



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 3945 of 2001**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Approved for Reporting	Yes	No

PRAFULCHANDRA G PATEL & ORS.

Versus

DISTRICT PANCHAYAT & ANR.

Appearance:

MR AB ACHARYA(1137) for the Appellant(s) No. 1

MR PARTHIV B SHAH(2678) for the Appellant(s) No. 1.1,1.2

MS RV ACHARYA(1124) for the Defendant(s) No. 1,2

CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

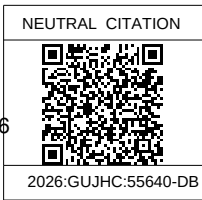
Date : 02/09/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

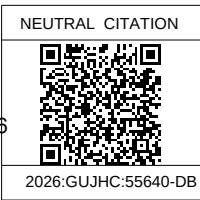
1. Being aggrieved and dissatisfied with the judgment and decree dated 30.08.2000 passed by the learned 5th Joint Civil Judge, Bharuch (for the sake of brevity and convenience, hereinafter referred to as “the Learned Civil Court”), in Civil Suit No.175 of 1992, whereby the suit instituted by the appellant seeking recovery of damages/dues amounting to Rs.27,89,319.06 (Rupees Twenty-Seven Lakhs Eighty-Nine Thousand Three Hundred Nineteen and Paise Six only) along with interest at the rate of 18% per annum from the defendants came to be dismissed, the appellant has preferred the present First Appeal.

2. The appellant, a civil contractor, entered into Contract Agreement No. B-2/72 of 1984-85 with the defendant department (Executive



Engineer, Irrigation Division, District Panchayat, Bharuch) for constructing a new M.I. Tank at Village Valli, Taluka Jhagadia, District Bharuch, at the sanctioned tender amount of Rs.26,57,345.91 (Rupees Twenty-Six Lakhs Fifty-Seven Thousand Three Hundred Forty-Five and Paise Ninety-One only) against the estimated cost of Rs.33,33,190 (Rupees Thirty-Three Lakhs Thirty-Three Thousand One Hundred Ninety only). The work order was issued on 07.06.1984, with a stipulated completion period between 07.06.1984 and 06.06.1986. Alleging breaches, delays, non-supply of drawings/designs, change of specifications, and failure of reciprocal contractual obligations on the part of the defendant department, the plaintiff instituted the suit claiming an aggregate sum of Rs.27,89,319 (Rupees Twenty-Seven Lakhs Eighty-Nine Thousand Three Hundred Nineteen only) under seventeen (17) distinct heads, enumerated as under:

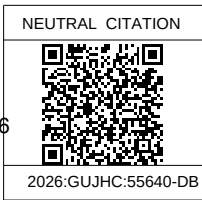
Claim No.	Description of Claim	Amount (Rs.)
1	On account of work done in hard rock	6,00,000/-
2	On account of excavation of earth for foundation	90,000/-
3	On account of change in specification design	2,49,700/-
4	On account of rock toe work done in valley	90,000/-
5	On account of certain prevention and extra expenses	1,00,000/-
6	On account of re-establishment	1,00,000/-
7	On account of preliminary arrangement and preparation	40,000/-
8	On account of maintenance due to non-sanction/delay of Letter of Credit	2,45,000/-



9	On account of damage/loss suffered due to government employees' strike from 02/06/85 to 19/06/85	1,09,500/-
10	On account of price rise @ 15% of the tender amount i.e. Rs. 26,57,345/-	3,98,621/-
11	On account of prolongation of work / loss of profit @ 20%	5,31,469/-
12	On account of illegal recovery of interest	32,200/-
13	On account of non-recovery of advance paid to labourers	22,000/-
14	On account of refund of Security Deposit	1,33,328/-
15	On account of final bill	8,000/-
16	On account of deduction for time limit extension	1,500/-
17	On account of escalation	38,000.00/-
	Total :	27,89,319/-

3. The defendant department filed its Written Statement at (Exh.-13) denying all allegations, contending inter alia that the suit is not tenable at law and barred by limitation, that designs were supplied along with the work order, that the plaintiff committed default by failing to complete the contract work within the stipulated/extended time limit, and that the materials were prematurely removed from the site before completion.

4. The Learned Civil Court, upon appreciation of the oral evidence of Prafulbhai Gordhanbhai Patel (Exh.-20), documentary evidence at (Exh.-162) to (Exh.-172), including the R.A. bill file at (Exh.-165), undertaking/letters written by the plaintiff at (Exh.-163), (Exh.-166), and contract conditions, answered Issues Nos. 2 to 5 in the negative and

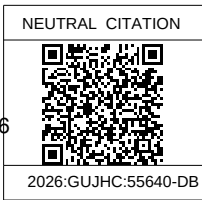


dismissed the suit in its entirety vide order dated 30.08.2000. The Learned Civil Court specifically observed that the plaintiff gave writings dated 11.04.1989 and 29.01.1991 promising to complete the work without claiming any damages if time was extended, and that the delay was attributable solely to the plaintiff.

