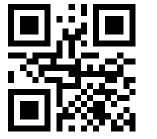


2021:KHC-D:10202

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 27TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

REGULAR FIRST APPEAL NO.100097 OF 2018

C/W

REGULAR FIRST APPEAL NO.100038 OF 2018

IN RFA NO.100097/2018:
BETWEEN:

UNIVERSITY OF AGRICULTURAL SCIENCES
R/BY ITS REGISTRAR,
KRISHI NAGAR, DHARWAD-580005.

... APPELLANT

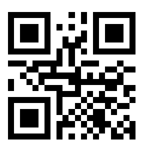
(BY SRI S.A. SANDOOR, ADVOCATE FOR SRI K.L. PATIL, ADVOCATE)

AND:

1. M/S SHANKAR CONSTRUCTION CO.
   BY PARTNER SRI SUNIL M. SHETTY,
   AGE: MAJOR (AGE NOT KNOWN),
   OCC: CONTRACTOR,
   R/O: SHREE BUILDING,
   POLICE HEAD CROSS,
   QUARTERS ROAD, DHARWAD-580007.

2. SHREE KEMPAYYA
   AGE: MAJOR, (AGE NOT KNOWN)
   OCC: ESTATE OFFICER,
   NOW WORKING AS
   EXECUTIVE ENGINEER,
   ESTATE BRANCH CVKV HEBBAL,
   BENGALURU-560024.

... RESPONDENTS



(BY SRI PRAKASH K. JAWALKAR, ADVOCATE FOR R1;
NOTICE SERVED TO R2 DISPENSED WITH)

THIS RFA IS FILED UNDER SECTION 96 OF CPC., PRAYING TO, SET ASIDE THE JUDGMENT AND DECREE PASSED BY THE 2ND ADDITIONAL SENIOR CIVIL JUDGE DHARWAD IN O.S.NO.211/1998 DATED 30.10.2017 IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,.

IN RFA NO.100038/2018:
BETWEEN:

M/S SHANKAR CONSTRUCTIN CO.
BY PARTNER SRI SUNIL M. SHETTY,
AGE: 50 YEARS, OCC: CONTRACTOR,
R/O: "SHREE BUILDING",
POLICE HEAD QUARTERS ROAD,
DHARWAD-580008.

… APPELLANT

(BY SRI PRAKASH K. JAWALKAR, ADVOCATE)

AND:

1 . UNIVERSITY OF AGRICULTURAL SCIENCES
R/BY ITS REGISTRAR,
KRISHI NAGAR, DHARWAD-580008.

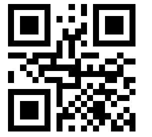
2 . SHREE KEMPAYYA
AGE: MAJOR, OCC: ESTATE OFFICER,
NOW WORKING AS EXECUTIVE ENGINEER,
ESTATE BRANCH, C V K V HEBBAL,
BENGALURU-01.

… RESPONDENTS

(BY SRI S.A. SANDOOR, ADVOCATE FOR SRI K.L. PATIL, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC., PRAYING TO, SET ASIDE THE JUDGMENT AND DECREE PASSED BY THE 2ND ADDITIONAL SENIOR CIVIL JUDGE DHARWAD IN O.S.NO.211/1998 BY PARTLY DECREEING THE SUIT OF THE PLAINTIFF BY ITS JUDGMENT AND DECREE DATED 30.10.2017 AND DECREE THE ENTIRE CLAIM OF THE PLAINTIFF/APPELLANT AS PRAYED FOR IN THE SUIT AND ETC.,.

THESE APPEALS ARE COMING ON PRONOUNCEMENT AND THE SAME HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10.03.2026, THIS DAY, **B. MURALIDHARA PAI J.,** DELIVERED THE FOLLOWING:



CORAM: THE HON'BLE MR. JUSTICE H.P.SANDESH
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CAV JUDGMENT

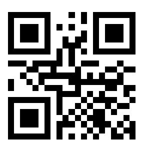
(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

Defendant No.1 namely University of Agricultural Sciences, and the Plaintiff namely M/s Shankar Construction Company in O.S. No.211/1998 have maintained these appeals, being aggrieved by the judgment and decree dated 30.10.2017 passed therein by learned II Additional Senior Civil Judge, Dharwad (hereinafter referred to as "Trial Court").

