

**Reserved On : 15/07/2026****Pronounced On : 05/08/2026****IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 1202 of 2004****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI sd/-**

=====		
Approved for Reporting	Yes	No
		no
=====		

STATE OF GUJARAT & ANR.

Versus

S.K.PATEL

=====

Appearance:

MS KINJAL VYAS ASSISTANT GOVERNMENT PLEADER for the
Appellant(s) No. 1,2

MR CHIRAG B PATEL(3679) for the Defendant(s) No. 1

MRS RANJAN B PATEL(646) for the Defendant(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**CAV JUDGMENT**

1. Being aggrieved and dissatisfied by the judgment and decree dated 21.06.2002 passed by the learned 8th Joint Civil Judge, Senior Division, Vadodara, in Special Civil Suit No.275 of 1991 granting decree in favour of the plaintiff to recover Rs.4,43,376.57/- with interest at 15% from the date of the suit till realization has been assailed by the State Government and its Officer by way of first appeal under Section 96 of the Code of



Civil Procedure, 1908 (for short, 'CPC').

2. Parties are referred to as per their original status before the learned trial Court.

2.1 Brief facts of the case are as under:

2.2 The State of Gujarat through Executive Engineer, Irrigation Project Division No.12, Sukhi Colony, Tarapur Road, Pavi-Jetpur, invited tender from the government approved contractor for constructing earth work and lining to Jambughoda Branch canal from Ch. 23850 to 24700 MTS of RBMC. The original plaintiff – Mr. S.K. Patel submitted his bid which was found competitive and lowest and such bid of the plaintiff was accepted by the department. After paying the security deposit, the plaintiff was called upon to execute regular agreement bearing agreement no.LCB.6 of 1988-89. Accordingly, formal agreement/contract was executed between the parties. The total work was amounting to Rs.5,28,208.23/-. It was to be commenced from 28.07.1988. The time period to complete the work was 11 months. The plaintiff was required to complete the work on or before 26.06.1989. The plaintiff's claim that due to various reasons and unavoidable circumstances, the State of Gujarat and Executive Engineer failed to fulfill the obligation. One of such was not handing over the site for five months.

2.3 The State of Gujarat had given extension twice to complete the work and ultimately, the work agreed was completed on 14.04.1990. The final bill was paid on 27.09.1990. According to the plaintiff, at the time of paying the final bill, the plaintiff was



compelled to give the undertaking to the effect that the plaintiff will not move either for arbitration or to the Civil court for claiming anything, invoking the State's dominant position. The plaintiff impeached such undertaking by pleading that obtaining such undertaking under duress or coercion has no legal sanctity and cannot foreclose plaintiff's right to claim the amount of compensation resulting from breach of contract executed between the parties.

2.4 The backdrop of the plaintiff's suit is breach of reciprocal contractual obligation resulting into delay in payment and some additional work not being contracted, was carried by the plaintiff, having been not paid. The plaintiff in the aforesaid backdrop put his claim for the payment of extra work on the ground that the soil from nearby borrow pit within lead of 50 mtrs. was required to be provided, however, the department was unable to provide borrow pit in vicinity within the embankment of 50 mtrs. Thus, the plaintiff was compelled to bring the soil from outer area, beyond the embankment area of 50 mtrs. and it has incurred more expenses to the plaintiff than it was agreed. It becomes work of extra items and requires to be paid by the defendant. It is also pleaded by the plaintiff that the plaintiff was required to carry extensive breaking of hard rock and soft rock. The plaintiff, therefore, has to be paid for that extra work he had done for breaking hard and soft rocks.

2.5 The plaintiff pleaded that if quantity of extra work in regards to breaking of hard and soft rocks exceed 130%, new rates were required to be fixed which is mutually agreed upon



the parties. The department instead of mutually agreeing to fix the rate, exercised its dominant position and paid the amount of excess work at the rate fixed. Therefore, the plaintiff is entitled to the amount of extra work at the reasonable rate which could be mutually fixed. The plaintiff further pleaded that while giving an extension to complete the work, the State Government and its Officer did not consider forthcoming monsoon season as well as heavy monsoon period which did not allow the plaintiff to do any inch of work and it carried and extended the time to complete the work.

