹⁹ to buttress the submissions made on the principle of accord and satisfaction. The relevant portion has been reproduced below:

“19. In Master Construction [Union of India v. Master Construction Co., (2011) 12 SCC 349 : (2012) 2 SCC (Civ) 582] , this Court held that : (SCC pp. 354-56, paras 13-19)

“13. The Bench in Boghara Polyfab (P) Ltd. [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] in SCC paras 42 and 43 (p. 291), with reference to the cases cited before it, inter alia, noted that there were two categories of the cited cases; (one) where the Court after considering the facts found that there was a full and final

¹⁹ (2020) 4 SCC 621

settlement resulting in accord and satisfaction, and there was no substance in the allegations of coercion/undue influence and, consequently, it was held that there could be no reference of any dispute to arbitration and (two) where the court found some substance in the contention of the claimants that “no-dues/claim certificates” or “full and final settlement discharge vouchers” were insisted and taken (either in printed format or otherwise) as a condition precedent for release of the admitted dues and thereby giving rise to an arbitrable dispute.

14. In *Boghara Polyfab (P) Ltd. [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117]*, the consequences of discharge of the contract were also considered. In SCC para 25 (p. 284), it was explained that when a contract has been fully performed, then there is a discharge of the contract by performance and the contract comes to an end and in regard to such a discharged contract, nothing remains and there cannot be any dispute and, consequently, there cannot be reference to arbitration of any dispute arising from a discharged contract. It was held that the question whether the contract has been discharged by performance or not is a mixed question of fact and law, and if there is a dispute in regard to that question, such question is arbitrable.

15. The Court, however, noted an exception to this proposition. The exception noticed is that where both the parties to a contract confirm in writing that the contract has been fully and finally discharged by performance of all obligations and there are no outstanding claims or disputes, courts will not refer any subsequent claim or dispute to arbitration. Yet another exception noted therein is with regard to those cases where one of the parties to the contract issues a full and final discharge voucher (or no-dues certificate, as the case may be) confirming that he has received the payment in full and final satisfaction of all claims, and he has no outstanding claim. It was observed that issuance of full and final discharge voucher or no-dues certificate of that kind amounts to discharge of the contract by acceptance or performance and the party issuing the discharge voucher/certificate cannot thereafter make any fresh claim or revive any settled claim nor can it seek reference to arbitration in respect of any claim.

16. In SCC para 26 (pp. 284-85), this Court in *Boghara Polyfab (P) Ltd. [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117]* held that if a party which has executed the discharge agreement or discharge voucher, alleges that the execution of such document was on account of fraud/coercion/undue influence practised by the other party, and if that party establishes the same, then such

discharge voucher or agreement is rendered void and cannot be acted upon and consequently, any dispute raised by such party would be arbitrable.

17. In SCC para 24 (p. 284) in *Boghara Polyfab (P) Ltd. [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117]*, this Court held that a claim for arbitration cannot be rejected merely or solely on the ground that a settlement agreement or discharge voucher has been executed by the claimant. The Court stated that such dispute will have to be decided by the Chief Justice/his designate in the proceedings under Section 11 of the 1996 Act or by the Arbitral Tribunal.

18. In our opinion, there is no rule of the absolute kind. In a case where the claimant contends that a discharge voucher or no-claim certificate has been obtained by fraud, coercion, duress or undue influence and the other side contests the correctness thereof, the Chief Justice/his designate must look into this aspect to find out at least, prima facie, whether or not the dispute is bona fide and genuine. Where the dispute raised by the claimant with regard to validity of the discharge voucher or no-claim certificate or settlement agreement, prima facie, appears to be lacking in credibility, there may not be necessity to refer the dispute for arbitration at all.

19. It cannot be overlooked that the cost of arbitration is quite huge — most of the time, it runs in six and seven figures. It may not be proper to burden a party, who contends that the dispute is not arbitrable on account of discharge of contract, with huge cost of arbitration merely because plea of fraud, coercion, duress or undue influence has been taken by the claimant. A bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up such a plea must prima facie establish the same by placing material before the Chief Justice/his designate. If the Chief Justice/his designate finds some merit in the allegation of fraud, coercion, duress or undue influence, he may decide the same or leave it to be decided by the Arbitral Tribunal. On the other hand, if such plea is found to be an afterthought, make-believe or lacking in credibility, the matter must be set at rest then and there.” (emphasis supplied).

41. The learned Senior Counsel with respect to the impugned judgment submits that the learned trial court had correctly held that the defendant was all along diligent and responsible with the work orders, and had the appellant been dissatisfied with the work of the

respondent, he wouldn't have issued any further work orders to the respondent. The work by the respondent was done in the presence of the agents of the appellant and such agents had signed the bills raised by the respondent after being satisfied with their work; hence the allegations that the work done by the respondent was not satisfactory does not stand and further the appellant failed to produce any document or evidence in support of their allegations of bad workmanship. After examining the letter dated December 13, 2006, the learned trial court had correctly concluded that the said letter was on blank paper, which was signed by the respondent. Further, the respondents had always used their letterhead and printed receipts and never used any blank paper, but on December 13, 2006, the respondent was made to sign on blank paper, which proves that the appellants had a coercive and fraudulent mentality of depriving the remuneration to respondents for their work. The Money Suit has been rightly decreed against the appellant without any order as to cost, and the appellant was directed to pay Rs.59,14,685/- to the respondent within three months from the date of the said Judgment, along with an interest at the rate of 9% per annum only from the date of filing of the instant suit till the realization of the claim, failing which the plaintiff will be at liberty to get the decree executed through the process of the Court.

42. The learned Senior Counsel submits that the learned trial court, by a well-reasoned Judgment, decided the 4 issues framed in the favour of the plaintiff-respondent. The Court, after examining the

evidence and exhibits, decided Issue No. 3 in favour of the respondents-plaintiffs. It held that the appellant-defendant failed to prove the poor quality of work or provide documents supporting such claims. The Court noted that further work orders were issued despite allegations of poor quality and delay, which contradicted the appellant's case. Hence, the Court found that the allegations of substandard or incomplete work had no merit.