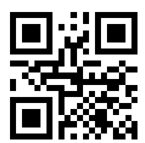
2. The parties to these appeals are hereinafter referred to by their respective rankings as arrayed before the Trial Court.

3. Brief facts leading to these appeals are as under:

i) In the year 1992, Defendant No.1 invited tenders for construction works at their four campuses including construction of Main Administrative Building in Dharwad Campus at the estimated cost of Rs.1,57,00,000/-. Defendant No.1 received two tenders, one from the plaintiff and another of Mr. Bhosle, in respect of the work in Dharwad Campus. The plaintiff was the lowest tenderer. After some deliberations, the plaintiff's tender

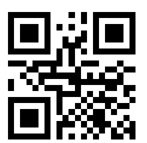


was accepted and work order was placed with them on 6.8.1992, to carry out the work at total value of Rs.1,94,89,161/-, to be completed within 24 months excluding rainy season. Pursuant to the same, the plaintiff executed an agreement with Defendant No.1 and commenced the work. Subsequently, Defendant No.1 rescinded the contract on 22.09.1994 by citing various reasons including stoppage of construction work and that the plaintiff has no intention of honouring the agreed terms of the contract. The plaintiff challenged the said action of Defendant No.1 before this Court in W.P. No.30585/1994. The said writ petition came to be dismissed on 25.01.1995 with an observation that "… Whether there has been any breach of the contract on the part of the petitioner or the respondents or at what stage the breach occurred and in what terms; whether the appendix formed part of the contract or not particularly in the light of the correspondence between the parties, are all matters which cannot be decided in this Court. …" and that the appropriate course for the plaintiff is to work out his remedies in the civil court in that regard.



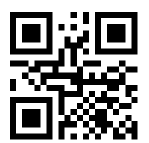
ii) Afterwards, the plaintiff maintained the suit in O.S. No.211/1998 on 19.09.1997, seeking relief of – (i) declaration that the determination of contract on 22.9.1994 is illegal, null and void; (ii) direction to the defendants to pay a sum of Rs.42,22,105 to the plaintiff; (iii) interest at the rate of 18.5% from the date of suit till the date of realisation; and for court cost and other reliefs as the court deems fit, in the circumstances of the case.

iii) The case of the plaintiff is that they agreed to undertake construction work with a specific understanding and agreement that the cost of the materials if increased are to be reimbursed by the defendants and that they commenced the work only on the defendants agreeing to their such terms and conditions. The plaintiff alleges that the defendants did not keep up their words and did not act as promised by them in spite of several oral and written requests of the plaintiffs. It is further alleged that because of inaction of the defendants, the plaintiff suffered financially and progress of the work hampered. It is contended that immediately after acceptance of tender, there was abnormal increase in the price of the steel and cement and in spite of repeated request, and the defendants did not place



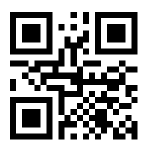
the request of the plaintiff before the Board of Regents for suitable decision and till date no decision has been taken by the defendants in that behalf. It is contended that after vehement protest, finally a meeting was held in the office of Defendant No.1 on 25.07.1994, wherein the commitment of the University to the conditions of the contract, clauses of agreement, appendix to the agreement etc. were considered and thereafter it was decided that the demand of the plaintiff was to be placed before the ensuing Board Meeting in view of urgency and time factor involved. Even then, the matter was not placed before the Board of Regents and no decision was taken by the said Board till rescinding of the contract. In this background, the plaintiff maintained the suit claiming his right to recover escalation amount, difference in cost of cement, encashed bank guarantee amount, profit out of balance work and cost of materials in the site at the time of stoppage of work together with interest thereon apart from the relief of declaration.

iv) Initially the plaintiff had maintained the suit against University of Agricultural Sciences and one Sri Kempayya, the Estate Officer. The suit against Sri Kempayya, i.e, Defendant No.2, came to be dismissed on 27.01.2001 as the plaintiff failed



to take necessary steps for service of summons on him. In the said circumstances, the suit was continued only against Defendant No.1 i.e., University of Agricultural Sciences.

