

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

AD-COM 1 of 2024

With

CS 103 of 1999

M/s A.K. Ghosh & Sons

Vs.

The State of West Bengal

For the appellant : Mr. Pranit Bag, Adv.
Mr. Ashis Kumar Mukherjee, Adv.
Mr. Sourabh Prasad, Adv.
Mr. Akash Munshi, Adv.

For the respondent : Mr. Dhruva Ghosh, Sr. Adv.
Ms. Nilanjana Adhya, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Arindam Mondal, Adv.
Mr. Altamas Alim, Adv.
Ms. Swagata Ghosh, Adv.

Hearing concluded on : 16.12.2025

Judgment on : 22.01.2026

Md. Shabbar Rashidi, J.:-

1. The appeal is directed against the impugned judgment and decree dated October 10, 2023 corrected by order dated October 12, 2023 passed in C.S. No. 103 of 1999.

2. By the impugned judgment and decree, the original suit being C.S. No. 103 of 1999 filed at behest of the appellant herein, was dismissed.

3. Learned advocate for the appellant submitted that the learned Trial Judge misconstrued the facts as well as legal propositions and came to an erroneous finding. The learned trial court also failed to appreciate the evidence adduced leading to dismissal of the suit.

4. Learned advocate for the appellant further submitted that the learned Trial Judge did not consider that the delay in the completion of the project awarded to the appellant was attributable to the respondent as the respondent delayed handing over the drawing layout of the building. They also did not respond to the communications made to them and convey their decisions on issues raised by the appellant in time and delayed the release of payment towards the running bills raised.

5. Learned advocate for the appellant further submitted that while dismissing the suit, learned Trial Judge completely overlooked the fact that the delay in completion of the project was solely due to the acts and omissions on the part of the respondent, which resulted in increase in the cost of the project including overhead costs and labour costs for the additional timeline of 19½ months.

6. Learned advocate for the appellant further submitted that the learned Trial Judge failed to appreciate that the respondent did not disclose the Joint Measurement Book despite of notice in this regard by the appellant. Learned Single Judge ought to have drawn an adverse inference against the respondent on account of non-disclosure of Joint Measurement Book as the onus to prove such evidence was on the respondent/defendant. According to learned advocate for the appellant, the respondent acted in breach of contract between the two parties. Since the delay was caused due to breach by the respondent, the respondent was to bear the overheads and escalated costs of the project. Learned advocate for the appellant also submitted that the respondent had accepted the works beyond the contractual terms and as such, was liable to pay for the same.

7. Learned advocate for the appellant further submitted that the learned Trial Judge erred in holding that consumption statement was

not provided by the appellant to the respondent. In fact, such statement was neither demanded by the respondent nor such point was raised and argued in the suit. Necessary building materials were supplied to the appellant with considerable delay and extensions were granted without imposing any conditions upon the appellant.

8. Learned Senior Advocate appeared for the respondent submitted that the appellant was awarded a work contract in pursuance of a tender. The appellant delayed the completion of the work. The work was scheduled to begin from 16th January, 1989 and was to be concluded by 15th April, 1990. However, owing to alleged delays, the appellant sought extension of time by letter dated 28th June, 1990. The contract period was extended up to 30th September 1990. The work was ultimately completed on 29th November 1991, resulting in a delay of approximately 19 months and 14 days beyond the stipulated completion period.

9. It was further contended by learned Senior Advocate that upon completion of the work, the appellant raised bills which were paid by the respondent. Appellant had accepted full and final payment without any protest or reservation, and was therefore estopped from raising any further claim.

10. Learned Senior Advocate also submitted that the delay in the completion of the project was attributable solely to the laches and inability of the Appellant. In particular, it was contended that the Appellant failed to construct the two masonry wells during the dry season, which rendered the adopted construction method unsuitable and resulted in avoidable delay. In addition, Learned Senior Advocate also submitted that the appellant was duly provided with necessary materials for construction, including 15 metric tonnes of cement. The appellant never provided a consumption letter regarding timely consumption of the building materials supplied to the appellant.

11. According to the plaint case, the appellant participated in a tender process. He submitted the tender in response to an invitation to tender from the Superintendent Engineer, Project Circle, P.W.(CB) Directorate, Burdwan for construction of new Primary Healthcare (P.H.C) with staff quarters including Sanitation & Plumbing works along with two masonry wells at Udoypur under Rampurhat – I Block, District Birbhum.

12. The tender submitted by the Appellant was accepted by the Superintending Engineer by letter dated 20th December 1988. The tender was quoted at 4.85% above the departmental schedule of rates, and the total tender value was assessed at ₹22,77,981/-. Pursuant to

such acceptance, a work order dated 30 December 1988 was issued in favour of the Appellant by the Executive Engineer, Birbhum Division-I, P.W. (CB) Directorate. A formal agreement was executed by and between the parties bearing contract number 29/SE, PCE of 1988 - 89/41/Birbhum Division - I of 1988 -89.

13. It was the further case that according to the contract, the work was scheduled to begin from 16th January, 1989 and was to be concluded by 15th April, 1990. Owing to alleged delays, the Appellant sought extension from time to time lastly by letter dated 28th June, 1990. The contract period was extended up to 30th September, 1990. The work was ultimately completed on 29th November 1991, resulting in a delay of approximately 19 months and 14 days beyond the stipulated completion period. Such delay, according to the appellant, was mainly on account of the following grounds, namely:

- i. Delayed handing over of site for the construction work.
- ii. Delay in finalising and handing over approved designs and drawings, and failure to take timely decisions in respect thereof;
- iii. Failure in furnishing of required supply of specified store materials such as cement and steel which was the obligation of the Respondent to supply;
- iv. Additional expenditure incurred due to delay in and carriage of departmental materials;

- v. Delay due to monetary constraint placed on the Appellant because of non-release of funds as per Running Account (RA) bills on time.

14. Upon completion of work, the Respondent had prepared the final bill, to which the Appellant had raised objections. According to the appellant, a sum of ₹32,56,903/- was due and payable. The respondent having failed and denied to pay the legal dues, the Appellant instituted the suit claiming recovery of the said amount along with interest at the rate of 22% per annum from January 1, 1992 to February 29, 1996, aggregating to a total claim of ₹83,74,613/-.

15. The Respondent/State contested the suit by filing a written statement denying all material allegations contained in the plaint. It was contended that the Appellant had accepted full and final payment without any protest or reservation, and was therefore estopped from raising any further claim.

16. It was the case of the respondent that upon completion of the project, the appellant received full and final payment of their bill raised towards the project work without any demur and as such, the appellants were estopped from claiming any amount of alleged unpaid bills or any damages. Moreover, according to the terms of the tender, the work was to commence by January 16, 1989 and it was supposed

to be complete by April 15, 1990. The appellant failed to commence the work in time inspite of all possible cooperation rendered on the part of the respondent. By reason of delay which was solely attributable to inaction on the part of the appellant, the appellant sought for extension of time. The respondent accepted the request for extension of time and the time of completion of project was extended by the respondent on condition that such extension would not entitle the appellant/plaintiff for any compensation on account of delay. The project work was completed on November 29, 1991 after a delay of 19 months and 14 days.

17. Although, the respondent/defendant suffered loss and damages due to delay in completion of the project owing to inaction of the appellant/plaintiff, nevertheless, the respondent made full payment to the plaintiff/appellant by the 11th and final bill being Voucher No. 7 dated February 29, 1996 amounting to ₹31,61,721/-. The full and final payment of all supplementary items of works approved by the superintending Engineer, Project Construction Circle was also made to the appellant by Voucher No. 8 dated February 29, 1996. Such payments were made as per the bills duly made out on the basis of mutually recorded measurements and the payment was made by the respondent and accepted by the appellant without any

reservation. According to the case made out by the respondent, the appellant was required to submit a bill every month in terms of Clause 8 of the contract, however, the appellant failed to submit bills month by month. For such reason, the respondent department prepared the bills on the basis of recorded measurements and payments were made to the appellant on the basis of such bills. In such fashion, 11 bills for the contractual works and one bill for supplementary work, was approved by the superintending engineer in terms of Clause 12 of the agreement and was paid to the appellant.

18. On the basis of the pleadings put in by the parties, the learned Trial Judge framed as many as 8 issues in order to adjudicate the disputes in the proceeding, namely:

1. Was the execution on completion of the work under the contract between the plaintiff and the defendant delayed due to the fall or default on the part of the defendant or by reason of the laches and inability of the plaintiff?
2. Was there any agreement between the plaintiff and the defendant to pay at different rates for additional items of works done by the plaintiff?
3. Did the defendant make payment for all items under the contract in question including additional items of work not mentioned in the contract?

4. Is the plaintiff entitled to the claims preferred in respect of execution of extra item of works as mentioned in paragraph 11 of the plaint?
5. Did the plaintiff suffer any loss due to default on the part of the defendant for prolongation of work beyond the date for completion of work mentioned in the contract in question?
6. If so is the defendant liable to compensate the plaintiff on account thereof as claimed by the plaintiff?
7. Is the suit barred by limitation?
8. So what relief the plaintiff is entitled?

19. Issue No.7 was decided by the learned Single Judge in favour of the appellant/plaintiff. No arguments were advanced by the parties at the time of hearing of the instant appeal in relation to such issue. On perusal of the materials placed before us, we also find nothing to differ with the findings of learned Trial Judge. So far as Issue No.1 with regard to delay in completion of project work is concerned, it transpires that the learned Single Judge came to a conclusion that the delay in the completion work was not attributable to the respondent. The learned Judge also held that the deficiencies on the part of the appellant itself were actually responsible for delayed completion of project. While deciding the issue, learned Single Judge noted that by a letter dated January 4, 1989, the appellant informed the assistant engineer that the plaintiff had received the work order and was in a

position to start work at an early date. On the same day, the assistant engineer wrote a letter to the plaintiff with a request to start work. The date of completion of work was fixed on April 15, 1990. Learned Single Judge also noted that by a letter dated May 4, 1989 the assistant engineer intimated the appellant that upon inspection of the work on March 9, 1989, March 20, 1989, April 11, 1989, April 17, 1989, April 21, 1989, April 24, 1989 and May 3, 1989 it was observed that no work of masonry well was done by the appellant although, site representative of the plaintiff was requested several times in this regard. The letter also stated that the appellant had wasted the dry season which was the best time for digging masonry well. Such allegation was also not denied on the part of the appellant.

20. Learned Trial Judge also noted in the impugned judgement that while seeking extension of time by its letter dated June 28, 1990, it was stated that segment was not available for two months from the end of March 1990. However, learned Single Judge was of the opinion that non-availability of cement for a limited period of two months can be taken as a ground causing delay of the entire project. The learned Single Judge also took note of an explanation sought to be given on the part of the appellant that much time was consumed in the construction of masonry well by sinking method and in doing so

considerable quantity of material had to be carried by head load from about a distance of half a kilometer as the road became un-motorable for some months.

21. By a letter dated February 12, 1990, the plaintiff informed the assistant engineer that the plaintiff had taken up construction of one Masonary well at the site shown by the assistant engineer. The said letter was responded by the assistant engineer by a letter dated February 26, 1990 wherein it was stated that the plaintiff started construction of the Masonary well on February 20, 1990 only when the assistant engineer was inspecting the site. The appellant/plaintiff wanted to know the exact location of the second Masonary well and it was shown to him on such date. The appellant or his representative never asked for identification of the location earlier. Learned trial judge also noted that by its letter dated June 29, 1990, the appellant informed the executive engineer to the effect that much time was consumed in constructing Masonary well by the method of sinking. Building materials had to be taken overhead for 1/2 kilometers as the road had gone un-motorable.