2.6 During the interim period, the plaintiff's bills were withheld and all these reasons showing fault of the State Government. The plaintiff could not complete the work before the stipulated time period and it has resulted into the various extra items, losses, damages etc. The plaintiff, therefore, was required to pay 30% rise on the various items as the item cost increased after prolong period and thus, the plaintiff was entitled to extra payment on the aforesaid reasons. Rs.2,500/- and Rs.3,000/- were deducted from final bill and kept as deposit by the State Government, is required to be refunded back. The plaintiff on account of executing the work in prolong period, borne expenditure of Rs.5,000/- per month for overhead, overstay, loss of profit of capital, tools, plants, establishment, etc. The prolong period was nine months and seventeen days. The plaintiff claimed the compensation on that ground.

2.7 The plaintiff also claimed that the plaintiff was required to execute the work as mentioned in Schedule 'B', but due to



departmental reason, the said work could not be executed and thereby, the plaintiff suffered a loss of profit on un-executed work amounting to Rs.86,059.74/-. The plaintiff claimed 15% profit on un-executed work.

2.8 All the above bundle of facts added in the cause of action by the plaintiff to pray a decree for recovery of Rs.5,31,399.60/- with 18% interest.

3. The State Government filed the written statement and raised various contentions including the contention that the plaintiff on his own has asked for extension of time period for executing and completing the work and has given an undertaking that he shall not ask for price-rise during the extended time period to complete the work. Secondly, the State Government having accepted that the plaintiff has done extra work of breaking hard and soft rocks and brought the soil from outside the vicinity of 50 meters of the embankment area, did not accept the calculation of the amount of compensation and denied to grant the same with the contention that since no specific rate has been fixed between the parties, the claim of the plaintiff is excessive and exorbitant.

3.1 The other grounds of the claim are denied in-toto on the ground that the plaintiff, who could not complete the work within the stipulated time or extended time period due to his own fault, cannot ask for recovery of any expenses, for overhead expenses and overstay or loss of profit etc. Thus, it was pleaded to dismiss the suit.



3.2 The learned trial Court having fixed the issues and analyzed the evidence on record, pleased to decree the suit in aforesaid terms.

3.3 Being aggrieved, the State Government and its Officer has filed this appeal, *inter alia*, on the grounds mentioned in the appeal memo.

4. Learned AGP Ms. Kinjal Vyas as well as Learned Advocate Mr. Chirag B Patel appearing for the respective parties have filed their written submissions which are taken on record.

5. In order to allow the appeal, learned AGP Ms. Kinjal Vyas, having referred to the facts of the case candidly admitted that there is a delay of five months in handing over the work site to the plaintiff, the State Government has compensated the same by extending the time to complete the work, which otherwise, has to be completed within the stipulated/fixed time period as the time was the essence of the contract. She would further submit that twice the extension has been granted with the undertaking and contention that the plaintiff's field work at existing contractual rate and no price rise shall be given. A specific letter to that effect has been written by the plaintiff on 13.12.1989. She would further submit that the plaintiff, who has been given all ten bills, did not come forward to prepare and submit the final bill. However, the department on its own, following the contractual obligation has preferred the final bill and paid the same to the plaintiff on 27.03.1990, after due scrutiny. The plaintiff accepted the same without raising any objection or protest. Therefore, in that circumstances, the



plaintiff has no right to claim any compensation.

5.1 Learned AGP Ms. Kinjal Vyas in her written submissions prepared a table to show that how much extra work has been done by the plaintiff in regards to excavation of hard and soft rocks and embankment of earthwork and lining. She submits that though these two works are executed by the plaintiff under the instructions and are beyond the contractual work, they have to be paid by a rate mutually agreed between the parties. But in the case on hand, the learned Civil Court instead of referring and resorting to that clause, granted the payment for extra work and thereby, has judicially intervened to settled the contractual obligation between the parties, which is a grave error on the part of the learned trial Court.

5.2 Learned AGP Ms. Kinjal Vyas further submits that the plaintiff had given written consent to accept the revised rate as approved by the competent authority and the running bill at tendered rate vide his letter dated 20.03.1989. Therefore, the plaintiff is now estopped from raising any rate other than the contractual rate and that too, after lapse of 16 months of work. Lastly, learned AGP Ms. Kinjal Vyas submitted that the learned Civil Court cannot sit over the contract between the parties and cannot award rates outside the agreed term of tender, unless clauses of the contract, explicitly provide for revision. She further submits that by granting a market adjusted rate for excavation of hard and soft rocks, the learned trial Court by-passed Clause 31 and Clause 32 and thereby, the learned trial Court has committed serious and manifest error.



5.3 Learned AGP Ms. Kinjal Vyas also argued that grant of compensation on some other claim without being proved by cogent evidence on record, the learned trial Court has committed serious and grave error. She also submits that the grant of 15% interest without having any contractual terms and conditions between the parties is in excess of the jurisdiction. She has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Oriental Insurance Co. Ltd. vs. Dicitex Furnishing Ltd., reported in 2020 (4) SCC 621*, to support the contention that bald plea of coercion without any supporting material is insufficient for Court to hold that the accord satisfaction or no due certificate was involuntarily given.

5.4 Upon above submissions, learned AGP Ms. Kinjal Vyas submitted to allow this appeal and to quash and set aside the impugned judgment and decree and to dismiss the suit.

6. Per contra, Learned Advocate Mr. Chirag Patel appearing for the original plaintiff firstly supports the impugned judgment and decree and submits that the learned trial Court has appreciated all documentary evidence on record properly and passed the well-reasoned judgment and decree. Thus, it deserves no interference.

7. As far as submission that the plaintiff has not submitted final bill as per Clause 33, learned Advocate Mr. Chirag Patel submits that joint reading of Clause 33 and Clause 35 of the tender stipulates that the contractor requires to submit monthly bill which is to be cleared after measurement carried out in presence of the parties. He would further submit that clearance



of all monthly bills were treated as advance payment. He would further submit that in the case on hand, all running bills have been certified by the department and it gives certificate that the plaintiff has satisfactorily completed the work.

7.1 In line of above submissions, Learned Advocate Mr. Chirag Patel would further submit that though it is correct that the plaintiff has not submitted the bill on 30.06.1990, which was admittedly cleared on 27.09.1990, there is no time limit for the plaintiff to submit the final bill. In a nutshell, it is argued by learned Advocate Mr. Chirag Patel that non-submitting of final bill would not nullify the claim of the plaintiff as all previous running bills having been certified forms the content of final bill. Learned Advocate Mr. Chirag Patel further submits that there is no doubt that payment of final bill was accepted by the plaintiff under duress and coercion as the department was in a dominant position and refusal to pay the amount could put the plaintiff in a dire financial situation. Therefore, any undertaking taken by the department at the time of paying the final bill not to raise the issue either through arbitration or in a court of law, is forbidden under Section 23 of the Contract Act. It is argued that nonetheless right of the plaintiff to refer arbitration or approaching court of law cannot be curtailed by taking any undertaking to redress the grievance in a court of law as a fundamental right of the plaintiff cannot be undermined merely on taking one undertaking. Therefore, Learned Advocate Mr. Chirag Patel submitted that the argument to that effect is non-viable.



7.2 Learned Advocate Mr. Chirag Patel also argued that as far as breaking of hard and soft rocks carry extra work and likewise bringing the soil from outside of the lead of 50 mtrs. is also an extra work accepted by the State Government and therefore, at least for that extended work, the plaintiff was required to be paid. Learned Advocate Mr. Chirag Patel further submits that in case on hand, contractual work could not complete within the prescribed time period at fault of State Government and therefore, plaintiff sustained the loss of profit, loss of price rise, overhead and related expenses. Therefore, he submitted that the learned trial Court has rightly passed the decree after assessing the evidence in detail.

7.3 Upon above submissions, learned Advocate Mr. Chirag Patel submitted to dismiss this appeal and to confirm the impugned judgment and decree.

7.4 In support of his submissions, learned Advocate Mr. Chirag Patel relied upon following list of judgments:

- AIR 2011 SC 754 (R.L. Kalathia and Co. vs. State of Gujarat- Relevant Para-4 and 5);
- AIR 1975 Supreme Court 763 (Bombay housing Board (Now Maharashtra Housing Board- Relevant Para-20 and 21);
- (2007) 13 SCC 43 (K.N. Sathyapalan (Dead) By Lrs. vs. State of Kerala and Another- Relevant Para-31-34);
- (2017) 8 SCC 146 (Assam State Electricity Board and Ors. vs. Buildworth Private Limited – Relevant Para-14);
- AIR 1977 Supreme Court 1481 (Mohd. Salamatullah and ors. vs. Government of Andhra Pradesh- Relevant Para-4);



-AIR 1984 Supreme Court 1703 (M/s. A.T. Brij Paulsingh and Brothers vs. State of Gujarat- Relevant Para-9, 10 and 11);
-(2006) 11 SCC 181 (Mcdermott Internation INC. vs. Burn Standard Co. limited and Others – Relevant Para-96-98, 103-106, 109-110).