v) On service of summons, Defendant No.1 appeared before the Trial Court through their counsel and contested the suit by filing their written statement. According to them the plaintiff did not perform the contract in full as per the agreed terms and conditions. They contended that the plaintiff tried to impose the conditions not agreed to between the parties and that the plaintiff tried to incorporate conditions beyond the scope of the contract to his own advantage and to the detriment of the University. They alleged that when the plaintiff was not successful, adopted unwarranted delaying tactics and ultimately illegally stopped the work and even started moving materials from the site. They submitted that the University was compelled to terminate the contract as the plaintiff committed breach of the contract. They also contended that they have paid all the running bills of the plaintiff to a tune of Rs.86,00,000/- and justified the termination of contract with the plaintiff.



vi) Based on the pleadings of the parties and the documents available on record, the Trial Court framed the following issues:

1. Whether the plaintiff proves that it is a registered partnership firm?

2. Whether the plaintiff proves that the validity of the tender dated 10.4.1992 was extended by plaintiff as per advise of defendant Nos. 1 and 2?

3. Whether the plaintiff proves that the defendants have agreed to escalation of prices of cement, steel and pay the other building materials during the construction period as per terms?

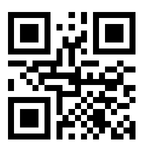
4. Whether the Plaintiff proves that the progress of the construction work was hampered because of the in action of Defendants and thereby progress of the work was hampered and he was put to loss?

5. Whether the Plaintiff proves that, because of the in action of the defendants and at their request the work was slowed down?

6. Whether the Plaintiff proves that, the defendants have illegally rescinded the contract on 22.9.1994?

7. Whether the Plaintiff proves that, the imposition of penalty by the Defendants affected the progress of the work of the was illegal and that had adversely affected the progress of the work of the Plaintiff?

8. Whether the Plaintiff proves that, Defendants did not allow him to take his belongings and building materials from the



construction spot and has not taken measurements of the works undertaken by Plaintiff and thereby did not settle the accounts as alleged?

9. Whether Plaintiff proves that he has completed 80% of the construction work and he is entitled to recover thereon the accounts to be recovered by him?

10. Whether the Plaintiff is entitled to price escalation and interest of Rs.9,67,546-22 Ps. from Defendants?

11. Whether Defendant proves that they are not liable to pay escalation charges for the completion of work beyond 2 years as per clause 44 of contract?

12. Whether Plaintiff is entitled to claim Rs.1,39,456/- as pleaded in Schedule 'B' of the plaint?

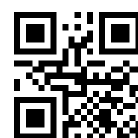
13. Whether Defendants prove that Plaintiff created deadlock in the matter and hence they could not take early decision?

14. Whether Defendant proves that they have supplied building materials to them after 4.8.1992 and hence they are not liable to pay difference in materials?

15. Whether Plaintiff proves that defendants encashed bank guarantee illegally and high handedly?

16. Whether Defendants prove that they are liable to recover a sum of Rs.24.18 lakhs from Plaintiff?

17. Whether Defendants prove that Plaintiff committed illegal breach of contract and thereby caused loss to Defendants?



18. Whether the Defendants prove that the Plaintiff caused loss to defendants to the tune of Rs.94,10,437/-?

19. Whether the Plaintiff proves that he is entitled to recover a sum of Rs.42,22,105.00 Ps. from Defendants?

20. Whether the suit is barred by limitation?

21. Whether the Plaintiff is entitled for the relief of declaration as prayed for?

22. What order or decree?

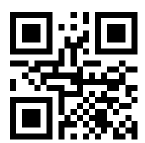
vii) In support of their case, the plaintiff examined three witnesses including its partner as PW-1 and got marked documents at Ex.P1 to P42. On behalf of Defendant No.1, its Estate Officer was examined as DW-1 and got marked at Exs.D1 to D45.

viii) Subsequently, the trial Court heard the arguments of both sides, considered the materials on record and proceeded to decree the suit in part with cost of Rs.10,000/- and directed Defendant No.1 to pay a sum of Rs.85,000/- to the plaintiff together with interest at the rate of 6% p.a. from 15.03.1994 to 31.03.1997 and interest at the rate of 8% p.a. on the said amount of Rupees 85,000/- from the date of filing of this suit till its realization, within one month from the date of the order.

Being dissatisfied with the impugned judgment and decree, both the plaintiff and Defendant No.1 have preferred these appeals.