43. The appellant-defendant relied on a letter dated 13th December 2006 claiming full and final settlement. The Court found this letter unreliable since, unlike all other communications made on company letterhead, it was on plain paper and signed under circumstances where the appellant-defendant held a superior position, with substantial dues still pending. The Court held that the stipulations in the letter were never fulfilled and thus gave it no credence.

44. Mr. Chatterjee further argues that it will be evident from the website of the appellant-defendant company, wherein the achievements of the company have been detailed, and milestones covered by the appellant-defendant show that by December 2006, all 20 (twenty) wells were drilled and completed. This proves that the work entrusted to the appellant-defendant was duly completed.

45. In reply to Mr. Aniruddha Chatterjee's submissions, Mr. Ajoy Krishna Chatterjee submits that a discharge voucher or no-claim certificate has been obtained by fraud, coercion, duress, or undue influence, and produces evidence proving the same; the defendant's defence of estoppel and/or waiver cannot be sustained. To buttress

his submission, reliance is placed on paragraphs 18 and 23 of **Union of India and others v. Master Construction Company**²⁰. The relevant portion has been reproduced below:

“18. In our opinion, there is no rule of the absolute kind. In a case where the claimant contends that a discharge voucher or no-claim certificate has been obtained by fraud, coercion, duress or undue influence and the other side contests the correctness thereof, the Chief Justice/his designate must look into this aspect to find out at least, prima facie, whether or not the dispute is bona fide and genuine. Where the dispute raised by the claimant with regard to validity of the discharge voucher or no-claim certificate or settlement agreement, prima facie, appears to be lacking in credibility, there may not be a necessity to refer the dispute for arbitration at all.

23. The present, in our opinion, appears to be a case falling in the category of exception noted in Boghara Polyfab (P) Ltd. [(2009) 1 SCC 267 : (2009) 1 SCC (Civ) 177] (p. 284, para 25). As to financial duress or coercion, nothing of this kind is established prima facie. Mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute. The conduct of the contractor clearly shows that “no-claim certificates” were given by it voluntarily; the contractor accepted the amount voluntarily and the contract was discharged voluntarily.”

46. The alleged settlement dated December 13, 2006, whereby the respondent sacrificed/ relinquished Rs.39,06,232/- out of Rs.63,14,440/-, which was due on that date, clearly falls under the purview of unconscionable agreement as defined in **Vinayakappa Suryabhanappa Dahlenkar v. Dulichand Hariram Murarka** ²¹ in paragraph 18. It is such an agreement as no sane man, not acting under a delusion, would make, and that no honest man would take advantage of. The inadequacy in consideration is so extreme as to call for the interposition of equity, either offensively and defensively.

²⁰ (2011) 12 SCC 349

²¹ 1987 Mh.L.J. 274

47. Mr. Chatterjee submits that the appellant, being a Public Limited Company that issued work orders in favour of the respondent, clearly was in a dominant position. It is clear from the records that from the very beginning, the appellants negotiated and reduced the consideration money of the work orders time and again. It is also evident from the records that the appellant failed to produce any evidence that shows that there was any deduction in payment due to any inferior quality of work on the part of the respondent. Thus, it is clear that the respondents were forced to accept such a lower amount, considering the dominant position of the appellant. Considering the dominant position of the appellant, the burden of proving that the contract was not induced by undue influence lies upon the appellant. The appellant failed to discharge such burden.
48. The complaint made to Durgapur P.S. was made for future reference and for noting the incident of December 13, 2006, in the records. The language of such a document clearly depicts the intention of the respondent. The respondent made such a complaint not for the initiation of any investigation and/or criminal proceeding but for future reference. Since the respondent at that time was executing the work orders granted by the appellant, he naturally did not want to initiate any criminal proceedings against the appellant, but at the same time wanted to officially report the incident to the police authority for future reference.
49. Mr. Chatterjee further submits that the respondents have specifically pleaded the incidents that led to the execution of the letter

dated December 13, 2006, and also adduced evidence to prove such fact. It is settled that if there are sufficient facts on record of a case to justify the inference of undue influence, the omission to raise such a plea in the pleadings would not prevent a Court from deciding the case on that ground, provided there is no surprise to the opposite party. He places reliance on paragraph 5 of **Subbamma v.**

Mohd. Abdul Hafiz²²:

“5. I regret that questions as to whether the position of respondent 2 is of active confidence and whether the presumption of undue influence arising therefrom has been discharged, have to be determined by us and answered without any assistance from the judgments of the Courts-below. This is entirely due to their erroneous decisions about the necessity of a specific plea of undue influence in the written statement. It is true that undue influence being a species of fraud must be pleaded with precision, but this does not mean that the relevant particulars in the pleadings should be labelled as undue influence. Further, if there are sufficient facts co-record of a case to justify the inference of under influence the omission to raise such a plea would not prevent the Court from deciding the case on that ground, provided there is no surprise to the opposite party. Several authorities support the position I have taken. In Sheocharan v. Channulal, A.I.R. (18) 1931 Nag. 63 : (27 N.L.R. 19), the vendor of a house brought a suit for the cancellation of its sale deed, on the ground that it was executed while he was under the influence-of drug and on misrepresentation of its being a mortgage, that the defendant, his cousin, taking unfair advantage of his position had induced him, an inexperienced youth, to sell the house worth rupees one thousand for rupees three-hundred; the lower appellate Court concurring with the original Court held that no misrepresentation was proved, but found the house to be worth rupees eight hundred, the plaintiff to have just attained majority and to have relied solely on the advice of the defendant, which it held, raised a presumption of undue influence, and the evidence being insufficient to discharge the burden about the defendant not having taken undue advantage of his position, it decreed the appeal. Niyogi A.J.C., dismissing the appeal observed that if there are facts on the record to justify the interference of undue influence, the Court has power to administer relief notwithstanding inartistic pleadings.”

²² AIR 1950 Hyderabad 55

In Rama Patter and Bros. v. Manikkam, A.I.R. (22) 1935 Mad. 726 : (58 Mad. 454), a suit was instituted against three persons for money as per account signed by all the three defendants; and the question in appeal was whether defendant 3 can also be held liable, he in his written statement had pleaded that from his in fancy he had been living with and been under the protection of the other defendants and even after attaining majority had habitually affixed his signature on any paper he was directed to do by them, his signature on the account sheet sued upon was so affixed without understanding and on belief that there would be no deception or fraud; it was got because of a cuds piracy between the plaintiff and the defendants to get him involved for the better security of the loan. It was held there that in the written statement all material facts were set out and the claim to relief must be decided with reference to them independently of their being labelled as fraud or undue influence. The written statement of the appellant in the case before us contains the facts of respondent 2 being employed as her Mukhtar, the period of his employment, and the date of the agreement being within that period. All this is there, and the mere absence of the label of undue influence is of no importance. Even if the plea of the agreement being forged is rejected that does not justify denial of any relief on the admitted or proved facts of respondent 2 being Mukhtar and the non dis charge of burden of good faith by plaintiff-respondent 1." (emphasis supplied).

50. Further reliance is placed on **Gouri Shankar Misra v. Fakir**

Mohan Dash²³. The relevant portion has been reproduced below:

"6. Mr. Sinha, the learned counsel for the plaintiff-appellants, assailing the affirming judgments and decrees of the two Courts below contends that the defendant having made out a case of undue influence has failed to give Sufficient particulars and such failure on the part of the defendant has not only caused great prejudice to the plaintiff but there has been an infraction of the provisions of Order 6, Rule 4, Code of Civil Procedure, and, therefore, the conclusions of the Courts below cannot be sustained. The learned counsel further contends that a finding that a document is the outcome of undue influence alone will not vitiate the transaction unless it is further found that the party to the document obtained an unfair advantage and the said finding not being there, the transaction (Ext. 13) cannot be said to be vitiated. Mr. Sinha, the learned counsel for the appellants, lastly urges that the Courts below having found that the plaintiff had parted with a sum of Rs. 9,000/- as well as the money which was deposited by the defendant to obtain specific performance in

²³ AIR 1989 Or 201

accordance with the compromise decree in the High Court committed gross error in not directing the defendant to pay back the benefits received from the plaintiff and completely ignored the provisions of Section 19-A of the Contract Act and consequently the judgments of the two Courts below are vitiated thereby.

Mr. Patra, the learned counsel for the defendant-respondent No. 1, on the other hand, contends that on the materials on record, the two Courts of fact having found that the plaintiff was in a position to dominate the will of the defendant and the agreement (Ext. 13) is of unconscionable nature and is vitiated by undue influence exercised by the plaintiff, this Court in second appeal is not entitled to reverse the same. The learned counsel further urges that no relief for refund of the amount paid by the plaintiff having been claimed in the plaint, this Court will not be justified in granting that relief to the plaintiff. The rival contentions require careful examination.

7. Coming to the first submission of Kr. Sinha as to whether there has been infraction of Order 6, Rule 4 of the Code of Civil Procedure or not, it is no doubt true that undue influence being a species of fraud must be pleaded with precision and unless it is supported by particulars, it will not be investigated by Courts. General allegations are often treated as insufficient and the person alleging that another person was in a position to dominate his will and exercise influence and he actually exercised such influence must prove the same. But where there are facts on the record to justify the inference of undue influence, the omission to make an allegation of undue influence specifically is not fatal and all that the Court has to see is whether there has been a surprise to the party against whom allegation has been made. In the written statement filed by the defendant all material particulars have been pleaded right from the decree against Premraj which ended in compromise in the High Court as well as under what circumstances the defendant approached the plaintiff on 31-1-1968 which was the last day to make the deposit failing which the right to specific performance would have been forfeited. It had also been pleaded in the written statement that finding no other way out and being under the pressure of circumstances and under great mental strain, the defendant believed the plaintiff who was his advocate all through and executed the documents which would indicate that the plaintiff was in a position to dominate the will of the defendant and actually used that position to obtain an unfair advantage over the defendant and in fact, has been successful in obtaining, which was vitiated by undue influence. In view of the aforesaid assertion in the written statement, really fail to appreciate the contention of Mr. Sinha that material particulars of undue influence have not been pleaded. In my considered opinion, there has been no infraction of the provisions of Order 6, Rule 4 of the Code of Civil Procedure and all material particulars with regard to undue influence

exercised by the plaintiff have been pleaded in the written statement itself. The first contention of Mr. Sinha, the learned counsel for the appellants, is accordingly rejected." (emphasis supplied).

51. A similar view was also taken in **A.L. Rama Patter and Brothers by Partner A.L. Rama v. Manikkam alias Lingappa Gounder**²⁴ and **Sheocharan v. Channulal**²⁵. While placing reliance on these two cases, our attention has been drawn to Section 16 of the Indian Contract Act, 1872. The section has been reproduced below for better perusal:

"16. "Undue influence" defined.—(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872)."

²⁴ 1934 Scc Online Madras 213

²⁵ AIR 1931 Nag 63

52. Mr. Chatterjee also places reliance on paragraph 9 of **A.E.G. Carapiet v. A.Y. Derderian**²⁶. The said paragraph has been reproduced below:

“9. The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety. Such failure leads to miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated.”

53. Mr. Chatterjee strenuously argues that the submission made by the appellant that, in the absence of a specific pleading of undue influence, the Court cannot decide on the point of undue influence, is not tenable.

54. To rebut the submissions of Mr. Ajoy Krishna Chatterjee, Mr. Aniruddha Chatterjee submits that the respondents are now trying to make out a fresh case of undue influence or fraud, whereas their plaint case or any of their pleadings does not contain any averment relating to fraud or undue influence. Since there was no averment of

²⁶ 1960 SCC OnLine Cal 44

undue influence or fraud in the original plaint, the appellants have not received any opportunity to counter such allegations and have also not cross-examined their witness with respect to undue influence or fraud and therefore, this stand cannot be taken by them at the appellate stage.

55. The respondents have failed to prove coercion from the witness statements and pleadings, and therefore, the acknowledgement letter could not be vitiated on the ground of coercion. The respondents had encashed the cheque amount and thereafter did not address any communication to the appellant that the same was done without prejudice to the fact that they were coerced into signing the agreement.