8. Having heard learned Advocates for both the sides extensively and applying mind to the facts emerged from the record and proceeding as well as the impugned judgment and decree, firstly, let me refer to the issue framed by the learned trial Court, which are reproduced herein-under:

“1. Whether plaintiff proves that he is entitled to recover Rs.5,31,399.60/- from the defendants?

2. Whether plaintiff proves that he is entitled to recover 18% interest per annum on the suit amount?

3. Whether defendants proves that the suit claim as alleged by the plaintiff?

4. Whether plaintiff is entitled to get decree as prayed for?

5. What order and decree?”

8.1 Issue nos.1 was answered in affirmative, issue no.2 was answered in affirmative with a decision that the decretal amount shall carry interest at 15%, issue no.3 was answered in affirmative and held that the plaintiff is entitled to claim Rs.4,43,376.57/-, issue no.4 was answered in affirmative and the end result is partly decreeing of the suit.



8.2 It is noticeable that the plaintiff's suit consisted of several claims. The claim is divided into two parts. One part of the claim is based upon the extra work carried by the plaintiff and having not been paid, whereas second part of the claim is in regards to loss of profit, overhead expenses, loss of price-rise etc. To claim the compensation in second claim, the plaintiff attributed the lethargy to the State Government and pleaded that the State Government acted in slipshod and disorganized manner resulting into the delay of the work. Two other but peripheral issues also argued. Firstly, that plaintiff is to be refunded the security deposit and secondly, charge of 15% yearly interest on the decretal amount is justified.

9. As far as first part of the claim is concerned, there is no cavil that the plaintiff has carried out the extra work of breaking the hard and soft rocks. As per work contract, the plaintiff was required to break the hard rocks of 113 AM. The plaintiff has completed the work of 2089.91 AM of breaking the hard rocks. The rate fixed to pay the work is also applied to the extra 30% work which comes to 146.9 AM. The plaintiff has carried out a huge work of 2089.91 AM. Alike, the plaintiff was required to excavate soft rocks in tune of 523 AM, the plaintiff was required to pay contractual rate for additional 30% quantity, which comes to in-total excavation work of 679.9 AM soft rocks. Comparing to that, the plaintiff has completed the work of excavating soft rocks of 13261 AM.

9.1 The learned trial Court has addressed above issue in paragraph nos.15, 16 of the impugned judgment. The finding of



the learned trial Court in paragraph nos.15, 16 reads as under:

...“15) Defendant in their written statement Ex. 110 have mentioned that they have paid 75% of the proposed rationed thereby it is clear that the rate in question has not been mutually agreed or finalized. The plaintiff are entitled for a rate of Rs. 23.98 and for the quantity of 13261 AM and for 2089.91 AM as per plaintiff demand the total amount payable on account of work done is amounting to Rs.3,73,130.60 looking to the Ex. 123 page 184 the defendant have considered the quantity of 15773.04 Cm. The said quantity is paid at the rate of Rs. 10.08 defendant have paid for the said item a sum of Rs. 158589.04 therefore plaintiff entitled for Rs.214541.56. The plaintiff have claimed a sum or Rs. 2,22,236.85 and the rate as demanded by the plaintiff is justified the quantity as claimed by the plaintiff is 15350 AM whereas the defendant have work ed out the quantity as 15773 AM. Hence plaintiff claim is reasonable legally and justified the plaintiff are entitled for sum of Rs. 214541.55 instead of Rs. 222236.85 from the defendant.

16) The plaintiff has made a claim of Rs. 88717.75 on account of item of soft rock and hard rock. As per the contract provision the plaintiff were required to carry out the work to the at tune of 523CM and in hard rock was required to carry out work of 113 AM. Whereas during its execution and as per final bill the quantity for said item being 787.30 for soft rock and 1328.50 AM for hard rock the quantity has exceeded by more than 30% of the contract quantity and as per