4. Sri Prakash K. Jawalkar, learned Counsel for Plaintiff submitted that the crux of the dispute is whether the plaintiff entitled to claim escalation of prices of cement, steel and other building materials during the construction period as per terms agreed between the parties and whether Defendant No.1 justified in rescinding the contract. He vehemently submitted that the plaintiff had agreed to undertake construction work and commenced the work only on the defendants agreeing to pay cost of the materials if increased and as such Defendant No.1 is liable to reimburse the plaintiff in terms of such understanding. He contended that the delay in the work was on account of inaction on the part of Defendant No.1 and that the plaintiffs have not committed breach of contract as alleged by the defendants. He further contended that the trial Court has failed to properly appreciate the contentions of the parties and the evidence placed on record and thereby arrived at wrong conclusion.

5. Per contra, Sri K.L. Patil, learned Counsel for Defendant No.1, vigorously submitted that the plaintiff had



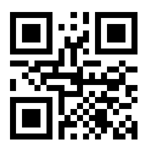
quoted low rates in the tender so as to appear that he was lowest tenderer and it was a deceitful attempt. He submitted that as per Clause 44, the plaintiff was not entitled to claim escalation of prices and as such, the claim of the plaintiff is not permissible. He contended that the plaintiff was not at all ready and willing to perform their part of contract and complete the construction work within stipulated time, on account of which the contract was terminated. He contended that in the facts and circumstances of the case, the plaintiff was not entitled for any relief and that the trial Court committed error in decreeing the suit in part.

6. Having heard the arguments addressed by both counsels and on considering the materials available on record, the following points arise for the consideration of this Court:

1) Whether Defendant No.1 had agreed for escalation of prices as contended by the plaintiff?

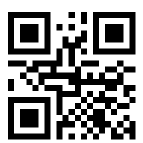
2) Whether the trial court committed error in properly appreciating the contentions of the parties and the evidence placed on record in support of their case?

7. Before proceeding further, it would be appropriate to refer to the Order dated 25.01.1995 passed in



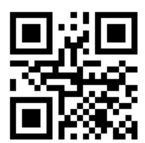
W.P.No.30585/1994 produced at Ex.P3. It was a proceeding initiated by the plaintiff being aggrieved by rescission of the contract. In the said proceeding, the plaintiff had sought to declare the action of Defendant No.1 in rescinding the contract as illegal, without jurisdiction, void and non-est and unenforceable in law. The writ petition came to be dismissed with following observations:

> "6. Although lengthy arguments have been addressed before this Court, the matter confines itself to a narrow compass. The question for consideration is whether, as contended for the petitioner, the doctrine of promissory estoppel is attracted to the present case or not. In GODFREY PHILIPS INDIA's case, the Supreme Court examined the whole gamut of the doctrine. It was explained that this principle is evolved in the administrative law and is styled as promissory estoppel but it is neither in the realm of contract nor in the realm of estoppel. The basis of the doctrine is one based on equity true to its form stepped into mitigate the rigours of strict law. The requirements for application of the said principle is that (1) where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect the relationship arising in future; (2) knowing or intending that it would be acted upon by the other party to whom the promise or representation is made; (3) it is in fact acted upon by another party; (4) the promise or the representation will be binding on the party making it and he will not be entitled to go back or turn upon it. Now, I have to examine whether the claim made by the petitioner in this case is one that falls within the scope of this principle. Learned counsel for the petitioner principally based his arguments on the



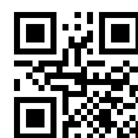
construction of the letters dated 8.8.1992 and 2.2.1994 in the context of his letter sent on 18.7.1992. When the respondents sent a letter on 17.7.1992 stating that the request or the conditions mentioned in the letters of the petitioner dated 9.4.1992, 19.5.1992 and 15.7.1992 cannot be considered as there is no provision in the conditions of the tender, the petitioner wrote a letter the very next day to indicate that, in the event the same is not acceptable, the respondents should refund the earnest money deposit made by him at the earliest. While the petitioner is categorical in stating that he is not interested in continuing the contract in the event of the respondents not accepting or considering the request made by him or the conditions offered by him, the respondents are not so categorical. On the other hand, they are equivocal in their statements. What they state is that, so far as the hike in cement is concerned, they accept the same in principle and would pay the same. But so far as the escalation in regard to other items mentioned in the appendix, it will be confirmed to him after obtaining the approval of the Board of Regents. The same position is reiterated two years later also in their letter dated 2.2.1994. If this is the state of affairs, can it be laid that there is an unequivocal, clear and unambiguous act on the part of the respondents to accept the offer made by the petitioner as to the conditions mentioned the appendix? The answer is obvious. It cannot be said that there has been an unequivocal promise on the part of the respondents to accept the same. All that is stated is that the matter would be placed before the Board of Regents and thereafter decision will be taken. The decision being taken either then or later was all that promise was made. Therefore, the question of the petitioner having been given any promise in that regard may not be well founded. (emphasis supplied)".