5. Aggrieved by the dismissal of the suit, the appellant has preferred the present First Appeal. During the course of hearing before this Court, the Learned Advocate for the appellant has fairly conceded that, considering the facts of the case on hand, the claims raised before the Learned Civil Court the details of which have been narrated in the preceding paragraphs (i.e., Claims Nos. 1 to 13 and Claims Nos. 15 to 17) are not required to be gone into, and has explicitly not pressed those claims. Instead, the Learned Advocate has pressed only for Claim No. 14, which pertains to the refund/recovery of the Security Deposit amounting to Rs.1,33,328/- (Rupees One Lakh Thirty-Three Thousand Three Hundred Twenty-Eight only).

6. Thus, in view of the aforesaid, since a precise statement has been made at bar by the Learned Advocate for the appellant only pressing for Claim No. 14, the rest of the claims are otherwise not required to be gone into. However, to avoid any complexity so as not to leave any stone unturned, this Court has deemed it appropriate to have a brief glance even as to the maintainability and the findings of rejection recorded by the Learned Civil Court on those unpressed claims.

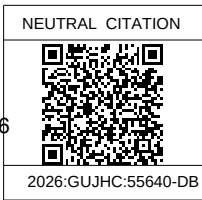
7. A perusal of the record and the written synopsis reveals that the



Learned Civil Court systematically dealt with and clubbed the various monetary claims raised by the plaintiff under the seventeen distinct heads.

8. Insofar as Claim No. 1 for a sum of Rs.6,00,000/- (Rupees Six Lakhs only) on account of work done in hard rock is concerned, the Learned Civil Court observed that though the defendant admitted that the plaintiff had worked in hard rock, the plaintiff himself had quoted separate prices in the tender for soft rock at Rs.15/- (Rupees Fifteen only) and hard rock at Rs.25/- (Rupees Twenty-Five only) under item No. 3, and payment at those rates had already been made in the R.A. bills produced at (Exh.-165). The claim was, therefore, wholly untenable.

9. With regard to Claims Nos. 2, 5, 6 and 7 for Rs.90,000/- (Rupees Ninety Thousand only) on account of excavation of earth for foundation, Rs.1,00,000/- (Rupees One Lakh only) on account of certain prevention and extra expenses, Rs.1,00,000/- (Rupees One Lakh only) on account of re-establishment and Rs.40,000/- (Rupees Forty Thousand only) on account of preliminary arrangement and preparation, the Learned Civil Court found that no assurance or writing had been given by the defendant for payment of any extra foundation work executed thrice or for additional expenses; that the delay was attributable solely to the plaintiff who failed to engage labourers (who had gone for farm work during monsoon), failed to obtain the necessary permission from the Geological Department as required under Clause 38 of the tender, and that materials including cement had been duly supplied by the defendant as evidenced by the correspondence and receipts on record. The provision of road facility and preliminary arrangements for transportation of materials

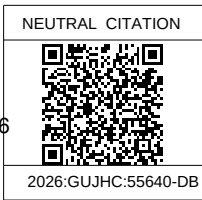


formed part of the plaintiff's own contractual obligations. These claims were consequently rejected.

10. As regards Claim No. 3 for Rs.2,49,700/- (Rupees Two Lakhs Forty-Nine Thousand Seven Hundred only) on account of change in specification/design, the Learned Civil Court held that the plaintiff had produced no document evidencing any change, and Clause 2 of the tender expressly stipulated that the design of the section of the earthen dam was under consideration of the Central Design Department and that any alteration in design would not entitle the contractor to extra payment or compensation, the same being binding upon him. The claim stood barred by the tender conditions themselves.

11. In respect of Claim No. 4 for Rs.90,000/- (Rupees Ninety Thousand only) on account of rock toe work done in the valley, the Learned Civil Court noted that the plaintiff had himself addressed a letter dated 22.02.1988 (forming part of the file at Exh.-163) requesting permission to execute rock work in place of bricks which were unavailable, and had undertaken to carry out the same at the agreed tender price; payment having been received accordingly, no extra claim could be sustained.

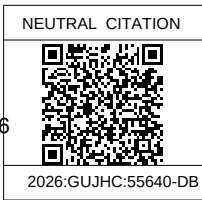
12. Qua Claim No. 8 for Rs.2,45,000/- (Rupees Two Lakhs Forty-Five Thousand only) on account of maintenance due to non-sanction/delay of Letter of Credit, the Learned Civil Court recorded that the first R.A. bill of Rs.60,000/- (Rupees Sixty Thousand only) had been sanctioned on 18.10.1984, i.e., within four months of the work order, as clearly borne



out from the R.A. bill file at (Exh.-165), thereby completely negating any allegation of delay on the part of the defendant.