clause -31 once the quantity exceeded by more than 30 the same is required to be paid at mutually agreed rates. It is the say of the plaintiff as per Clause -32 and the quantity of item No.3 is provided in the tender and executed works out to 523 AM+30%=679.90 AM. Whereas the quantity executed is 787.30 CM. Similarly for item No.4 the quantity provided is 113 AM +30%= 146.90 AM. Whereas the quantity executed is 1328.50 AM. Hence the plaintiff says that he is entitled for revised rates. Now looking to the Ex. 123 page 184 the defendant's final bill rates have not been revised. The plaintiff have demanded the rates of Rs. 57/- per AM. for soft rock by his letter dated 15.2.90 Ex.83 and by letter dated 26.12.89 Ex. 90 Rs. 76/- for hard rock. The claimed for rates have not been denied nor the defendant have cancelled the order for executing the work and therefore in view of the judgment of Hon'ble Apex Court in civil appeal 206 of 1961 the plaintiff are entitled for their demanded rates. So far as the quantity is concerned there is no dispute by between the parties, the plaintiffs demands for item No.3 for soft rock at the rate of Rs.57/- for 786.60 AM which amount works out to Rs.44836.20 and for hard rock at the rate Rs.76/- for 1328.5 AM. which comes to Rs. 1,00,966/- the total amount payable comes to Rs. 1,45,802.20 against amount paid to plaintiff only Rs.57084.45 hence remaining amount unpaid comes to Rs.88717.75 the plaintiff is entitled for said amount from defendant.

The Ld. A. G.P. Mr. Haribhakti has forcefully argued on behalf of the defendant stating that the defendant in their written statement at Ex. 110 at page



14 have mentioned that the revised item rates shall not exceed the item rate quoted in tender subject to the formula for working out the revised rate as per G.B.dt.5/2/85. Now formula for the escalation is provided in tender agreement Ex. 121 page 31 & 32 and which has been deleted. Once the price adjustment formula is deleted the question of its applicability under any of the provision of contract does not survive and thereby the said part of the clause becomes redundant. I do not find force in the submission made by the Id. A.G.P. Mr. Haribhakti. Looking to the Clause 31 and 32. it is smple clear that. Clause 31 says regarding the excess quantity and clause 32 provides for extra items. It has been clearly provided that the rates for the extra items are to be mutually agreed and therefore the said clause it self are contradictory and there is an ambiguity. looking to the settled position of the law the ambiguity-ties if found then the Clause which are favouring to the non-drafter the plaintiff placed reliance on the principle of contra proferetum the extract of the same is provided from the book on building and engineering contract in India by Shri G.T. Gajria. Looking to the Clause 32 along with the settled position by the Apex Court the plaintiff are entitled for the claims of soil, soft and hard rock.”...

9.2 According to this Court, the learned trial Court has correctly assessed the amount to be paid to the plaintiff for excavating the extra work of hard and soft rocks on the ground that the State Government or its Officer did not mutually agreed to finalize the rate to pay the amount for work which is carried



out beyond additional 30% of the contractual work. Learned AGP Ms. Kinjal Vyas could not point out any other or different proposition of illegality in the aforesaid finding.

9.3 The second claim of doing extra work is bringing the soil from beyond the lead of 50 mtrs. The State Government did not seriously contest this issue. The written statement on the record rather accept that the State Government could not provide the borrow pit within vicinity of 50 mtrs as the forest department did not permit to cut the trees. It was also accepted by the State Government that the plaintiff could complete the work of borrow soil from far fetch area beyond 50 mtrs. The demand of Rs.23.98/- was not seriously objected by the State Government. The finding of the learned trial Court in regards to assessment of the compensation for this extra work is in para 14 of the impugned judgment which reads as under:

...“14) The plaintiffs have made a claim of Rs. 2,22,236.85 ps. for the work of embankment executed by bringing the soil beyond lead or 50 Mts. And for which the plaintiff says that looking to the terms and conditions of the contract agreement Schedule-B item No.5 Wherein it has been clearly provided that earth work is required to be carried out from the borrow pit and with the lead of 50 Mts. It is the say of the plaintiff that the earth was not available within the lead of 50Mts. And therefore the same was required to be brought from beyond 50 Mts to the said claim the plaintiff says that work was commenced from 28.7.88 and was to be completed on or before 27.6.89 the plaintiff had immediately in form the defendant by