22. The learned Single Judge also noted in the impugned order that an instant report was supposed to be submitted by the contractor if he was not able to execute the work due to unavoidable

circumstances. However, in the case at hand, an extension of time was sought by the appellant without assigning any specific reason, merely citing 'reasons beyond control'. A second extension of time was sought by a letter dated June 28, 1990 on the ground of non-availability of cement for two months from March 1990. On this score, the learned Single Judge observed that the project work was hampered for a limited period of two months for non-availability of cement. It did not cover the entire project timeline and did not accept the same as a ground for delay in completion of the project. The learned Single Judge also noted that by a letter dated April 13, 1990, the assistant engineer wrote to the appellant that whitewash, paint and other works were yet to be executed. The letter also stated that the appellant/plaintiff was not executing the tender project earnestly.

23. The materials on record reveals that the appellant was requested to start the construction work by a letter from the Assistant Engineer on the very date when the appellant intimated the respondent, after acceptance of his tender, that it was ready to undertake the project. Therefore, the case of the appellant that there was considerable delay in the delivery of the site, ready for the work does not stand.

24. The respondent has come up with a case that the appellant was provided all cooperation and supply of building materials at relevant time. The appellant has not been able to provide the details of such delayed supply of building materials. On the contrary, evidence led at the trial demonstrates that a considerable amount of cement etc. was lying with the appellant, supplied by the respondent. In fact, the appellant, in its letter, cited the reason for delayed execution of work as non-motorable condition of road which obliged the appellant to carry head loads to the project site for about $\frac{1}{2}$ km. In such letter by the appellant, there is no whisper of delayed supply of building materials. Not only that, the appellant was obliged to submit consumption reports of such articles. Our attention was not drawn to any evidence which established that such report was submitted by the appellant at any point of time.

25. According to the terms of the contract, the contractor was under obligation to instantly intimate respondent of any circumstances which hindered the execution of the project. However, no such report appears to have been submitted by the appellant. The appellant ventilated its inability at the time when it sought for extension of time. His request for such extension also did not disclose any specific reason of delay save and except 'reasons beyond control'. The evidence led at

the trial also does not disclose that the appellants ever endeavored to refute the allegation of the respondent to the effect that the appellant lost the dry seasons without any reason in digging up the masonry well. At the time of inspection of the first masonry well, the appellant allegedly asked the Assistant Engineer for the location of second masonry well which, of course, was shown to them. However, it remains a mystery as to how the appellant agreed to execute the work when the construction site was not known to him and as to what prevented the appellant from taking instructions beforehand.

26. The evidence on record also shows that after the award of contract work, the respondent conducted survey of the ongoing project on several dates i.e. on March 9, 1989, March 20, 1989, April 11, 1989, April 17, 1989, April 21, 1989, April 24, 1989 and May 3, 1989. By a letter dated May 4, 1989 the assistant engineer intimated the appellant that upon inspection of the work it was observed that no work of masonry well was done by the appellant although, site representative of the plaintiff was requested several times in this regard. Later, by a letter dated April 13, 1990, the assistant engineer wrote to the appellant that whitewash, paint and other works were yet to be executed by the appellant. We have noted hereinbefore that project was to commence with January 16, 1989 and it was supposed

to be complete by April 15, 1990. Extension of time was sought twice by the appellant and was granted by the respondent.

27. So far as the case made out by the appellant is concerned, according to them the delay was caused on account of belated approval of construction drawings, delay in supply of building materials, stale decision on the issues raised by the appellant. However, at the time of hearing, the appellant did not draw our attention to any specific act or omission on the part of the respondent which could be accepted as genuine cause of delay. The appellant did not point out the specific drawing which was provided to the appellant belatedly. On the contrary, it appeared from evidence that the day appellant intimated its readiness to execute the job, on the selfsame day, by a letter from Assistant Engineer; he was requested to execute the same. We have already noted that cement etc. was duly supplied to the appellant and in fact, at the time of inspection, it was found that considerable amount of cement was still lying with the appellant. The appellant also did not refute the case of the respondent to the effect that the appellant failed and neglected in submitting the consumption statement of the building materials as required in compliance to the terms of the contract.

28. In such inspection, it was duly intimated to the appellant that the project work was not being carried out with required speed. There were several works to be accomplished. While asking for extension of time, the appellant pleaded un-motorable condition of road where building materials had to be taken as manually. According to the terms and conditions of the contract, the appellant was supposed to intimate the authorities about any circumstances hindering the completion of project but our attention was not drawn to any such communication on the part of the appellant/plaintiff. In view of the aforesaid facts and circumstances, we find no reason to differ with the findings of the learned Single Judge that the appellant was not able to prove that delay in completion of the project work was attributable to the respondent.

29. Issue nos. 3 to 6 were taken up and decided together. The learned Trial Judge considered the evidence adduced on behalf of the parties and observed that in accordance with the terms and conditions of the contract more specifically Clause 12, the decision of the Superintending Engineer of the circle was to be final. The learned Single Judge also noted that after completion of the work, meetings were convened. The minutes of the meeting disclosed that the appellant participated in such meetings with regard to claim for

carriage of departmental materials for distance beyond initial 20 km. The claim of the appellant was considered and discussed in the first meeting held on June 27, 1995. It was further discussed in the second meeting dated July 14, 1995 and a final order was issued on August 28, 1995 by the Superintending Engineer. Learned Trial Court also observed that the plaint filed on behalf of the appellant did not contain any statement to the effect that the order dated August 28, 1995 was not accepted by the appellant or it was passed in violation of any term of the contract.

30. According to Clause 18 of the contract, the appellant was not entitled to claim transportation cost of the building materials. It was to be borne by the appellant himself. By a letter dated December 13, 1991, the appellant intimated the respondent that the work had been completed and asked for a refund of the security deposit. By another letter dated January 1, 1992, the appellant claimed reimbursement for extra expenditure. The appellant also disputed the measurements of different items of work recorded in the measurement book by a letter dated March 2, 1992. By another letter dated March 16, 1992, the appellant withdrawn his protest noted on the final bill prepared on the basis of measurements dated February 21, 1992. It was observed by learned Trial Judge that after withdrawing his protest, the appellant

was estopped from raising any dispute in connection with the measurements.

31. Evidence on record goes to show that final bill was made ready and it was communicated to the appellant by a letter dated February 7, 1994 by the Executive Engineer. The appellant raises claim by a letter dated November 22, 1993 addressed to the Chief Engineer which was relegated to the Executive Engineer in terms of clause 12 of the contract, with intimation to the appellant. It transpires that in terms of letter dated June 15, 1998 issue by the Executive Engineer; all the claims raised by the appellant were paid by voucher No. 8 dated February 29, 1996, in terms of an order passed by the Superintending Engineer, Project Construction Circle. The final bill of the appellant was paid by T. O. Voucher No. Seven dated February 29, 1996. In such fashion, the claims raised on the part of the appellant were finally decided by the authorities. Nothing has been placed before us, at the time of hearing, that the appellant was entitled for any claim other than that was decided and paid to the appellant after affording due opportunity to the appellant of hearing, in accordance with the terms and conditions of the contract between the parties. In such view of the facts, we are of the opinion that the learned Trial Court was quite justified in deciding issue Nos. 3 to 6 against the appellant/plaintiff.

32. Since, on the basis of evidence led at the trial, we are of the opinion that the appellant has not been able to justify that the delay caused in the completion of the project work was attributable to the respondent/defendant. We have also come to a conclusion that the appellant was paid all his bills including the final bill as well as the bill raised for the additional works upon affording the appellant a reasonable opportunity of hearing, we find no materials to hold that the appellant is entitled for any damages.

33. In the light of discussions made hereinbefore, we find no reason to interfere with the impugned judgment and decree. We affirm the same.

34. Consequently, the instant appeal being AD-COM 1 of 2024 and CS 103 of 1999 along with all connected applications, if any, are hereby dismissed however without any order as to costs.

35. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

36. I agree.

[DEBANGSU BASAK, J.]