13. Concerning Claim No. 9 for Rs.1,09,500/- (Rupees One Lakh Nine Thousand Five Hundred only) towards damage/loss suffered due to the government employees' strike from 02.06.1985 to 19.06.1985, the Learned Civil Court observed that the plaintiff had produced no evidence of having employed any labourers during the said period which fell within the monsoon season; that under Clause 11.2 the work remains suspended during monsoon and all precautions are required to be taken by the contractor at his own cost; and that the plaintiff himself had earlier stated that the labourers had gone for farm work. The claim was thus devoid of any merit.

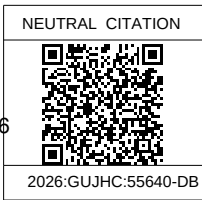
14. Turning to Claims Nos. 10, 11 and 17 for Rs.3,98,621/- (Rupees Three Lakhs Ninety-Eight Thousand Six Hundred Twenty-One only) on account of price rise at the rate of 15% of the tender amount, Rs.5,31,469/- (Rupees Five Lakhs Thirty-One Thousand Four Hundred Sixty-Nine only) on account of prolongation of work/loss of profit at the rate of 20%, and Rs.38,000/- (Rupees Thirty-Eight Thousand only) on account of escalation, the Learned Civil Court meticulously analysed Clause 61 of the tender which restricted price escalation/adjustment to a maximum of 5% on the estimated amount put to tender for the first three years, and recorded that the defendant had already sanctioned and paid a sum of Rs.1,32,867.30 (Rupees One Lakh Thirty-Two Thousand Eight Hundred Sixty-Seven and Paise Thirty only) towards such escalation. The plaintiff had further furnished explicit written undertakings dated



11.04.1989 (Exh.-163) and 29.01.1991 (Exh.-166) promising to complete the work without claiming any damages if time was extended. No documentary evidence in support of the claimed profit percentage was produced, and the delay was held attributable to the plaintiff alone. These claims were, therefore, rightly disallowed.

15. Lastly, as regards Claims Nos. 12, 13, 15 and 16 for Rs.32,200/- (Rupees Thirty-Two Thousand Two Hundred only) on account of illegal recovery of interest, Rs.22,000/- (Rupees Twenty-Two Thousand only) on account of non-recovery of advance paid to labourers, Rs.8,000/- (Rupees Eight Thousand only) on account of final bill, and Rs.1,500/- (Rupees One Thousand Five Hundred only) on account of deduction for time limit extension, the Learned Civil Court found that the tender conditions at (Exh.-162) expressly provided for recovery of interest on loans at the rate fixed by the Government in three equal monthly instalments with no exception for any idle time; that no account or document evidencing any advance paid to the labourers/Mukadam was produced, such engagement being the contractor's own liability; that the deduction of Rs.1,500/- (Rupees One Thousand Five Hundred only) for extension of time was admitted and stood justified since the extension had been sought by the plaintiff himself; and that the final bill could not be prepared in the absence of completion of the work. The contractual terms fully justified the recoveries and deductions made.

16. Thus, on independently examining the aforesaid claims with reference to the tender conditions, the R.A. bill file at Exh. 165, the writings of the plaintiff at Exh. 163 and Exh. 166, and the oral evidence



at Exh. 20, the extra claim for hard rock work was already covered by the separate tender rates quoted by the plaintiff himself and by the payments made in the R.A. bills.

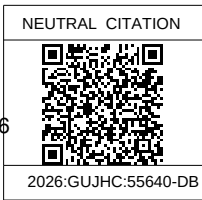
17. The claims for extra foundation work, prevention expenses, re-establishment and preliminary arrangements were unsupported by any written assurance of the department and stood contradicted by the plaintiff's own default in engaging labour during monsoon, in obtaining permission from the Geological Department, and in completing the work within the stipulated and extended time.

18. The claim founded on alleged change of specification/design was barred by Clause 2 of the tender, which made any alteration in the design of the earthen dam binding on the contractor without extra payment.

19. The rock-toe claim stood concluded by the plaintiff's own letter dated 22.02.1988 undertaking to execute the work at the agreed tender price. The allegation of delayed Letter of Credit was falsified by sanction of the first R.A. bill of Rs.60,000/- (Rupees Sixty Thousand only) on 18.10.1984.

20. The strike-period claim lacked any proof of labour having been employed during the monsoon, when work remained suspended under Clause 11.2.