his letter Dtd. 15.2.89 1.e.Ex.78 he gave the rate for different leads, The plaintiff vide Ex.83 and prior to completion of the work as on 15.2.89 have demanded rate of Rs.23.98 for the lead from 50 to 300 Mts. The defendant contention that the rate of Rs. 23.98 as claimed in the notice is not correct. The plaintiff had vide Ex. 103 submitted the rate analysis and even in the oral evidence the plaintiff has mentioned regarding the said rates. The documentary evidence and oral evidence has not been contravened. Looking to the provision of the contract Clause -32 the rate is required to be mutually agreed. The plaintiff has demanded the rate of Rs. 23.98 has not been denied for the plaintiff was directed not to proceed with the work. Plaintiff place reliance on un reported judgment in the case of Union of India vs. Khetra Mohan Benerjee by the Hon'ble Apex Court in Civil appeal No.206 of 1961. The Hon'ble Apex court has held that" An engineer could allow a contractor to do the entire work without rejecting his claim and after the entire work was done could dictate his own terms-we therefore hold that under the terms of clause 12 if the engineer did not refuse the claim within a reasonable time he must be deemed to have agreed to the claim made by the contractor"....

9.4 Hardly any reason appears to interdict aforesaid finding. Aptly, as stated supra, State Government did not seriously object to aforesaid claim.

9.5 As far as claim of security deposit is concerned, learned AGP Ms. Kinjal Vyas did not object. The finding in this regard



does found fit and true on the judicial scrutiny.

9.6 As far as other claims are concerned, it is the plaintiff who was compensated by extending the time period of completing the work and he has accepted the same without any protest, now, cannot come out with a say that work has been prolong due to the fault of the State Government, that too, after accepting the final bill without raising any protest and 16 months thereafter. There is absolute dirth of evidence in regards to overhead and overstay expenses. It was just a pleading. The plaintiff asked without proving it by way of evidence. The learned trial Court unnecessarily resorted to Section 23 and granted compensation. Simultaneously, grant of loss of profit on un-executed work does not seems to be a correct interpretation of law.

9.7 The plaintiff twice asked the extension and completed the work, cannot come forward to say that he suffered loss due to extended time period of work. The plaintiff in suit asked for the interest on certain amount. After adding the amount on interest in the principal amount, the learned trial Court granted Rs.55,300.27/- towards interest at 12% on the principal amount and then, while deciding the issue no.2, granted further interest of 15%. I do not approve such finding of the learned trial Court. It is the principal amount, upon which the plaintiff would be entitled to recover compensation.

9.8 In total, there are two claims upon which the plaintiff's suit could have been succeeded. One is extra work of breaking the hard and soft rocks and second is bringing the soil from beyond the embankment on lead of 50mtrs. Therefore, the plaintiff is



entitled to additional amount of compensation of Rs.3,03,259.30/- rounding up to Rs.3,03,260/-, (Rs.2,14,541.55/-the amount to be paid towards borrowing the soil outside the lead of 50mtrs + Rs.88,717/- to be paid towards doing extra work of excavating hard and soft rocks + Rs.5,500/- towards the refund of security deposit). In total, the plaintiff is required to be paid Rs.3,08,760/-.

10. The next question arises that whether a grant of 15% interest on the decretal amount is justified? The learned trial Court considered that it was a commercial transaction and that the department is charging 20% interest. Therefore, grant of 15% interest is justified. I find such finding totally unjustified and against the settled provision of law. It is true that its a commercial transaction, but at the same time, the Court has no authority to grant the interest beyond the contract's terms and conditions. In the present case, the terms and conditions of the contract is silent on granting interest on payment of extra work to be carried out by the contractor. In the aforesaid circumstances, this Court takes judicial notice of interest rate in a banking transaction at relevant-era and deem it fit to grant 8% yearly interest on the decretal amount.

11. The judgment relied upon by the learned Advocate Mr. Chirag Patel, on facts, are not assisting the case.

12. For the foregoing reasons, the present appeal is partly allowed. The impugned judgment and decree is modified to the extent that original plaintiff would be entitled to recover amount of Rs.3,08,760/- with 8% annual interest from the date of suit



till realization instead of amount decreed by the learned trial Court. No order as to cost. Decree to be drawn. If the State Government has deposited any amount pursuant to the judgment and decree under challenge, the same shall be refunded to the State Government with accrued interest after adjusting the aforesaid decretal amount. That amount which is decreed herein-above in favour of the plaintiff shall be paid to him with accrued interest. Record and proceeding to be sent back to the concerned Court forthwith.

PARMAR KRISH

sd/-
(J. C. DOSHI,J)