56. The respondents have not been able to distinguish the judgments cited by the appellants on coercion, and all of their judgments relate to undue influence. However, this Hon'ble Court cannot look into these cases as no case of undue influence was at all made at the trial stage.

Observation:

57. The short issue that is required to be decided in the appeal is the letter dated 13th December 2006 (**Exhibit B**). The letter apparently is not on the letterhead of the respondents/decreed holders. Admittedly, when the letter was issued, a sum of Rs.59,14,685/- was payable under the contract, which consists of seven agreements for the development of digging wells at different places and an additional

contract awarded to the plaintiff by reason of the refusal of M/s. Made & Trade to carry out the additional work. The new contract was not in the original scope of the work awarded to the plaintiff. The obvious question that would arise is if the performance of the plaintiff in respect of the seven contracts was bad, or if there were poor workmanship and use of inferior quality of materials, was it wise or prudent enough for the defendant/appellant to award the new contract, which is approximately Rs.17,00,000/-.

58. The plaintiff has alleged that due to coercion and undue influence, the plaintiff was forced to sign the letter. The signature of the plaintiff in the document by itself is not to show that the plaintiff has agreed and accepted a much lesser sum than what he is entitled in law to receive, on the plaintiff establishing that he has executed the contract, including the extended work and is able to establish its claim of Rs.59,14,685/-. The obvious question that would arise is under what circumstances the plaintiff would accept a lesser sum and what could be the circumstances for such acceptance of the said amount. The evidence of the plaintiff with regard to the circumstances leading to the execution of the said letter dated 13th December, 2006, is required to be analyzed.

59. The concept of 'accord and satisfaction' is traceable to Section 63 of the Indian Contract Act, 1872. Whether the plaintiff had agreed to dispense with or remit wholly or in part of the performance of the promise, which in the instant case, payment of a sum of Rs.59,14,685/- is a question of fact to be decided on the basis of the

analysis of the facts and evidence. The plaintiff in paragraph 44 of the original plaint has categorically stated that the plaintiff was coerced to accept a substituted agreement in the sense of receiving a much lesser sum, which would be approximately Rs.41,85,921 if such dispensation had not been there. This needs to be assessed on the basis of the conduct between the parties immediately preceding and subsequent to the execution of the document dated 13th December 2006.

60. Accord refers to an agreement whereby a party/person agrees to accept a valuable consideration in lieu of the right of action that he has against the other. Satisfaction means actual payment of an amount of consideration so agreed to when there is an agreement, and it is satisfied by its executors. The agreement is termed as an accord and satisfaction, and it discharges the parties from further obligations.

61. The case of ***National Insurance Co. Ltd. vs. Boghara Polyfab Pvt. Ltd.***²⁷ emphasised that for valid accord and satisfaction, there must be a clear and voluntary agreement to settle the dispute and unqualified acceptance of new terms, reinforcing that mutual consent is crucial for the validity of this doctrine. The Supreme Court held that mere acceptance of the lesser amount does not amount to accord and satisfaction if the acceptance is without free consent.

62. Mr. Ajoy Chatterjee has nowhere pleaded undue influence and yet has argued cases of undue influence. It is well-settled that in a

²⁷ AIR 2009 SC 170

case where there is a variation between the pleadings and proof, the pleadings shall prevail except where the parties have allowed a question to be put and evidence to be led on such matters which are not strictly covered by the pleading and allowed the evidence to proceed. The general rule of law is that no amount of evidence can be looked into upon a plea which was never put forward (**See Siddik Mahomed Shah v. Mt. Saran and others**²⁸ and **Kishor Kirtilal Mehta & ors. V. Lilavati Kirtilal Mehta Medical Trust & ors.**²⁹).

63. In **Kalyan Singh Chouhan v. C.P. Joshi**³⁰, the law regarding framing of issues has been discussed. The Hon'ble Supreme Court has stated:

23. Order 14 Rule 1 CPC reads:

"1. Framing of issues.—(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other."

24. Therefore, it is neither desirable nor required for the court to frame an issue not arising on the pleadings. The court should not decide a suit on a matter/point on which no issue has been framed. (Vide Bommadevara Venkata Narasimha Naidu v. Bommadevara Bhashyakarlu Naidu [(1901-02) 29 IA 76] , Sita Ram v. Radha Bai [AIR 1968 SC 534] , Gappulal v. Thakurji Shriji Shriji Dwarakadheeshji [(1969) 1 SCC 792 : AIR 1969 SC 1291] and Biswanath Agarwalla v. Sabitri Bera [(2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695] .)

25. The object of framing issues is to ascertain/shorten the area of dispute and pinpoint the points required to be determined by the court. The issues are framed so that no party at the trial is taken by surprise. It is the issues fixed and not the pleadings that guide the parties in the matter of adducing evidence. (Vide Sayad Muhammad v. Fatteh Muhammad [(1894-95) 22 IA 4 (PC)])

26. In Kashi Nath v. Jaganath [(2003) 8 SCC 740] this Court held that where the evidence is not in line with the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon. While deciding the said case, this Court placed a very

²⁸ AIR 1930 PC 57(1)

²⁹ (2007) 10 SCC 21

³⁰ (2011) 11 SCC 786

heavy reliance on the judgment of the Privy Council in Siddik Mohd. Shah v. Saran [AIR 1930 PC 57].

27. There may be an exceptional case wherein the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in refutation thereof by the other side. In such an eventuality, absence of an issue would not be fatal and it would not be permissible for a party to submit that there has been a mistrial and the proceedings stood vitiated. (Vide Nagubai Ammal v. B. Shama Rao [AIR 1956 SC 593] , Nedunuri Kameswaramma v. Sampati Subba Rao [AIR 1963 SC 884] , Kunju Kesavan v. M.M. Philip [AIR 1964 SC 164] , Kali Prasad Agarwalla v. Bharat Coking Coal Ltd. [1989 Supp (1) SCC 628 : AIR 1989 SC 1530] , Sayeda Akhtar v. Abdul Ahad [(2003) 7 SCC 52] and Bhuwan Singh v. Oriental Insurance Co. Ltd. [(2009) 5 SCC 136 : (2009) 2 SCC (Cri) 619 : (2009) 2 SCC (Civ) 399 : AIR 2009 SC 2177]). (emphasis supplied).

64. It is, no doubt, a well-settled principle of law that where sufficient facts are available on the record to justify an inference of undue influence, the Court is not precluded from adjudicating the matter on that ground, even in the absence of a specific plea, provided that such a course of action does not occasion surprise or prejudice to the opposite party.

65. The formation of the alleged substituted contract is itself in issue. If the formation is vitiated by coercion or undue influence, the said contract is not enforceable. Semantics and rhetorics cannot change the complexion of the matter when in the labyrinth of the dispute establish undue influence although it may have been inartistically or inaccurately stated in the pleadings. Once the court finds ingredients of undue influence on a wholesome reading of the pleadings and evidence and a party is likely to suffer because of the ultimate conclusions being reached by the court with regard to a

particular fact which in this case is undue influence as opposed to the use of the word 'coercion' in the pleadings and also in the oral evidence, it would not be fatal once the court finds that although coercion was used but in effect it is undue influence. However, if the court finds that such new plea is likely to cause prejudice and springs a surprise to the opposite party it will be extremely inequitable and unfair to hold against the said party as he believed in a particular state of affairs and acts and had conducted himself in that particular manner. This is precisely my understanding of the judgment in **Subbamma (supra)** and **Siddik Mohamed Shah (supra)** and **Kalyan Singh Chouhan (supra)**. Although we do not find that any specific issue has been raised with regard to coercion or undue influence but no objection was raised at any point of time that by reason of non-framing of such issue the defendant, the appellant herein has suffered or it has caused any prejudice to him.

66. In this regard we may refer to the following paragraphs from the plaint:-

"35. That from the face of the letter dt. 13.12.06 it raises a suspicion in the mind of any person whether the letter is genuine or have been manufactured with ulterior motive and malafide intention. Actually, an act of coercion has been committed by the Defendants specially Defendant No. 2 with illegal and malafide intent, motive and purpose to make less payments to the plaintiff and making unlawful gains to the Defendants by misrepresenting and thereby cheating the plaintiffs. The plaintiffs with the hope and utmost earnestness to come out from their miserable financial condition had to sign on the dotted lines. The letter itself shows that it is not in the letter head of the plaintiffs but on a plain paper In the earlier and subsequent correspondence with the Defendants the Plaintiffs had never used any plain paper but have always used their letter head and printed receipts.

35A. The plaintiff states the letter dated 13.12.2006 as stated in paragraph 34 herein above is illegally procured, invalid and not binding upon the plaintiffs. The said letter has been caused to be issued under coercion of the defendants. The said letter, if allowed to be relied upon by the defendants would cause serious loss and prejudice to the plaintiffs. It is fit and proper case where the said letter dated 13.12.2006, as stated in paragraph 34 aforesaid should be declared invalid, void and not binding on the plaintiff and should further be directed to be delivered up and cancelled.

35B. The plaintiff states that after being coercively constrained to sign the letter dated 13.12.2006 on 15.12.2006, the plaintiffs, by their letter dated 16.12.2006 addressed to Officer-in-Charge, Durgapur Police Station informed the Police authorities of the said fact.”

67. Paragraphs 35A and 35B were added by way of an amendment in order to elucidate and clarify the circumstances under which the alleged substituted agreement was executed by the plaintiff no.2. Curiously, the defendant no. 2 and 3 against whom specific allegations have been made of coercion did not file any written statement.

68. The original written statement was verified by one Mr. Albert Bengra, as constituted attorney of the defendant no.1. In dealing with the averments made in paragraph 35 of the original plaint, the said constituted attorney has not specifically dealt with the said paragraph. However, in paragraph 14 of the written statement, allegations contained in paragraph 33 to 48 was dealt with in the manner following:-

“14. With reference to the allegations contained in paragraphs 33 to 48 of the plaint, it is denied that the plaintiff went on making expenses from their end on the expectation that the defendant would reimburse the same but the defendants failed to do so as alleged. It is denied that the defendants by their omission and commission had violated the terms of the contract and failed to

pay the bills which were signed by the defendants' representative. The defendants had right throughout complained that the work were not satisfactory as would appear from letters dated January 31, 2007 and September 21, 2007, copies whereof have been annexed to the plaint. In the meeting held by and between the plaintiffs and the officers of the defendants herein, the amount payable to the plaintiff was settled after records pertaining to the actual workmanship done by them on all the well sites had been shown to them and matter was discussed at length. The papers were prepared accordingly and the same were signed by the parties. The defendants crave leave to refer to the letter dated December 13, 2006 acknowledging the amount due as on December 13, 2006 as well as receipt of the said amount. It is denied that the defendants fraudulently to deprive the plaintiff of their payments made them sign on a white paper dated December 13, 2006. It is denied that the claim amount was drastically reduced to Rs.17,28,764/-after being compelled or forced by the defendants. It is denied that the plaintiff was forced or compelled to sign the letter as they did not have any alternative to realize money or for easing their debt. All the allegations in the paragraphs under reference are wholly false, motivated and wholly in the nature of an afterthought. It is denied that the letter dated December 13, 2006 raises a suspicion as to the authenticity thereof. It is denied that an act of coercion had been committed by the defendants with illegal or malafide intent or motive or purpose for making less payment to the plaintiff or for making unlawful gains. It is denied that the allegations contained in the letter dated January 31, 2007 are false and have been made only after the plaintiff began to put pressure upon the defendants to pay their bills. It is denied that even though the contracts ought to have come to an end on January 31, 2007, the plaintiffs were called upon to complete the same. It is denied that for nonpayment of R.A. Bills and for no fault on the part of the plaintiffs the completion work got delayed. It is denied that the defendants were aware of the said facts and allowed the plaintiff to carry on with the execution of the work and/or extended the completion date. The plaintiffs, at all material times, assured to complete the pending contracts and by reason of such assurances the defendants did not impose liquidated damages. The allegations contained in the letter dated February 2, 2007 are entirely false and frivolous and are denied and disputed. The defendants by their letter dated September 21, 2007 have once again reiterated their grievances as contained in the letter dated January 31, 2007. The allegations contained in the plaintiffs' letter dated October 6, 2007 are entirely false and frivolous and denied and disputed. The question of any bill of the plaintiff remaining unpaid did not arise as on December 13, 2006 the plaintiff has received their final and legitimate dues in final satisfaction and had accepted the same save and except 25% of

the dues pending till full completion thereof. As the work had not been completed the plaintiff is not eligible to receive the balance 25% of the dues. It is denied that the defendants had committed violation of their contractual obligations as alleged. It is denied that the defendants had failed to settle the claims of the plaintiff as alleged. It is denied that the defendants had failed to settle the claims of the plaintiffs as alleged. It is denied that the defendants could not have not been able to specify which work is of poor workmanship and not up to the mark. Such fact of poor workmanship of the plaintiffs has been specifically mentioned in the letter dated September 21, 2007 being Annexure 9 to the plaint. It is denied that the defendants in violation of the stipulation of the contract had withheld the running bills of the plaintiffs as alleged. It is denied that the plaintiffs have done extra work in the nature of painting, fixation of rain water pipe and glass in windows were not mentioned in the contract as alleged. It is denied that other portion of the work could not be completed due to non-payment of bills. The plaintiffs have admitted non-completion of work in its entirety. It is denied that the plaintiffs have been coerced to sign on the dotted lines contained alleged declaration prepared by the defendants which are to their advantage with the malicious intention to defraud the plaintiffs of their contractual dues. It is denied that the defendants have given vague reply to the plaintiffs' letter dated October 6, 2007. It is denied that the amount mentioned in the schedule to the plaint is due or payable by the defendants to the plaintiffs. It is denied that the defendants have illegally or motivatedly or fraudulently or with ulterior motive for some unlawful gain have not paid the plaintiffs bills. It is denied that the defendants have failed to pay the plaintiffs the amount mentioned in the schedule in the plaint with interest as alleged."

Curiously the constituted attorney has affirmed and verified the said paragraph as true to his knowledge although he was completely unconnected with the execution of the said alleged letter.

69. Mr. Albert Bengra did not depose. This was followed by another written statement by one S. Ramamurthy who claimed to be the D.G.M. Project of the defendant-appellant and in the written statement it is alleged that the plaintiff had suppressed that it had unconditionally admitted and/or acknowledged that a sum of Rs.17,28,764/- was due and payable as on December 2006 out of

which the defendant (sic) has already received a sum of Rs.12,04,104/-. He has also not deposed.

70. After the incorporation of paragraphs 35A and 35B of the plaint, an additional written statement was filed by Sri Anoop Gupta who claimed to be the D.G.M. (Upstream) working under the defendant. The said paragraphs are dealt with in paragraphs 3 and 4 of the additional written statement which are reproduced below:

“3. With regard to the allegations made in para 35A of the plaint, it is stated that the same are repetition of the allegations contained in paragraphs 34 and 35 of the plaint which have been duly replied to by the defendants in their Written Statement filed on 4.12.2008. It is denied that the letter dtd. 13.12.06 was illegally procured or that the same is invalid in any manner or is not binding upon the plaintiffs or that the said letter was ever caused to be issued under coercion of the defendants as alleged. It is denied that it is a fit or proper case where the said letter dtd. 13.12.2006 should be declared invalid or void or not binding on the plaintiffs or should be delivered up or cancelled. It is stated that the letter dtd. 13.12.06 was voluntarily issued by the plaintiff and the same was never obtained by the defendants by adducing any threat or force or coercion. The plaintiffs are estopped from disputing the letter dtd.13.12.06 under any circumstance and the said letter is binding upon the plaintiffs. The plaintiffs have no right to challenge or dispute the said letter at this stage. The allegations contained in the paragraph under reply are an afterthought and no reliance can be placed on the above.

4. With regard to the allegations contained in para 35B of the plaint it is hereby denied that the plaintiff ever filed any complaint before the officer-in-charge, Durgapur police Station on 16.12.06 as alleged and the purported complaint as referred to by the plaintiff in the said paragraph is false and fabricated. It is stated that as alleged by the plaintiffs that the said complaint was purportedly filed on 16. 12.2006 there is no reason and since the plaint was filed on for not having disclosed the alleged filing of the said complaint earlier. Furthermore, no copy of any purported complaint has been produced or annexed by the plaintiffs and as s: such no reliance can be placed on the forged and fabricated letter, if any. The story of giving letter to the O.C. Durgapur P.S. dated 16.12.2006 is nothing but a subsequent creation of the plaintiffs and the defendants categorically dispute

and deny the existence and/or contents of the purported letter dated 16.12.2006. The plaintiffs are put to strict proof of their said allegations.”

71. The said paragraphs have been affirmed as true to his knowledge and belief. He however deposed. He also filed an affidavit-in-chief on behalf of the defendants. In his examination-in-chief in paragraph 16 he has stated as follows:-

“16. That the plaintiffs duly signified their acceptance of the amount calculated to be paid to the plaintiff as per measurement made by the third party Agency.”

72. However, the measurement made by the third-party agency was neither disclosed nor produced at the time of evidence. In paragraph 23 of the said examination-in-chief, he has stated that *“The agreement between the parties was duly recorded in the form of the letter dated 13.12.2006 and the same was duly signed by the parties”*.

73. Moreover, the said alleged letter dated December 13, 2006 would show that Mr. Arun Nebatia, Vice-President, Finance, who was present at the time of signing of the said letter had not put his signature on the said letter. In his cross-examination, he has stated that the dispute between the plaintiff and defendant is that *“whether the payment should be made on the basis of lumpsum or on the basis of measurement”*. He further stated that he was unaware of the fact whether the plaintiff completed the work or the work executed was of poor quality. The witness was shown the website that was marked as **Exhibit 15** which is the certified copy of the report which would clearly show that the plaintiff had completed and executed all the

works to the satisfaction of the defendant. The relevant portion of the report has been reproduced below:-

“Milestones

- *December 2006 – All 20 wells drilled and completed.”*

The said witness has stated that he had no personal knowledge of the document prepared on December 13, 2006 and at that time he was not present when the document was made. He has also stated that he had no personal knowledge *“that under what circumstances and situation the plaintiff put his signature”*. This is clearly contrary to the statement in the additional written statement.

74. The second witness of the defendant, Sri Shishir Kumar Rohtagi, in paragraph 8 of his chief has stated as follows:-

“8. That after final measurement of the work the plaintiff received their full and final payment of their dues on mutual discussion on 15.12.2006. The plaintiff signed on the said settlement voluntarily without any pressure or coercion. Mr. Subrata Dutta signed the said Memo. on behalf of the plaintiff and Mr. Arun Nebatia the then Vice President Corporate Finance signed the same on behalf of the Defendant Company I and Mr. Debasish Nandy the then commercial Manager were present at the time of signing the said Memo. at the office. The Settlement was made after getting necessary approval from the Co.'s corporate office Gurgaon.”

75. However admittedly the alleged document recording settlement does not contain the signature of Mr. Arun Nebatia. Nor was any document produced to demonstrate that necessary approval from corporate office of defendant appellant was obtained.

76. There are specific allegations by the plaintiff to sign the said letter by coercion. The unusual features and circumstances surrounding the execution of the said letter has been noticed by the

learned trial Judge during his analysis of the evidence. It is extremely unusual that while all correspondence was on the letterhead of the plaintiff, a blank paper was used without the letterhead of the plaintiff for obtaining the signature from the plaintiff. It has been substantiated during trial that admittedly a sum of Rs.59,14,685/- was due and payable. The basis of settlement at a much-reduced rate in the background of the aforesaid facts and **Exhibit 15** in particular can lead to an inference of involuntariness in the execution of the alleged letter. It is absurd to suggest that when the work was completed to the full satisfaction of the defendant, any prudent person unless there are other factors, reasons and circumstances would agree to forgo almost Rs.41,00,000/-. There is something more than what meets the eye. Possibly realizing that it would be well-nigh impossible for the defendant to explain for denying the entire amount payable under several contracts and to justify awarding of the additional work, when according to the defendant the plaintiff did not achieve the milestone or used inferior quality of materials. Emphasis was laid on the word 'coercion' used in the plaint and the evidence of PW1 as the last resort to deny the claim of the plaintiff. It is clear from the evidence of the parties that all of them were aware that the undue influence was the core issue although the word coercion was used. It is not expected from PW1 to really understand the legal difference between coercion and undue influence and what he stated in his evidence and also in his communication to the police authorities is in reality undue influence although the word coercion was used in the

sense of forcing the plaintiff to accept much lesser sum when there is a clear need of money.

77. What actually happened and under what circumstances the said alleged letter was drafted and signed, only three persons could have said, namely, PW 1 and the defendant nos. 2 and 3 as they were the only persons present in the said room. Defendant nos. 2 and 3 neither filed any written statement nor appeared as witness to rebut the allegation of the plaintiff. The reason for their absence or for not filing any written statement was not explained. There is something fundamentally wrong in the execution of the said agreement and as we often misquote Shakespeare's Hamlet "All is not well in the State of Denmark", the famous line being "Something is rotten in the State of Denmark", it makes the Court curiuser and curiuser like Alice in Wonderland to unravel the truth and what could be the possible reason for the said defendants to avoid the trial. In fact, they were the main witnesses for the defendants-appellants. The evidence of the other witnesses of the defendants is hearsay.

78. There are sufficient facts which upon correlation justify that "all was not well" when the said document was executed. The omission to raise the issue of either coercion or undue influence could not prevent the Court from deciding the case on the ground of undue influence as all the parties knew exactly what they are going to plead and defend at the trial and it has not resulted in any surprise to the defendant-appellant.

79. The resultant effect of the transaction is an unfair advantage obtained by the defendant over the plaintiff. The substituted agreement read with the evidence would clearly show that it is unconscionable. The facts on record justify the Court to decree the suit once it is established that the document was executed under circumstances giving rise to a belief that it was not voluntary or not out of free will.

80. On the date of the alleged substituted contract, there are admitted dues and part payments were made against the running bills. The measurement book and other documents in relation to the execution of the contract was never produced. There is not even an attempt made to show that on the date of such alleged agreement there was a counter claim and all the disputes have been amicably settled. The said alleged letter does not even say or indicate that appellant-defendant had any claim against the plaintiff for the works executed and completed. If the plaintiff was so unworthy in discharging their obligations why was the plaintiff awarded the extra work left unfinished by another contractor? Even after that three separate contract were awarded to the plaintiff with some extra work. In a situation where the plaintiff was in dire financial need and had to depend upon the principal for the release of the funds, there is certainly an element of dominance and normally a contractor would avoid litigation unless the contractor is compelled. The defendant-appellant is a public company and vis-à-vis the plaintiff-respondent, it is in a superior position.

81. In deciding a case of undue influence, the court has to consider four different questions, connected with each other, namely, (i) whether a transaction is a righteous transaction, i.e., whether it is a transaction which a right minded person might be expected to do, (ii) whether it was improvident, i.e., whether it shows so much improvidence as to suggest the idea that executant was not a master of himself and not in a state of mind to weigh what he was doing; (iii) whether it was a matter which required legal advice (iv) whether the intention to execute the document originated with the executant or the executee. (**See *Thrasia v Varkey Mathai***³¹).

82. In the case of ***Jaytee Exports v. Natvar Parikh Industries Limited***³², this Court has held:

“161. “Proof”, which is the effect of evidence led, is defined by the provisions of S.3 of the Evidence Act. The effect of evidence has to be distinguished from the duty or burden of showing to the court what conclusions it should reach. This duty is called the “onus probandi”, which is placed upon one of the parties in accordance with appropriate provisions of law applicable to various situations; but, the effect of evidence led is a matter of inference or a conclusion to be arrived at by the court.

162. When a party adduces his evidence in proof of the fact in issue, then it has to be seen what the other side has to say on the matter which is called shifting of the burden of proof. However, the person on whose behalf the Judge wishes to hear evidence should offer none but content himself with giving his own observations and criticisms on the evidence already given by his opponent it will then be open to the Court to give judgment to either party. A presumption of law is an inference which the Court must draw as a matter of law, and is conclusive, unless the party against whom the presumption arises gives sufficient to rebut it.

³¹ A.I.R. (1951) T.C. 42

³² 2018 SCC OnLine Cal 1160

163. In *Kundan Lal Rallaram v. Custodian, Evacuee Property*, reported at AIR 1961 SC 1316 the Apex Court has succinctly explained the phrase “burden of proof” in the following words:—

“The phrase “burden of proof” has two meanings - one, the burden of proof as a matter of law and pleading and the other, the burden of establishing a case; the former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour. The evidence required to shift the burden need not necessarily be direct evidence i.e. oral or documentary evidence or admissions made by opposite party; it may comprise circumstantial evidence or presumptions of law or fact.”

166. Section 101 of the Act lays down the rule that “whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exists.” In other words it is the same as saying that the burden of proof lies on the party who substantially asserts the affirmative of the issue and not on the party who denies it. The burden of proof in any particular case depends on the circumstances in which the claim arises. In general the rule which applies is *Ei qui affirmat non ei qui negat incumbit probatio*. It is an ancient rule founded on considerations of good sense and should not be departed from without strong reasons”, per Lord Maugham in *Constantine Line v. Imperial Smelting Corporation* (1942 A.C. 154). This rule is adopted principally because it is but just that he who invokes the aid of the law should be the first to prove his case; and partly because, in the nature of things, a negative is more difficult to establish than an affirmative. This is simply a rule of convenience which in the Roman Law is thus expressed, *Ei incumbit probatio, qui dicit, non qui negat* and is adopted in practice, not because it is impossible to prove a negative assertion but because the negative does not admit of the direct and simple proof which the affirmative is capable of.

167. The elementary rule in Section 101 is inflexible. In terms of Section 101, Evidence Act, 1872, ordinarily, the burden of proving the fact rests on the party who substantially asserts the affirmative of the issue and not on the party who denies it. The said rule may not be universal in its application and there may be exception thereto.

168. Under the Evidence Act there is an essential distinction between the phrase “burden of proof” as a matter of law and pleading and as a matter of adducing evidence. Under S.101 of

the Evidence Act, the burden in the former sense is upon the party who comes to court to get a decision on the existence of certain facts which he asserts. That burden is constant throughout the trial; but the burden to prove in the sense of adducing evidence shifts from time to time having regard to the evidence adduced by one party or the other or the presumption of fact or law raised in favour of one or the other. (*K.S. Nanji & Co. v. Jatashankar Dossa*, AIR 1961 SC 1474, 1478 : (1962) 1 SCR 492).

169. There is an essential distinction between burden of proof and onus of proof. Burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. (*A. Raghavamma v. A. Chenchamma*, AIR 1964 SC 136 : (1964) 2 SCR 933).

170. The suit will fail if both the parties do not adduce any evidence, in view of Section 102 of the Evidence Act. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

173. Bowen, L.J., in the well-known case of *Abrath v. N.E. Railway Co.*, 11 Q.B.D. 440 at 456, lays down the canons of this subject as follows:—

“Whenever litigation exists, somebody must go on with it; the plaintiff is the first to begin; if he does nothing he fails; if he makes a *prima facie* case, and nothing is done to answer it, the defendant fails. The test, therefore, as to the burden of proof or onus of proof, whichever term is used, is simply this; to ask oneself which party will be successful if no evidence is given, or if no more evidence is given than has been given at a particular point of the case, for it is obvious that, as the controversy involved in the litigation travels on, the parties from moment to moment may reach points at which the onus of proof shifts, and at which the tribunal will have to say that, if the case stops there, it must be decided in a particular manner. The test being such as I have stated, it is not a burden that goes on forever resting on the shoulders of the person upon whom it is first cast. As soon as he brings evidence which, until it is answered, rebuts the evidence against which he is contending, then the balance descends on the other side, and the burden rolls over until again there is evidence which once more turns the scale. That being so, the question of onus of proof is only a rule for deciding on whom the obligation of going further, if he wishes to win, rests. It is not

a rule to enable the jury to decide on the value of conflicting evidence. So soon as a conflict of evidence arises it ceases to be a question of onus of proof.”

83. Therefore, the well-settled principle of law is that the initial onus of proof lies on the person who alleges a fact. However, once that onus is discharged by adducing sufficient and credible evidence, the burden of proof shifts to the opposite party to establish the contrary and to lead evidence that would disentitle the plaintiff from the relief claimed. In the absence of such rebuttal evidence, the case of the party who discharged the initial onus must prevail.

84. The onus is certainly on the party alleging undue influence after it is established that:

- (a) he was in a position to dominate the will of the person whose consent was obtained by such influence, and
- (b) the transaction appears or is shown to be unconscionable.

85. In the decision of the House of Lords in ***Rhesa Shipping Co. SA v. Edmunds & Anr.***³³ it was held that where the Court is in doubt on evidence, as to the correctness and credibility of both versions of facts put forward by the parties, it should go by the rule of onus of proof.

86. In the instant case as discussed, the onus has been duly discharged by the plaintiff and hence it shifts upon the defendant to show that there was no undue influence.

³³ (1985) 2 All ER 712

87. Once the plaintiff succeeded in discharging its initial onus the defendant would now be required to prove the contrary—namely, that the document was executed without coercion or to demonstrate any circumstance that would disentitle the plaintiff from obtaining any relief. The only persons who could have rebutted and raised sufficient doubt would have been defendant nos. 2 and 3 by adducing cogent and reliable evidence in support of their defence.
88. The defendant nos. 2 and 3 are the material witnesses essential to contradict the plaintiffs. They were conspicuous by their absence. They were not examined. The appellant has taken a great risk.
89. In light of the above, this Court is of the considered opinion that the reasoning adopted by the Learned Trial Court is correct and legally sound. Accordingly, the judgment and decree dated December 22, 2015, passed by the Learned Civil Judge (Senior Division) stands affirmed and is upheld.
90. Hence, the appeal is dismissed.
91. There shall be no order as to costs.
92. Urgent photostat copy of this judgment, if applied for, to be supplied upon completion of all requisite formalities.

I Agree.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)