



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

956 SECOND APPEAL NO. 273 OF 1996

M/s. A.T. Padwale & Co.
Engineers & Contractors
Subhash Road, Nashik

..APPELLANT

-VERSUS-

Maharashtra State Electricity
Transmission Company
132 KV Sub-Station Sangamner
Under EHV O & M Division,
Circle EHv O & M Circle,
Nashik

**(As per the Court order
dated 05.03.2025 new
address added of respondent)**

..RESPONDENT

...

Mr. R N Dhorde, learned Senior Advocate i/b Mr.V.R. Dhorde,
Advocate for the appellant.
Advocate for Respondent : Mr. A M Gaikwad

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CORAM : ROHIT W. JOSHI, J.

Dated : 5th MARCH, 2025

ORAL JUDGMENT :-

. Permission to correct the name of respondent sole is
granted. The appellant is directed to carryout the amendment
in the name of the respondent forthwith.

2. Erstwhile Maharashtra State Electricity Board had filed

Suit for recovery of money, being Special Civil Suit No.149/1991. The case of the plaintiff was that inadvertently payment of an additional amount of Rs.46,895.15 paise was made to the respondent under a contract, that was being executed by the respondent for the appellant. The mistake had occurred because the deduction of advance for the material supply was not made on account of inadvertence while making the payments to the respondent/contractor. The mistake was noticed during the course of audit and accordingly, a letter was issued by the plaintiff to the defendant calling upon it to deposit the said amount. The defendant/contractor initially agreed to deposit the amount and actually deposited a sum of Rs.14,900/-. However, the balance amount was not paid, as a consequence of which Special Civil Suit No.149/1991 came to be filed by the present respondent against the appellant.

3. The learned trial Court dismissed the suit vide judgment and decree dated 30th November, 1994 on the ground that the final bill was not settled. Aggrieved by the dismissal of the suit, the present respondent preferred First Appeal, being

Regular Civil Appeal No.8/1995. The learned Appellate Court on re-appreciation of the evidence found that the account was properly settled between the parties, in as much as the running account bills were paid to the contractor, escalation charges were also cleared and ultimately security deposit was also refunded. The learned Appellate Court has also considered that out of Rs.44,900/-, which was the outstanding amount, the appellant/contractor had paid Rs.14,900/- and had also expressly admitted to pay entire amount. In that view of the matter, the learned Appellate Judge was pleased to allow the appeal directing the defendant/appellant herein to refund the amount of Rs.39,900/- to the plaintiff/respondent along with interest at the rate of 18% p.a. from the date of filing of the suit till realization of the amount.

4. Present second appeal came to be admitted on 19.09.1996 on the following substantial questions of law :-

“(i) The trial Court dismissed the suit on the ground that there was no settlement of account between the parties. That finding of fact was reversed by lower appellate Court. There involves substantial question of law on appreciation of evidence by lower appellate Court.”

5. The learned Advocate for the appellant urged to frame an additional substantial question of law with respect to the rate of interest. On hearing the learned counsel for the appellant, I have framed following additional substantial question of law today :-

“(ii) Was the learned first appellate court justified in awarding interest at the rate of 18% p.a. ? ”

6. Both the learned Advocates consented to proceed with the final hearing of the second appeal even on the substantial question of law framed today. In such circumstances, with the consent of both the parties, the appeal is heard finally on both the substantial questions of law.

Question No.(i) :-

7. As regards, the first substantial questions of law, I am of the considered opinion that the learned trial Court had indeed erred in dismissing the suit on the ground that final bill was not settled and the suit was premature. The learned first appellate court has considered the controversy in a correct

perspective. It has rightly held that payment of all bills was made, escalation charges were also paid and finally security deposit was also released. In that view of the matter, although the final bill may not have been settled technically in accordance with tender conditions, it is obvious that the account was practically settled between the parties. It is also obvious that inadvertently, the amount of material advance, which was paid, was not deducted while making payments of bills to the appellant/contractor. The appellant/contractor also admitted his liability vide letter dated 08.10.1990 (Exhibit-46) as also vide letter dated 21.01.1991 (Exhibit-48) and accordingly had paid a sum of Rs.14,000/- to the respondent/plaintiff. However, having admitted the liability he resiled from making further payment. The learned First Appellate Court has rightly passed the decree for recovery of money against the appellant/contractor. The first question of law is answered accordingly against the appellant/defendant.

Question No.(ii) :-

8. The learned First Appellate Court has awarded interest at the rate of 18% p.a. Perusal of the judgment does not

indicate that the learned Appellate Court has recorded any reasons for awarding the interest at an exorbitant rate of 18% p.a. In my considered opinion, the ends of justice will be subserved, if interest is awarded at the rate of 9% from the date of institution of suit till the realization of the amount. The decree, therefore, requires modification in view of the reduction of rate of interest.

9. In the result, the second appeal is partly allowed. The decree dated 20.01.1996 passed by the learned Vth Additional District Judge, Jalgaon in Regular Civil Appeal No.8/1995 is modified by directing that the appellant/original defendant shall pay sum of Rs.39,900/- to the plaintiff along with interest at the rate of 9% p.a. from the date of institution of suit i.e. 29.07.1991 till realization of the amount.

10. Rule is made absolute in the above terms.

11. The parties to bear their own costs.

(ROHIT W. JOSHI, J)