21. The claims for price rise, loss of profit and escalation ran contrary

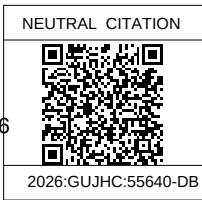


to the 5% ceiling under Clause 61, to the escalation of Rs.1,32,867.30/- (Rupees One Lakh Thirty-Two Thousand Eight Hundred Sixty-Seven and Paise Thirty only) already paid, and to the plaintiff's express undertakings dated 11.04.1989 and 29.01.1991 not to claim damages upon extension of time.

22. The recoveries towards interest, labour advance, final bill and deduction of Rs.1,500/- (Rupees One Thousand Five Hundred only) for time-limit extension were fully justified by the tender conditions at Exh. 162 and by the admitted incomplete status of the work. The findings of the Learned Civil Court is based on a sound appreciation of the evidence on record and calls for no interference.

23. Reverting back to the main claim (Claim No. 14) regarding the refund of Security Deposit which has been specifically pressed for by the Learned Advocate for the appellant, it is submitted by the Learned Advocate that as per the conditions incorporated in the agreement, the amount of the security deposited was subject to release/return after completion of the contracted work.

24. Thus, while referring to the aforesaid clause and taking us through the material and ocular evidence led before the Learned Civil Court, it is submitted that the entire work was completed and the last RA bill was paid, and therefore, the security amount is required to be refunded by the defendant after the expiry of the maintenance and guarantee period. Thus, it is submitted that even no cogent reason has been given by the defendant-respondent herein for not preparing the final bill, despite the

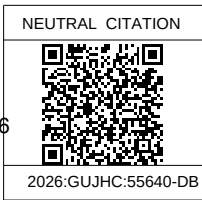


appellant having completed the work. It is argued that the Learned Civil Court has failed and committed a grave error while relying on the reply/written statement filed by the defendant, which otherwise does not fulfill the requirements of the agreement in question.

25. To substantiate his submissions and arguments, the Learned Advocate for the appellant has pressed for the provisions of Section 55 of the Indian Contract Act, 1872, and has submitted that where a contract is to be performed within the time agreed between the parties, but if the said time limit is extended, then the other side cannot claim any benefit or penalize the performance of the promise beyond the time originally agreed upon. While equating the same to the facts of the case on hand, it is submitted that the contract in question was to be completed within a period of 2 years; however, the time period was extended at the request of the appellant herein, without there being any negligence attributable to the appellant.

26. Thus, in view of the aforesaid submissions and upon re-evaluating the evidence on record, so far as the claim for recovery/refund of the Security Deposit is concerned, under the governing terms and conditions of the tender agreement, the return/refund of the Security Deposit is subject to the strict condition precedent that the contractor executes and completes the entire allotted work satisfactorily, leading to the formal issuance of a Completion Certificate by the department.

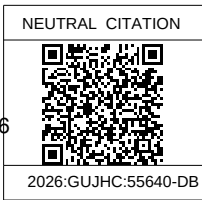
27. It is an admitted position on record that the original contract period from 07.06.1984 to 06.06.1986 was extended from time to time up to



31.03.1990 vide Resolution Nos. 137, 254, 456, and 127 upon the applications and undertakings of the plaintiff itself. For the purpose of preparing the final bill and assessing the site status, an inspection was carried out and a survey/inspection report was submitted by the Departmental Engineer, Shri K.G. More. The said expert report categorically establishes that the work of patching was not complete as per the required specifications and opinion of the expert.

28. Because the contract work remained incomplete as per the technical evaluation and expert findings of Shri K.G. More, the defendant department did not issue a Completion Certificate to the appellant. Although this Court considered whether a lenient view could be taken such as granting a partial refund after deducting a nominal percentage (5%) on equitable considerations, given the passage of time where the disputed principal amount of Rs.1,33,328/- (Rupees One Lakh Thirty-Three Thousand Three Hundred Twenty-Eight only) has grown substantially over time, a close examination of the record and the expert survey report of Shri K.G. More confirms that there was complete failure on site and the default in non-completing the patching work was entirely attributable to the contractor. Under the explicit terms of the contract, no refund of the Security Deposit can be granted in the absence of a Completion Certificate.

29. In view of the above factual and legal position, the underlying contract work remained incomplete, as verified by the inspection report of Engineer Shri K.G. More. The mandatory Completion Certificate was never issued in favor of the appellant; and the Learned Civil Court was



fully justified in holding that, without completing the contract work and obtaining a Completion Certificate, the appellant is not entitled to the refund of the Security Deposit.

30. The judgment and decree dated 30.08.2000 passed by the Learned Civil Court in Civil Suit No.175 of 1992 suffers from no illegality, infirmity, or error of law.

31. Consequently, the present First Appeal fails and is hereby dismissed.

32. Record and proceedings, if any, be remitted to the concerned Court forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP