

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

C.S. (COM.) No. 20 of 2024
(Old No. C.S. 404 of 1997)

M/s. B.B.M. Enterprises

Versus

State of West Bengal & Anr.

Ms. Nilanjana Adhya

Mr. Supratik Basu

... For the plaintiff.

Mr. Dhruba Ghosh, Sr. Adv.

Ms. Noelle Banerjee

Mr. Priyankar Saha

Mr. Altamash Alim

Mr. Paritosh Sinha

Mr. Arindam Mandal

Ms. S. Ghosh

Mr. Aishik Chakraborty

Ms. Srijani Mukherjee

Mr. Ritoban Sarkar

... For the defendants.

Hearing Concluded On : 11.03.2025

Judgment on : 16.04.2025

Krishna Rao, J.:

1. The plaintiff has filed the present suit praying for the following reliefs:

“a) Declaration that the said undated money receipt (being a part of Annexure ‘KK’ hereto) be declared null and void, illegal of no effect whatsoever and not binding on the plaintiff;

b) Delivery up and cancellation of the undated money receipt (being a part of Annexure ‘KK’ hereto);

c) Perpetual injunction restraining the defendant, its officers and employees from taking any step or further step in terms of and/or pursuant to the said purported undated money receipt (being a part of the Annexure ‘KK’ hereto);

d) Decree for Rs. 40,72,963.00;

e) In the alternative, an enquiry into damages suffered by the plaintiff and decree for such sum or sums, as may thereupon be found due to the plaintiff;

f) Interest on and from March 1, 1997 till filing of the suit, interim interest and interest on judgment @ 24% per annum till compoundable quarterly on the sum of Rs.40,72,963/- till actual payment thereof by the defendant;

g) Receiver;

h) Injunction;

i) Attachment;

j) Costs;

k) Further and/or other reliefs.”

2. The plaintiff is a partnership firm, registered under the Indian Partnership Act, 1932, carrying on business as Class-I Government Contractor.
3. The defendant is the State of West Bengal represented through the Secretary, Irrigation and Waterways Department and the defendant no. 2 is the Chief Engineer-II, Irrigation and Waterways Department of the State of West Bengal.
4. On 4th March, 1995, the defendants issued a work order dated 27th February, 1995, in favour of the plaintiff for special repairs to Syphone Aqueduct over Negua Diversion Channel at its crossing with O.O.C. under M.C. Sub Division No. IV, Egra during the year 1994-95 under Midnapore Construction Division, now named Contai, Irrigation Division, under West Circle II and Chief Engineer-II and the said work was to be completed within 2 ½ months starting from 6th March, 1995 till 21st May, 1995.
5. As per the work order dated 27th February, 1995, the plaintiff accepted all the terms and conditions contained thereof and accordingly an agreement bearing No. 46 MCD of 1994-95 was executed by and between the parties.
6. The work order was given to the plaintiff on 4th March, 1995, with a direction that the commencement of the said work should take place from 6th March, 1995 and layout of the said work was given by the Assistant Engineer and Sub-Assistant Engineer of the defendant no.1

on or around 24th March, 1995 and the location of the site work, i.e. Pani Parul, District Midnapore was handed over to the plaintiff on the same day.

7. According to the drawing, the plaintiff had to dismantle two side wall and dig upto the depth of 6.70 M. The dismantling of work was started from the east side of the wall. Dismantling work was completed upto the water level but it was suspended bailing out of water.
8. As per the case of the plaintiff on or about 13th April, 1995, the villagers of Pani Parul Village obstructed to carry out the work awarded to the plaintiff, finally permitted the plaintiff to put up four (4) cross bandhs. The plaintiff had completed four cross bandhs by 17th April, 1995 and bailing out of water was started but the defendants stopped it on 18th April, 1995 without any reasons.
9. Due to accidently death of one local village boy near the work site, some of the agitated villagers at the work site detained two Lorries bearing No. WMK-8691 and WMK-8692 as well as the representative of the plaintiff. The plaintiff by a letter dated 26th April, 1995 informed the said incident to the Officer-in-Charge, Egra Police Station being G.D. No. 1234. Due to the said incident, the work of the plaintiff was stopped for one week. By a letter dated 27th April, 1995, the defendants granted the plaintiff five days extension to complete the work i.e. upto 25th May, 1995.

- 10.** On 5th May, 1995, the defendants have issued a show cause notice upon the plaintiff calling upon the plaintiff to submit reply within seven days why an action under Clause 2 of the Agreement Form No. 2911 (ii) would not be taken against the plaintiff. In reply to the said notice, the plaintiff has informed the defendants that though the work order was issued on 4th April, 1995 and the site was handed over to the plaintiff on 17th April, 1995 and accordingly actual date of commencement of the work should be reckoned from 17th April, 1995 and actual date of completion would be 14th July, 1995. The plaintiff has also informed the defendants that the plaintiff has executed the work of Rs. 3,62,000/- and requested the defendants to extend the time to complete the work upto 30th July, 1995.
- 11.** In reply to the said two letters of the defendants dated 29th June, 1995, the plaintiff has submitted his reply dated 3rd July, 1995 to the then defendants with the request to confirm the executed item of works and to grant necessary permission for excess/ supplementary items of work. On being satisfied with the work of the plaintiff, the defendants by a letter dated 5th July, 1995, extended the time of completion of the work upto 30th July, 1995.
- 12.** The plaintiff had informed the defendants by a letter dated 19th August, 1995 that the plaintiff had completed the work on 11th August, 1995 including some supplementary works amounting to a sum of Rs. 5,63,397.38. Thereafter, by a letter dated 29th August, 1995, forwarded its second supplementary bill for the supplementary work and excess

quantity of items amounting to Rs. 4,12,371/- and requested the defendants to clear the dues and make payment for all works done by the plaintiff.

- 13.** On 22nd September, 1995 upon completion of work on 11th August, 1995, the plaintiff as per Clause 7 of the Conditions of Contract raised its 1st and Final Bill which included the value of work executed as per work order along with the excess quantity and as recorded in the 1st and 2nd Supplementary tender for a total sum of Rs. 24,63,099.27.
- 14.** Ms. Nilanjana Adhya, Learned Counsel appearing for the plaintiff, submits that the plaintiff by a letter dated 21st August, 1995 brought to the notice of the defendant that the Executive Engineer had raised questions regarding the quantity of earth and bailing out of water without actually checking the measurements which was previously noted by Mr. Barik, i.e. the Sub-Assistant Engineer on or around 5th July, 1995. The plaintiff states that the Executive Engineer wanted to reduce the measurement after the completion of the work. The measurement according to the drawing, design and specification of the work, the height of the concreting was fixed for 5.70 meters, which was reduced to final length of 4.0 meters, as a result of which the plaintiff was left with a lot of unused materials and had suffered financial losses.
- 15.** Ms. Adhya submits that the plaintiff by a letter dated 31st August, 1995, had requested the defendants to withdraw the penal action against the plaintiff as the prevailing conditions, natural calamities and

other conditions led to delay of completion of the work but inspite of such hindrances, the plaintiff completed the work on or around 11th August, 1995.

16. Ms. Adhya submits that the plaintiff had sent numerous letters to the defendants requesting for payment for the work executed by the plaintiff. By a letter dated 31st October, 1995, one cheque of Rs. 5,54,000/- was sent by the defendants to the plaintiff on 28th September, 1995, being the part payment of total bill amount of Rs. 24,63,099.27.
17. Ms. Adhya submits that in order to get the balance payment payable by the defendants within 31st March, 1996, following the usual practice, the plaintiff through its agent sent an advance undated money receipt on 30th March, 1996 to the Executive Engineer, Midnapore Construction Division (now known as Contai Irrigation Division), Contai, Midnapore, in duplicate wherein it is mentioned that *“Received Rs (Rupees) against above noted work”*.
18. On 30th March, 1996, the defendants made payment of Rs. 12,53,052/- out of Rs. 24,63,099.27 but in the blank money receipt submitted by the plaintiff, the defendants with a malafide intention, incorporated the word “full and final” to deprive the plaintiff from claiming the balance amount shown in the bill submitted by the plaintiff on 22nd September, 1995 by another type writer.

- 19.** Ms. Adhya submits that the words mentioned as “in full and final settlement of all demands” in the undated copy of receipt was wrongfully and fraudulently typed and incorporated by the defendants and without the knowledge of the plaintiff only with the intention to deprive the plaintiff from its legible claim.
- 20.** Ms. Adhya further states that upon close scrutiny of the said undated receipt copy, it will be evident that the words “in full and final settlement of all demands” were typed after a ‘full stop’ and the typed impression of the said words are different against the typed impression of “against above noted work” and also it is stated by the plaintiff that it will be evident upon close reading of the undated receipt copy that the typed impression of figures “12,53,052.00” and the words “Twelve Lakhs Fifty Three thousand and Fifty Two only” and “in full and final settlement of all demands” are all of the same typed impression.
- 21.** Immediately when the plaintiff came to know about the illegal act, the plaintiff had sent a letter to the Executive Engineer, Midnapore Construction Division (now known as Contai Irrigation Division), Contai, Midnapore recorded its protest against the mishap and unauthorized interpolation of the words done by the defendants, and forwarded the same to the Superintending Engineer II, Western Circle, Midnapore, Chief Engineer– II, I & W Department, Govt. of West Bengal, Writers’ Buildings, Calcutta – 700001 and Secretary, I & W Directorate, Govt. of West Bengal, Writers’ Buildings, Calcutta– 700001 for investigation.

- 22.** Ms. Adhya submits that the plaintiff by a letter dated 17th June, 1996, informed the Hon'ble Minister in charge, Irrigation and Waterways Department, Government of West Bengal, Writers' Building, Calcutta – 700001, informing about the incident and mentioning the amount owed by the defendant to the plaintiff, and requested the Hon'ble Minister to investigate the matter personally or get it investigated through a responsible officer. Thereafter, during the investigation it transpired that the Sub-Assistant Engineer had indeed reduced the measurement at the instruction of Executive Engineer.
- 23.** Ms. Adhya submits that the Chief Engineer– II, I & W Department, Government of West Bengal, by a letter dated 18th September, 1996, requested the plaintiff to place a Memorandum List and the same was duly presented by the plaintiff to the defendant.
- 24.** Ms. Adhya submits that on 16th October, 1996, the Superintending Engineer in exercise of powers under clause 24 of the conditions of contract acknowledged the claims and directed for payment. She submits that the claim of the plaintiff on the basis of bill raised by the plaintiff, admitted by the defendant.
- 25.** Ms. Adhya, submits that by a letter dated 17th January, 1997, Mr. Asit Kumar Barik informed the plaintiff that he was transferred from the said work on or around 6th July, 1995 and he admitted that he was forced by the S.D.O., Egra Irrigation Sub Division to reduce the measurement, as a result, he had struck out the original measurement

recorded on 16th September, 1995. Further, the concerned S.D.O. had put his signature in the measurement book on a back date, i.e. 16th September, 1995 although he had put the signature on 23rd May, 1995.

- 26.** The plaintiff finally on 4th March, 1997, through its Learned Advocate, called upon the Chief Engineer-II, Irrigation and Waterways Directorate, Government of West Bengal being the defendant no.2, to pay the sum of Rs. 40,72,963/- within 15 (fifteen) days from the date of receipt of the notice, to which the Executive Engineer, Contai Irrigation Division of the defendant no.1, by a letter dated 27th March, 1997, addressed to the Advocate-on-Record of the plaintiff, stated that the plaintiff is not entitled to claim any amount for extra work and the plaintiff has not executed any extra work.
- 27.** Mr. Dhruba Ghosh, Learned Senior Advocate appearing for the defendants submits that none of the claims made by the plaintiff in this instant suit are tenable and the same is liable to be dismissed with costs.
- 28.** Mr. Ghosh submitted that the plaintiff has essentially made four claims in this suit, amongst which the two claims, namely, claim for damages suffered due to reduction of measurement not recorded in the measurement book and business loss amounting to Rs. 20,00,000/-, are not proved and the plaintiff has not even tried to prove any damages or losses regarding the same.

- 29.** Mr. Ghosh further submits that from the facts and circumstances of the case, it is evident that it was the plaintiff which attributed to the delay in completing the project.
- 30.** Mr. Ghosh submits that neither claims of the plaintiff has any merit at all and the plaintiff has already been paid for the work done by it in relation to the contract in full and final satisfaction and the same was duly acknowledged by the plaintiff as well.
- 31.** Mr. Ghosh submits that the plaintiff has used and relied on the forged and fabricated documents in support of its purported claim and on that ground the suit is liable to be dismissed.
- 32.** Mr. Ghosh submits that in accordance to the work order dated 27th February, 1995, the work was required to be completed within 2½ months reckoned from 6th March, 1995 within 20th May, 1995 but the plaintiff was not able to complete the work within the said period due to negligence and deficiency on its part and the plaintiff did not even attend at the site until 24th March, 1995 for taking over the site.
- 33.** Mr. Ghosh submits that the running measurement of the plaintiff's work was done on 23th May, 1995 and 26th June, 1995 and the said measurement was duly confirmed by the plaintiff on 17th July, 1995. He submits that on the basis of such measurement, payments have been made to the plaintiff and the plaintiff has accepted the total amount as full and final payment.

- 34.** Mr. Ghosh submits that the plaintiff to justify the delay, has tried to magnifying an incident involving the local villagers. The defendants categorically assert that such incident never interfered with the work of putting up of the cross bundhs on 17th April, 1997, what happened in real was some villagers started fishing in the water collected in the space between the cross bandhs, and in order to avert any possible danger to the villagers, the Executive Engineer requested the plaintiff to stop bailing out of water temporarily. Thereafter, on or around 26th April, 1995, a local boy died by drowning in the water in the Aqueduct but the next day of such incident, the site was again free to commence work.
- 35.** Mr. Dhruba Ghosh submits that from the measurement book also it will appear that although the plaintiff claims to have been interrupted, the plaintiff has claimed charges for running its pumps continuously for 21 hours a day from 16th April, 1995 to 19th April, 1995 and again from 26th April, 1995 to 27th April, 1995, therefore, it will appear that the plaintiff's allegation of forcible stoppage of work on 18th April, 1995, is contrary to the facts.
- 36.** Mr. Ghosh submits that the defendants denied that the plaintiff executed any excess or supplementary items of work and as such, there was no question of the defendants confirming any such excess or supplementary work since the plaintiff has not produced any document or any contemporaneous correspondence relating to authorization or requirement for such alleged excess or supplementary work.

- 37.** Mr. Ghosh submits that the measurement of the plaintiff's work was done on 23rd May, 1995 and 26th June, 1995 and that such measurement was duly confirmed by the plaintiff on 17th July, 1995 and on the basis of such measurement, full and final payments were made with the satisfaction of the plaintiff.
- 38.** Mr. Ghosh submits that in any event supplementary claims could have only been made if there was a supplementary tender issued and approved in writing in favour of the plaintiff and in the instant case, there was no second supplementary tender was issued or any excess work was approved.
- 39.** Mr. Ghosh further submits that the plaintiff tried to argue that the Superintending Engineer had admitted the claim by way of his letter dated 16th October, 1996, which is an incorrect interpretation of the said letter, in the letter dated 16th October, 1996, it was stated that the concerned officer will scrutinize the claims first and then will decide whether the same are tenable and later on, by a letter dated 17th February, 1997, the plaintiff was informed that the matter was scrutinized and found to not be payable.
- 40.** Mr. Ghosh submits that the contract provides that in case of an additional work which is required to be undertaken should be necessary by way of a supplementary tender and not otherwise and the additional work commenced by the plaintiff was beyond the tender

schedule without the written order of the Engineer-in-Charge would be entertained as provided in Clause 22 of the contract.

41. Considering pleadings of both the parties by an order dated 22nd April, 2004, the following issues were framed:

- (i) *Is the suit maintainable in its present form?*
- (ii) *Has the plaintiff been paid in full and final satisfaction in relation to the contract and has the same been acknowledged by the plaintiff as alleged in the written statement?*
- (iii) *Was the plaintiff unable to complete the work within time as alleged in the written statement?*
- (iv) *Did the plaintiff execute additional and excess work as stated in the plaint?*
- (v) *Has the plaintiff used or relied on forged and fabricated documents in support of their claim in the suit?*
- (vi) *Is the undated money receipt being a part of the plaint null and void, illegal and has no binding force?*
- (vii) *Is the plaintiff entitled to raise any claim in relation to the contract?*
- (viii) *Is the plaintiff entitled to a decree as prayed for?*
- (ix) *To what relief, if any, is the plaintiff entitled?*

42. The plaintiff in order to prove its case has examined one witness, namely, Nirmalendu Das, a partner of the plaintiff firm and had exhibited a total number of “Forty-two (42)” documents which were marked as **Exhibit – “A” to Exhibit – “PP”**.

Exhibit – A: Copy of the work order dated 27th February, 1995.

Exhibit – B: Copy of an agreement entered by and between the parties, regarding the commencement of work.

Exhibit – C: Copy of a letter dated 24th April, 1995, sent by the plaintiff to the Executive Engineer.

Exhibit – D: Copy of a Police Complaint lodged by the plaintiff, on 26th April, 1995, with the Egra Police Station in respect of public agitation.

Exhibit – E: Copy of a letter dated 27th April, 1995, sent by the defendant to the plaintiff granting extension for 5 days.

Exhibit – F: Copy of a letter dated 27th April, 1995, sent by the defendant to the plaintiff.

Exhibit – G: A copy of a show cause notice dated 5th May, 1995, issued by the Executive Engineer, addressed to the plaintiff.

Exhibit – H: Copy of a letter dated 15th May, 1995, wherein the plaintiff replied to the show cause notice dated 5th May, 1995.

Exhibit – I: Copies of two letters dated 17th May, 1995 and 18th May, 1995, issued by the Executive Engineer for the defendant, alleging that the plaintiff has acted against the clause 2 of the conditions of contract.

Exhibit – J: Copy of a letter dated 20th June, 1995, sent by the plaintiff, addressing the Executive Engineer for the defendant.

Exhibit – K: Copy of Letter dated 21st June, 1995 sent by the plaintiff to the defendant, addressing the issue of wrongly imposing penalty as per the clause 2 of the conditions of contract.

Exhibit – L: copy of a letter dated 3rd July, 1995, sent by the plaintiff to the defendant, wherein the itemwise description of the work executed and to what extent the work was executed was given.

Exhibit – M: Another copy of the letter dated 3rd July, 1995, sent by the plaintiff to the defendant.

Exhibit – N: Copy of a letter dated 5th July, 1995, sent by the defendant to the plaintiff, extending the time for completion of work.

Exhibit – O: Copy of a letter dated 14th July, 1995, sent by the plaintiff to the defendant, stating that the defendant had failed to issue iron rods and cement required for commencement of work.

Exhibit – P: Copy of a letter dated 15th July, 1995, sent by the plaintiff to the Executive Engineer, Midnapore Construction Division, requesting to make payment.

Exhibit – Q: Copy of a letter dated 19th July, 1995, sent by the plaintiff to the Executive Engineer, Midnapore Construction Division, informing the

defendant about the extra work executed by the plaintiff.

Exhibit – R: *Copy of a letter dated 24th July, 1995, sent by the plaintiff to the defendant, complaining about non-availability of the departmental staff.*

Exhibit – S: *Copy of a letter dated 19th August, 1995, sent by the plaintiff to the Executive Engineer, Superintending Engineer, and the Sub-Divisional Officer, stating therein that the work had been completed by the plaintiff.*

Exhibit – T: *Copy of a letter dated 19th August, 1995, along with its enclosures, sent by the plaintiff to the Executive Engineer, Superintending Engineer, and the Sub-Divisional Officer.*

Exhibit – U: *Copy of a letter dated 21st August, 1995, sent by the plaintiff, wherein the plaintiff wrote to the Superintending Engineer stating about the reduction of measurement done by the Sub-Assistant Engineer.*

Exhibit – V: *Copy of a letter dated 29th August, 1995, along with the supplementary tender for an amount of Rs.4,12,371/- and an excess statement on the same date for Rs.92,912/-, sent by the plaintiff to the defendant.*

Exhibit – W: *Copy of a letter dated 31st August, 1995, sent by the plaintiff to the defendant, requesting to withdraw the penal charges.*

Exhibit – X: Copy of a letter dated 22nd September, 1995, sent by the plaintiff to the defendant, submitting its 1st RA Bill.

Exhibit Y: Copy of a letter dated 27th September, 1995, sent by the Executive Engineer of the defendant, to the plaintiff.

Exhibit – Z: Copy of a letter dated 31st October, 1995, sent by the plaintiff to the Executive Engineer of the defendant, regarding raising of 1st and 2nd Supplementary Bills.

Exhibit – AA: Copy of a letter dated 31st October, 1995, sent by the plaintiff to the Executive Engineer of the defendant, informing the defendant about the dues payable by them and acknowledging payment of only Rs. 5,54,000/- out of the total due amount.

Exhibit – BB: Copy of a letter dated 4th December, 1995, sent by the plaintiff to the Executive Engineer of the defendant, stating the measurements recorded by Mr. Barik on 7th July, 1995.

Exhibit – CC: Copy of one undated receipt sent by the plaintiff to the defendant, where the defendant mentioned paying the entirety of the dues payable by them “in full and final settlement of all demands”.

Exhibit – DD: Copy of a letter dated 30th March, 1996, sent by the plaintiff to the Executive Engineer of the defendant, regarding the interpolation of the contents of the undated receipt sent by the plaintiff to the defendant for payment of dues.

Exhibit – EE: Copy of a letter dated 17th June, 1996, sent by the plaintiff to the Hon'ble Minister-in-Charge, Irrigation & Waterways Department, requesting him to investigate the plaintiff's issues.

Exhibit – FF: Copy of Memo No. 3715-CI/2P-12/96, sent by the defendant to the plaintiff requesting the plaintiff to send a memorandum list.

Exhibit – GG: Copy of a letter dated 7th October, 1996 sent by the plaintiff to the Chief Engineer-II, Irrigation & Waterways Department along with a memorandum list as asked by the defendants.

Exhibit – HH: Copy of a letter sent by the plaintiff to the Executive Engineer of the defendant.

Exhibit – II: Copy of a letter dated 20th January, 1997 sent by the plaintiff to the Executive Engineer of the defendant, explaining the flood situation.

Exhibit – JJ: Copy of a letter dated 27th January, 1997 sent by the plaintiff to the Chief Engineer – II, Irrigation & Waterways Department to take appropriate actions.

Exhibit – KK: Copy of a letter dated 4th March, 1997, sent by the plaintiff's Advocate to the Chief Engineer – II, Irrigation & Waterways Department, requesting payment of dues.

Exhibit – LL: Copy of a letter dated 27th March, 1997 sent by the defendant to the plaintiff, replying to the Plaintiff's Advocate's notice.

Exhibit – MM: Copy of a letter dated 21st July, 1997, sent by the plaintiff's Advocate to the Chief Engineer – II, Irrigation & Waterways Department and to the Secretary of Irrigation & Waterways Department.

Exhibit – NN: Copy of a letter dated 24th February, 1995, sent by the Government of West Bengal, Irrigation & Waterways Directorate, Office of the Superintending Engineer to the Plaintiff, regarding the tender for the work to be done by the plaintiff.