8. The aforesaid extract unequivocally records a definitive finding by the learned Single Judge of this Court that



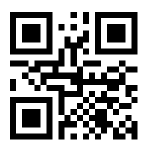
Defendant No.1 had not accepted the plaintiff's requests for price escalation or adjustment, as advanced through multiple letters, correspondences, or the appendix to the agreement. Consequently, the writ petition challenging Defendant No.1's rescission of the contract was dismissed vide Order dated 25.01.1995. The plaintiff neither preferred an appeal nor otherwise assailed this order, which thus attained finality and remains binding upon them. In light thereof, the plaintiff is precluded from seeking a declaration that the contract's determination on 22.09.1994 was either illegal or null and void.

9. The other relief sought by the plaintiff against Defendant No.1 is for recovery of Rs.42,22,105/- together with interest at 18.5% from the date of suit till its realization. The plaintiff quantified the amount under the heads of (i) escalation amount with interest, (ii) difference in cost of cement with interest, (iii) enchased bank guarantee amount with interest, (iv) profit out of balance work with interest, and (v) difference amount payable towards cost of materials at the site after deducting balance amount payable towards secured advance amount.



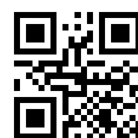
10. In W.P.No.30585/1994 it is unambiguously held that there was no promise on the side of Defendant No.1 to pay escalation price of steel and other materials except the price of cement. Added to the above, it is the definite case of the plaintiff that from the date of their first request letter dated 09.04.1992 till date, Defendant No.1 did not take any action to place it before Board of Regents for a decision on such request. Thereby, it becomes clear that the University or the tender accepting authority had not agreed for modification of the clauses relating to price adjustment/escalation as requested by the plaintiff. In view of the same, it is to be held that the plaintiff was not entitled to claim price escalation in respect of steel and other materials from Defendant No.1.

11. Even otherwise, the claim of price escalation and interest thereon needs to be considered in the light of the terms of the contract. Admittedly, the plaintiff submitted the tender subject to conditions of the contract produced at Ex.D2. Clause 44 of the contract relates to change in costs and price adjustment. The said clause makes it clear that it is applicable only to contracts where the stipulated period of completion of the work is more than two years. Clause 44 further makes it



clear that the price adjustment shall not be applicable on the value of work carried out during the initial 12 months of the contract period. In this case, the tender of the plaintiff was accepted on 06.08.1992 and the work order was issued to them on the same date subject to their executing an agreement. Pursuant to it, the plaintiff executed an agreement on 06.08.1992 itself. Thereby, it becomes clear that as per Clause 44, the plaintiff was not entitled to seek for price adjustment during initial 12 months from 06.08.1992.

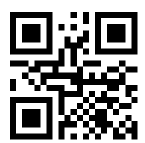
12. The case put forth by the plaintiff and the documents available on record including the request letter/ representation dated 09.04.1992 of the plaintiff clearly indicate that the plaintiff was fully aware of the condition in Clause 44, at the time of submitting their tender and in the said circumstances, they had submitted their tender along with the letter dated 09.04.1992, requesting the defendants to modify such condition and allow the price adjustment from the date of commencement of the contract work. In view thereof, the burden squarely lies upon the plaintiff to establish that the defendants had agreed for price adjustment or escalation from



the date of commencement of the contract works, a burden which they have wholly failed to discharge.

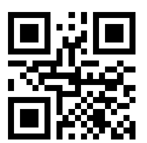
13. It is contended that in 1992, when the plaintiff sought to withdraw his tender, the defendants induced him to proceed by assuring payment of escalation charges for steel, cement, and other materials, enabling completion of the construction works within the stipulated two-year period and thereafter the defendants did not act as per their words. The materials on record do not support the above contention of the plaintiff. It is because the document at Ex.D4, the letter dated 17.07.1992 addressed by the Estate Officer to the plaintiff, contains information about rejection of the request in an unambiguous terms that "… the requests/conditions mentioned in your letter dated 09.04.1992, 19.05.1992 and 15.07.1992 cannot be considered as there is no provision in the conditions of tender, …". Thereafter, the plaintiff executed the work agreement marked at Ex.D5 on 06.08.1992, undertaking to execute the work in accordance with the conditions and stipulation of the tender.

14. Undisputedly, the plaintiff had enclosed an appendix to the agreement incorporating certain conditions like provision



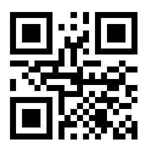
for escalation of prices of the materials based on the prices prevailing at the time of opening the tender. It is not the case of the plaintiff that the defendants had agreed for such escalation as on the date of agreement. For aforesaid reasons, it is held that the trial court justified in holding that the plaintiff was disentitled to claim escalation, price adjustment, or consequent payment thereunder.

15. Undisputedly, the plaintiff was required to complete the tender work within a period of 24 months from the date of work order excluding the rainy season. The work order was issued on 06.08.1992 and the said contract was terminated on 22.09.1994. It is the definite case of Defendant No.1 that the plaintiff had no intention to complete the work by the stipulated time i.e., 31.03.1995 and they had practically stopped the work by 11.06.1994. It is further contended by Defendant No.1 that the progress assessment as on 21.09.1994 revealed the financial performance of the plaintiff was 46% during the period of about 18 months and balance 54% was required to be completed within a span of about six months. On the other hand, the case of the plaintiff is that during the meeting held on 25.07.1994 they had expressed their inability to carry on the



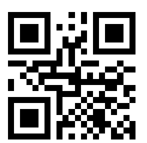
work if the escalation price is not paid to them as per their appendix and at that time, the committee had requested them to slow down the work. It is further case of the plaintiff that from September 1994 they were constrained to stop their work on account of rescind of the contract. In the averments of the plaint, it is contended that the plaintiff had completed 80% of the work and 20% of the work was remaining. But, according to PW-2 Sri Rajkumar Bilgi, the Engineer working with the plaintiff stated that when the work was stopped, they had completed only 70% of the work assigned to them. It is to be noted that the plaintiff has not adduced any reliable evidence to show the extent of the work turned out by them as on the date of termination of contract or that there was any instruction from the side of the defendants to slow down the work. In fact, the documents available on record indicate otherwise.

16. It is the definite case of Defendant No.1 that University was hard pressed for accommodation and anxious to get the main administrative building completed as early as possible. The plaintiff adopted tricky and misleading approach by quoting low rates in tender forms and then started claiming higher rates to suit his own convenience though he was not



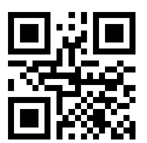
entitled to make such claim. They stated that under the circumstances, they could not straight away rejected the tender of the plaintiff, invited the plaintiff for discussion to resolve the issue and agreed to give difference in cost of cement only. The materials on record probabilise the above contention of Defendant No.1. The tender notice contains a specific clause that "Conditional tenders will not be accepted". In spite of the same, the plaintiff chose to submit their tender on 10.4.1992 along with a letter dated 09.04.1992 containing conditions styled as request. Even thereafter, the plaintiff kept on putting forth such conditions regularly in spite of clear indication on the side of Defendant No.1 that such requests are not permissible. Thus, there are sufficient materials on record to establish that the failure on the part of the plaintiff to adhere to the terms of contract and breach committed by them, forced Defendant No.1 to rescind the contract, which is perfectly justified in the facts and circumstances of the case.

17. The action on the part of Defendant No.1 of encashing the bank guarantee offered by the plaintiff is in terms of the contract. Defendant No.1 has proved their contention about breach of contract committed by the plaintiff as well as



encashment of the bank guarantee offered by the plaintiff towards their dues. Similarly, the question of the plaintiff claiming compensation or damages towards anticipated profit would arise when they succeed in proving breach of contract on the side of Defendant No.1. The plaintiff has also claimed certain amount from Defendant No.1 under the head of cost of the materials in the site. Admittedly, while rescinding the contract, Defendant No.1 had requested the Plaintiff to attend the closing measurements vide letter dated 22.09.1994 marked at Ex.P1. The Plaintiff has not produced any letter or reply sent to Defendant No.1 in response to Ex.P1, particularly giving details of their materials left at the site or calling upon Defendant No.1 to allow for its removal. Therefore, it is held that the trial court has rightly rejected the claim of the plaintiff under these heads.

18. The plaintiff has claimed a sum of Rs.85,000/- from Defendant No.1 under the head of difference in cost of cement. Admittedly, Defendant No.1 agreed to pay escalation of cement price and claimed that as per resolution dated 21.8.1993 they have paid a sum of Rs.1,41,476/- to the plaintiff towards difference in cost of cement through RA Bill No.12 and subsequently they have supplied required cement to the

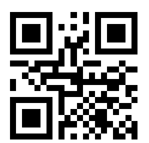


plaintiff. In support of this contention, Defendant No.1 has produced concerned bill at Ex.D39. The said bill pertains to cement consumed from 07.09.1992 to 13.06.1993. Even the plaintiff admits Defendant No.1 having paid a sum of Rs.1,40,000/- towards cost of cement. However, the plaintiff has not come up with the details or basis on which they are claiming a sum of Rs.2,25,000/- towards difference in cost of cement. The reasons assigned by the trial court indicate that it accepted the claim of the plaintiff mainly on the ground that before or after rescinding the contract vide letter dated 22.09.1994, no final settlement of account has taken place. The said reasoning of the trial court cannot be accepted. It is because, the initial burden is on the plaintiff to prove the dues on the part of Defendant No.1 towards difference in cost of the cement. The plaintiff has not placed any reliable evidence on record to support their contention. Further, it is the specific case of Defendant No.1 that they have paid difference in cost of the cement much before termination of contract through RA Bill No.12. The materials on record go to show that thereafter they have made payments to the plaintiff through few more bills i.e, RA Bill Nos.13 to 18. In the above circumstances, this Court

holds that the trial court has committed an error in holding that Defendant No.1 was still due a sum of Rs.85,000/- to the plaintiff towards difference in cost of the cement.

19. Learned Counsel for the Plaintiff has placed reliance on M/s J.G.Engineers Pvt. Ltd. Vs Union of India and another [Civil Appeal No.3349 of 2005, DD 28.4.2011] rendered by Hon'ble Apex Court to contend that Defendant No. 1 lacked authority to unilaterally adjudicate the alleged breach and rescind the contract. As pointed earlier, this Court has already upheld the legality of the rescission vide Order dated 25.01.1995 passed in W.P. No.30585/1994. Further, competent civil court has adjudicated the dispute relating to the claim arising out of such rescission. As such, it is held the cited decision is, therefore, inapposite and affords no assistance to the plaintiff's case.

20. Learned Counsel for the Plaintiff has relied on one more decision in M/s A.T. Brij Paul Singh and others Vs State of Gujarat reported in (1984) 4 SCC 59 and contended that where in a works contract, the party entrusting the work commits breach of the contract, the contractor would be entitled to claim damages for loss of profit which he expected to earn by



undertaking the works contract. In the present case, the materials on record clearly establish breach of the contract by the contractor i.e, the plaintiff and as such there is no question of the plaintiff claiming damages for loss of profit from Defendant No.1. It may be relevant to note that in Puran Lal Sah Vs The State of UP, reported in AIR 1971 SC 712, Hon'ble Apex Court has held that where work is done under a contract pursuant to the terms thereof, remedy by way of quantum meruit is not available to the party who breaks the contract even though he may have partially performed part of his obligation. For the foregoing reasons, Point No.(i) is answered in the negative and Point No.(ii) is answered partly in the affirmative.

21. In the result, this Court proceeds to pass the following :

ORDER

i) The appeal in RFA No.100097/2018 is allowed and the appeal in RFA No.100038/2018 is dismissed.

ii) In the facts and circumstances of the case, the parties are directed to bear their respective cost.

iii) Consequently, the judgment and decree dated 30.10.2017 passed in O.S. No.211/1998 by learned II Additional Senior Civil Judge, Dharwad is set aside and suit is dismissed in entirety.

iv) Draw a decree accordingly.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B. MURALIDHARA PAI)
JUDGE

YAN/RKM
Ct-CMU