Exhibit – OO: Copy of a letter dated 16th October, 1996 sent by the Government of West Bengal, Irrigation & Waterways Directorate to the Plaintiff, explaining the work to be done by the plaintiff.

Exhibit – PP: A document dated 22nd January, 1997, written by the Executive Engineer, Contai, Irrigation Department Contai, Midnapore, directing Sri Asit Kumar Barik, S.A.E. directing him to state the circumstances under which measurement was cancelled.

- 43.** The plaintiff in order to prove its case has examined one witness, namely, Madhusudan Dey, former Executive Engineer of Contai Irrigation Department and had exhibited four (4) documents which were marked as **Exhibit – “1” to Exhibit – “4”**.

Exhibit – 1: Copy of the contract, entered between the parties.

Exhibit – 2: Copy of a letter dated 17th May, 1995 sent by the Government of West Bengal, Office of the

Executive Engineer, Midnapore Construction Division, Contai, Midnapore, addressing the Executive Engineer and the plaintiff.

Exhibit – 3: *Copy of a Memo dated 28th March, 1996, sent by the plaintiff to the Executive Engineer, raising its 1st RA Bill.*

Exhibit – 4: *Copy of Supplementary Tender.*

- 44.** The plaintiff has made the following claim in paragraph 57 of the plaint which reads as follows:

“57. *In the circumstances, the plaintiff is entitled to claim and claims a sum of Rs. 40,72,963/- against the defendant, particulars whereof are set out hereunder:*

<u>PARTICULARS</u>	<u>Amount</u>
A. Executed value of work from Annexure “A”	Rs.24,63,099.27
B. Interest @ 24% quarterly compounded from 5 th July, 1995 to 31 st March, 1996	Rs.4,61,311.97
	Rs.29,26,411.21
B/F	Rs.29,26,411.21
C. Less payment including departmental Materials and S.T.I.T. etc. (-)	Rs.12,53,052.00
	Rs.16,73,399.21
D. Interest from 1 st April, 1996 to 28 th February, 1997 @24% quarterly Compounded	Rs.3,99,393.61
	Rs.20,72,962.88
Say	Rs.20,72,963.00
E. Damage suffered due to reduction of measurement and not recorded in the Measurement Book	Rs.10,00,000.00
F. Business loss	Rs.10,00,000.00

Total: Rs. 40,72,963.00
-----.”

- 45.** The defendants have not argued the matter on the point of maintainability of the suit. This Court finds that the plaintiff has filed the suit in its proper form, has paid the Court Fees and this Court is having jurisdiction to try and dispose of the suit filed by the plaintiff, thus the issue no.1 is decided in favour of the plaintiff.
- 46.** The issue nos. 2 to 9 are connected with each other, accordingly, all the issues are taken up together for consideration. By a letter dated 27th February, 1995, the Executive Engineer, Midnapore Construction Division, Contai issued work order for special repairs to the Syphone Aqueduct over Negua Diversion Channel at its crossing with O.O.C. under Midnapore Construction Sub-Division No. IV, Egra during 1994-1995. Subsequently, on 7th March, 1995, a formal written agreement was executed between the parties. The work was to be completed within 2 ½ months starting from 6th March, 1995 and to be completed by 21st May, 1995. By a letter dated 24th April, 1995, the plaintiff had informed the Executive Engineer that the plaintiff has completed four numbers of cross bandhs on 17th April, 1995 thereafter the plaintiff taken up the work in full swing and bailing out of water started by engaging five pump sets but the same was stopped by the Executive Engineer on 18th April, 1995. In the said letter, it was informed by the plaintiff to the defendants that time for completion of the work was allotted to the

plaintiff is not sufficient and for completion of the said work will take minimum 5 to 6 months. By a letter dated 27th April, 1995, the Executive Engineer extended the time to complete the work till 25th May, 1995. On the same day, the Executive Engineer has informed the plaintiff that till 25th April, 1995, 68% time has been elapsed for completion of the work but the plaintiff has only executed 10% of the work and also requested the plaintiff to complete the work within the stipulated period of time. On 5th May, 1995, the Executive Engineer has issued the notice to the plaintiff under Clause 2 of the agreement to show cause within 7 days why an action shall not be taken against the plaintiff for dilatory tactics which is detrimental to the interest of work and causing loss to the Government. On 15th May, 1995, the plaintiff has submitted a reply informing that the work order was issued on 4th April, 1995 but the site was fully handed over to the plaintiff on 17th April, 1995 and as such the actual date of commencement of work is from 17th April, 1995. In the said letter, it was informed by the plaintiff to the defendants that from 27th April, 1995 to 4th May, 1995 due to the death of one villager on 27th April, 1995, the work was hampered and only on 4th May, 1995, the plaintiff has commenced the work. In the said letter by calculating the holidays and the work hampered due to the death of one of the villager, the plaintiff has informed that the actual date of completion of work would be 14th July, 1995 and the date of completion depends on weather condition. In the said reply, the plaintiff has requested for extension of time to complete the work till 30th July, 1995.

- 47.** On receipt of the said letter, the Executive Engineer by a letter dated 17th May, 1995, had sent a detailed reply to the plaintiff informing that the plaintiff has only executed 15% of the work. Time and again, the Executive Engineer requested the plaintiff not to make misleading and fabricated fact in order to cover up the wrongful and inordinate delay in executing the work within the stipulated period of time. On 18th May, 1995, the Executive Engineer issued a notice informing the plaintiff that the reply submitted by the plaintiff to the notice under Clause 2 of the agreement is not satisfactorily and also informed that the plaintiff would be liable to pay levy as compensation at the rate and period to be fixed and intimated to the plaintiff by the Superintending Engineer-II, Western Circle but the plaintiff is directed to continue the execution of the said work. By a letter dated 5th July, 1995 as per the request made by the plaintiff, the Executive Engineer has extended the time to complete the work till 30th July, 1995 without prejudiced to the right of the department to recover liquidated damage in accordance with the provisions of Clause 2 of the agreement.
- 48.** The plaintiff by a letter dated 15th July, 1995, informed the Executive Engineer that the work awarded to the plaintiff is going to be complete shortly and no payment was received by the plaintiff and requested to give necessary direction to Mr. Barik to prepare and submit the bill for payment. By a letter dated 24th July, 1995, the plaintiff has again informed the Executive Engineer that the scheduled date of final concreting in right side of the work was fixed on 21st July, 1995 and the

plaintiff has completed the shuttering work on 20th July, 1995 but inspite of several calls, none of the departmental officials reached to the site due to which the concreting work could not take place and from 21st July, 1995, the man and machineries were kept idle.

- 49.** By a letter dated 19th July, 1995, the plaintiff also informed the defendant that the plaintiff has executed some supplementary and excess works as per verbal instructions of the Engineer-in-Charge but the plaintiff has not received any written confirmation of the said extra work. The plaintiff also informed the defendants that the work is going to be complete within 30th July, 1995 and requested the defendants for payment of the excess work executed by the plaintiff. By a letter dated 19th August, 1995, the plaintiff has submitted details of the extra/supplementary works executed by the plaintiff to the defendants with the request for payment of the work executed by the plaintiff.
- 50.** By a letter dated 22nd September, 1995, the plaintiff has submitted 1st Final bill for a total sum of Rs. 24,65,099/- with the request to the defendants for release the payment as per the bill raised by the plaintiff. On 27th September, 1995, the Executive Engineer sent a reply to the 1st supplementary work wherein the Executive Engineer replied to the plaintiff to the item wise works.
- 51.** On 28th September, 1995, the plaintiff has received an amount of Rs. 5,54,000/- and the same was duly informed by the plaintiff to the

Executive Engineer by a letter dated 31st October, 1995 and requested to release the final payment.

- 52.** It is the case of the plaintiff that on 5th July, 1995, a joint measurement of the work executed by the plaintiff was taken and recorded in the measurement book and such recording was done by Shri Asit Kumar Barik who was the Sub-Assistant Engineer and was in-charge of the said work. The plaintiff found that the entries of the joint measurement have been reduced by another Sub-Assistant Engineer, namely, Santosh Kumar Bhuniya. When the plaintiff came to know about the same, immediately, the plaintiff by a letter dated 4th December, 1995, informed to the Executive Engineer with the request to investigate into the matter.
- 53.** It is the further case of the plaintiff that on 30th March, 1996, the plaintiff also came to know that the money receipt sent by the plaintiff, in the said money receipt, the office of the defendants have fraudulently typed in the said money receipt "*full and final settlement of all demand*". When the plaintiff came to know about the said fact, the plaintiff by a letter dated 30th March, 1996, sent a protest letter to the Executive Engineer. On receipt of complaint from the plaintiff, no action has been taken by the defendants. The plaintiff on 17th June, 1996, has submitted an appeal before the Hon'ble Minister-in-Charge, Irrigation and Waterways Department, Government of West Bengal with the request to investigate into the matter through a responsible officer so that the plaintiff can get his legitimate claim.

54. On 17th January, 1997, Shri Asit Kumar Barik sent a letter to the Executive Engineer copy to the Superintending Engineer and also to the plaintiff wherein it is mentioned that:

“S.D.O. Egra Irrigation Sub-division took me to his chamber and directed me to reduce the measurement recorded. He threatened me that if I fail to agree to his proposal to reduce the measurement, my provident fund, gratuity, would be held up and I will be suspended though I was on the verge of retirement. I was afraid for the threatening meted out to me by the S.D.O. Then I made an oral submission before executive Engineer who told me to carry out the order of S.D.O. failing which, penal action may be taken from his end. Ultimately I was forced to reduce the measurement as a result I, struck out the original measurement on 16.9.95. The concerned S.D.O. put his signature in the M.B. by putting back date i.e. on 16.9.95 through actually he signed on 23.5.95.

Now I give below a chart showing the original measurement and reduced measurement in item wise:

ORIGINAL MEASUREMENT RECORDE IN THE M.B. ACCORDING TO ACTUAL WORK DONE:	REDUCED MEASUREMENT.
Item No.	
5. 31,823.43 M ³	21,727.81 M ³
6. 26,413.43 M ³	15,242.88 M ³
7. 30,000 M ³	10,233.33 M ³
8. 2,340 M ³	130.87 M ³
10. 132.86 M ³	104.93 M ³
11. 169.00 M ³	47.26 M ³
22. 52,032.72 M ³	16,823.75 M ³

Till today, I could not understand why I was removed from the work before its completion and why I was not allowed to prepare the bill upto the execution of the said work on 5.7.95. In reply to your quires I am submitting this statement which is true to my knowledge and beliefs.

Thanking You,

Yours faithfully.”

- 55.** On 20th January, 1997, Mr. Asit Barik, Sub-Assistant Engineer who was the in-charge of the work had written a letter to the Executive Engineer wherein Mr. Barik has described as to why the supplementary work cropped up and the copy of the said letter was also provided to the plaintiff. The letter dated 20th January, 1997, is marked as Exhibit –“II”.
- 56.** The plaintiff has relied upon the letter dated 16th October, 1996 of the Superintending Engineer addressed to the Chief Engineer wherein the Superintending Engineer has observed as follows :

“(3) Earthwork item did not include earthwork for removal of 4 Nos. cross bundhs which were made for necessity of work. This was agreed by S.D.O., Egra Sub-Division. Contractor would get it.

“(4) Shuttering work for construction of R.C.C. retaining wall did not include any missing item. Contractor would get it. This was agreed by S.D.O., Egra Sub-Divn.

“(5) Carriage of sand was actually made from licensed dealer of Contai. But as per contract sand is to be procured from a distance of 300 M. After inspection of site by me it was revealed that sand was not available atleast 2 K.M. on either side of the site. The agency submitted realty receipts regarding allocation of sand from Contai pits and so it deserves payment regarding extra distance carriage of sand. There is a pit at Dapal about 4 K.M. from site, but it is not an authorised pit by L.A.C.

“(6) As per Clause – II of our tender agreement payment is to be made to the contractor monthly. But when the contractor requests for payment it should be done. But inspite of several requests Exe. Engineer did not make payment in time but once only i.e. 1st & final bill by which agency was unnecessarily harassed.

“(7) The agency has stated that if we make the due payment as per 51. Nos. 3 – 5, he will not go

for court of law and further Exe. Engineer is being instructed to make payment accordingly after obtaining a letter from M/s. B.B.M. Enterprises that it would not go for further payment to court of law if we pay the dues. The claim papers of the agency is being returned herewith.”

Relying upon the said exhibits, the plaintiff submits that the Superintending Engineer has admitted the claim of the plaintiff and directed the Chief Engineer for release of the payment but the defendants failed to release the amount which the plaintiff is entitled to.

- 57.** The plaintiff has further relied upon the Exhibit “PP” dated 22nd January, 1997 i.e. the letter issued by the Executive Engineer to the Sub-Divisional Officer wherein it is mentioned that *“it is observed that the measurement of the earthwork and de-watering has subsequently been cancelled and which has not been duly signed by the agency. Now, the agency is raising objection against the cancellation of the measurements.*

The General practice is that the measurement originally taken and accepted by the agency if subsequently found to be wrong then the concern agency should be given notice for the joint measurement, but from the record of the Measurement Book, it is found that the original measurement has been cancelled arbitrarily.

Under the circumstances, you are asked to straight reasons within three days of the receiving of this letter for such type of action on your part and under whose instruction the same has been made if any”.

The said letter (Exhibit “OO”) was also forwarded to Mr. Asit Kumar Barik, Sub Assistant Engineer with a direction to state under what circumstances he has cancelled the measurement which has originally been accepted by the agency and why the agency has not been given any notice before cancelling of the original measurement.

- 58.** The defendants relied upon a letter dated 17th February, 1997, issued by Shri Sisir Kumar Adak, Sub-Divisional Officer to the Executive Engineer wherein the Sub-Divisional Officer in reply to the letter dated 22nd January, 1997, has denied the claim of the plaintiff and admitted that it would have been proper to call the contractor for a joint measurement, subsequently to leave no scope for him to come up with a claim for the cancelled measurement afterwards. In the said letter, the Sub-Divisional Officer has also mentioned that the plaintiff was fully aware of the cancellation which will be evident from that he has received final payment without recording any claim.

It is pertinent to mention here that the defendants have relied upon the said document during the argument but the same was neither exhibited nor was proved and thus the document cannot be relied upon.

- 59.** The claim of the plaintiff is that the plaintiff has sent the pre-receipt through his man and/or agent for receipt of the payment but the defendants have manipulated the said receipts by incorporating the word 12,53,052=00 (*..... Twelve lakhs fifty three thousand and fifty two only.....*) in full and final settlement of all demands.

- 60.** The plaintiff has claimed total amount of Rs. 24,63,099.27 being the work executed by the plaintiff out of which the defendants have paid an amount of Rs. 12,53,052/-. Exhibit "CC" i.e. the money receipt which reveals that the words "12,53,052=00 (..... Twelve lakhs fifty three thousand and fifty two only.....) in full and final settlement of all demands" is being added by different typewriter and different font (in light print) of Exhibit "CC".
- 61.** By a letter dated 22nd September, 1995 being Exhibit "X", the plaintiff has submitted 1st and Final Bill of Rs. 24,65,099/-. On receipt of the final bill, the Executive Engineer by a letter dated 27th September, 1995, sent a reply to the plaintiff being Exhibit "Y" which reads as follows:

"Dear Sir,

With reference to above I am to submit herewith item wise replies of your claim for 1st and 2nd Supplementary tender received in your letter Nos. referred to above.

1ST SUPPLEMENTARY TENDER:

Replies

Item No.1: *Providing from work with Necessary provision for "MOUL" timber plank not less than 38 mm thick and staging this item has been made including hire and labour in the approved schedule of work in item No.14 charge complete for slabs and beams culvert cross drainage works and sluice upto 3 metre clear span including tripping off and removing after completion of works as specification and direction. Upto the height of 5.70 metres. In connection with item No.14*

Item No.2: *Extra rate for staging work for No standing work was original item No.13 of the necessary and was not*

schedule. done.
 Means concreting.
 Left side staging.
 Right side staging

Item No.3: Sand filling to plinth and foundation, watering and ramming complete in layer not exceeding 25 cm. Local sand available at Depal at a distance of above 8 K.M. He has not got permission for collecting sand from Contai and might have it at his own discretion.
 Sand carriage from Contai Distance 31 K.M.

However, extra rate as per Western circle Schedule may be allowed for 8 K.M. distance.

Item No.4: Supplying fitting and fixing wooden board by POLITHIN SHEET. This item may be allowed. But you have submitted an exorbitant amount, quantity of Polythine supplied with market rate along with reasonable labour charge will be allowed after obtaining approval of analysed rate.

2ND SUPPLEMENTARY TENDER:

Item No.1: Supplying fitting and fixing wooden Board by Polithin. (Balance quantity after 1st Supplementary tender). This item has been provided for in the approved schedule item No.14. Excess work if done will be made in the excess statement.

Item No.2: Earthwork for removing 4 Nos. cross bundhs. This item is included in the item earthwork with necessary lead and lift as provided in the approved work schedule.

Item No.3: Extra lead for removing earth from cross bundhs. Replay is same as in item No.2 above.

Item No.4:

*Extra lift for both Reply is same as in item
ways. No.2 above.*

Yours faithfully

*Executive Engineer,
Contai Irrigation Division,
Contai : : Midnapore.”*

- 62.** On receipt of the said letter, the plaintiff has sent detail letter to the Executive Engineer on 31st October, 1995, explaining all the work which is marked as Exhibit “Z”. Pending 1st and Final Bill, the defendants have released an amount of Rs. 5,54,000/-on 28th September, 1995 being Exhibit “AA”.
- 63.** In paragraph 33 of the plaint, the plaintiff has made out a case that the plaintiff has received an amount of Rs. 5,54,00/- out of the total balance amount of Rs. 12,12,047/-. In paragraph 36 of the plaint, the plaintiff has made out a case that as per usual practice on 30th March, 1996, the plaintiff through its agent sent an advance undated money receipt to the Executive Engineer and on 4th April, 1996, the plaintiff received a cheque dated 30th March, 1996 for Rs. 1,99,387/- and one copy of the undated receipt of the plaintiff and after going through the said receipt, the plaintiff came to know that the defendants have filled up by another typewriter which reads as follows 12,53,052=00 (..... Twelve lakhs fifty three thousand and fifty two only.....) in full and final settlement of all demands.

- 64.** In reply to the statements of the plaintiff, the defendants in their written statement have stated that the cheque amount was Rs. 2,00,146/- and not Rs.1,99,387/-. In the written statement, the defendants have stated that the total bill amount was Rs. 12,53,052/- out of which the plaintiff has received an amount of Rs. 5,54,000/-, Rs. 2,00,146/-, Rs. 69,738/- and Rs. 4,39,168/- was adjusted being the cost of materials received by the plaintiff departmentally.
- 65.** In Exhibit “OO”, the Superintending Engineer has admitted that the plaintiff has executed an extra work and directed to submit a report. The defendants though relied upon the report dated 17th February, 1997 wherein the Executive Engineer has submitted a report denying the claim of the plaintiff but the said document is not exhibited. In contrary thereto the letter dated 22nd January, 1997, issued by the Executive Engineer to the Sub-Divisional Officer being Annexure “PP” reveals that the Executive Engineer also admitted that the measurement originally taken and accepted by the plaintiff and if subsequently found to be wrong then the concern agency should be given notice for the joint measurement but from the record of measurement book, it is found that the original measurement book has been cancelled arbitrarily. Mr. Asit Kumar Barik who was the Sub-Divisional Officer at the time of the execution work of the petitioner in his letter dated 17th January, 1997 being Annexure “HH” has stated that he was forced to reduce the measurement as a result, he struck out the original measurement on 16th September, 1995. The concern

Sub-Divisional Officer put his signature in the measurement book by putting the date i.e. 16th September, 1995 though actually the Sub-Divisional Officer has signed on 23rd May, 1995. The Exhibit “HH” issued by Mr. Asit Kumar Barik dated 17th January, 1997 is marked as Exhibit “HH” by the plaintiff without any objection from the defendants. In the said letter, Mr. Barik has given the details of original measurement recorded in the measurement book according to actual background and reduced measurement which reads as follows:

“Now I give below a chart showing the original measurement and reduced measurement in item wise:

ORIGINAL MEASUREMENT RECORDE IN THE M.B. ACCORDING TO ACTUAL WORK DONE:	REDUCED MEASUREMENT.
Item No.	
5. 31,823.43 M ³	21,727.81 M ³
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7. 30,000 M ³	10,233.33 M ³
8. 2,340 M ³	130.87 M ³
10. 132.86 M ³	104.93 M ³
11. 169.00 M ³	47.26 M ³
22. 52,032.72 M ³	16,823.75 M ³ .”

- 66.** The plaintiff has claimed total amount of Rs. 24,63,099.27 being the work executed by the plaintiff out of which the defendants have paid an amount of Rs. 12,53,052/-. Exhibit “CC” i.e. the money receipt which reveals that the words 12,53,052=00 (..... Twelve lakhs fifty three thousand and fifty two only.....) in full and final settlement of all demands is being added by different typewriter and different font (in

light print which are encircled with red pen) of Exhibit “CC”. It is crystal clear that the receipt submitted by the plaintiff to receive an amount from the defendants, the defendants have incorporated the words and now taken plea that the plaintiff has received full and final amount.

- 67.** As regard to the claim of the plaintiff with regard to the extra work executed by the plaintiff is proved by the plaintiff from Exhibit “OO” i.e. the letter of the Superintending Engineer and the manipulation/reduction of the work in the measurement of the actual work executed by the plaintiff is proved from the letter of Asit Kumar Barik i.e. Exhibit “HH” which is being corroborated by the letter of the Executive Engineer i.e. Exhibit “PP”.
- 68.** Considering the above, this Court finds that the plaintiff has proved the that the plaintiff has executed extra work but only to debar the plaintiff to get the amount of the extra work executed by the plaintiff, the defendants have arbitrarily canceled the original measurement book of the work executed by the plaintiff and have reduced the work subsequently in the measurement book. From the letter of the Executive Engineer i.e. Exhibit “PP” also proved that if measurement book is to be corrected, notice is to be given to the contractor but in the present case, it is admitted by the defendants that the defendants have not issued any notice to the plaintiff for correction of the measurement book. From the letter of Asit Kumar Barik i.e. Exhibit “HH”, it is clear that the measurement has been reduced in the back date.

- 69.** In view of the above, the plaintiff is entitled to get an amount of the extra work i.e. an amount of Rs. 12,12,047/- as the plaintiff has only received an amount of Rs. 12,53,052/- out of the total amount of the Rs. 24,63,099.27.
- 70.** With regard to the claim of the plaintiff as damage of Rs. 10,00,000/- and business loss of Rs. 10,00,000/-, this Court finds that the plaintiff has not brought any evidence to show that the plaintiff has suffered damages and business loss. This Court not inclined to grant any compensation and business loss as claimed by the plaintiff.
- 71.** In view of the above, the defendants are directed to pay an amount of Rs. 12,12,047/- (Rupees Twelve Lakhs Twelve Thousand and Forty Seven only) to the plaintiff being the extra work executed by the plaintiff along with interest at the rate of 9% per annum from the date of filing of the sui till the realization of the said amount.
- 72. C.S. (Com) No. 20 of 2024 (Old No. CS 404 of 1997) is disposed of.**
Decree be drawn accordingly.

(Krishna Rao, J.)