IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 467 OF 2025

BETWEEN:

M/S. MVJ COLLEGE OF ENGINEERING
VENKATESHA EDUCATION TRUST
HAVING ITS OFFICE AT CHENNASANDRA
MAIN ROAD, NEAR ITBP
WHITEFIELD, KADUGODI /
BENGALURU - 560 067
REPRESENTED HEREIN BY ITS CHAIRMAN
MR. M.J. BALACHANDER

…APPELLANT

(BY SMT. MANASI KUMAR, ADVOCATE)

AND:

M/S. LIVING WATEREFINE
TECHNOLOGIES PVT. LTD.
A COMPANY HAVING ITS REGISTERED
OFFICE AT 9/1, DHANAKOTTI RAJA STREET
EKKADUTHANGAL
CHENNAI - 600 032, INDIA

AND
CORPORATE OFFICE AT
#47, 1ST FLOOR
NORTH UNIT, EVERGREEN LAYOUT
KOTHANUR, BENGALURU - 560 077
REPRESENTED HEREIN BY ITS
AUTHORISED REPRESENTATIVE

…RESPONDENT

(BY SRI C.K. DHARANEESWARAN, ADVOCATE)

Digitally signed by YASHAVANT NARAYANKAR
YASHAVANT NARAYANKAR
Date: 2026.06.15 17:20:01 +0530

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1-A) OF THE COMMERCIAL COURTS ACT, 2015, READ WITH ORDER 41 RULE 1 OF THE CODE OF CIVIL PROCEDURE, 1908 PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 25.06.2025, PASSED BY THE LXXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BANGALORE (CCH 87) IN COM. OS. NO. 25013/2019 & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

1. The present appeal is filed under Section 13(1A) of the Commercial Courts Act, 2015, [**CC Act**] read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 [**CPC**] by the defendant impugning the judgment and decree dated 25.06.2025 passed in Com.OS No.25013/2019 by the LXXXVI Additional City Civil and Sessions Judge, Bengaluru (CCH87) [**Commercial Court**], whereunder the suit filed by the respondent/plaintiff has been decreed by the Commercial Court. The operative part of the same reads as under:

> "The suit is hereby decreed with costs as follows:
>
> 1. The defendant do pay a sum of ₹8,43,402/- to the plaintiff along with interest at the rate of 18% p.a. from 06.09.2017 until the actual payment is made.
>
> 2. The defendant to pay a sum of ₹8,82,050/- to the plaintiff along with interest at the rate of 18% p.a. from 21.09.2018 until the actual payment is made.
>
> 3. The defendant shall pay cost of the suit to the plaintiff.
>
> 4. The counter claim of the defendant is hereby dismissed."

2. The parties would be referred to as per their rank before the Commercial court for the sake of convenience.

Background facts:

3. It is the case of the plaintiff that on the request of the defendant for refurbishing non operational Sewage Treatment Plant [**STP**], the plaintiff provided a quotation on 14.06.2017 quoting the final offer of its price for refurbishment of the existing STP. In addition, the plaintiff also gave a quotation for Operation and Maintenance [**O&M**] of the said refurbished STP. Apart from the refurbishment of the existing STP and carrying out O&M works for the said refurbished STP, all other works including the civil works were required to be carried out by the defendant. Accordingly, the defendant issued purchase order on 15.06.2017. The cost of the

refurbishment of the STP was agreed as ₹29,98,900/- (Rupees Twenty Nine Lakhs Ninety Eight Thousand Nine Hundred) and applicable Goods and Service Tax [**GST**]. Accordingly, the plaintiff supplied the materials from 01.07.2017 to 25.09.2017, which was acknowledged by the defendant. After refurbishing the STP and making the same into a working condition, the plaintiff raised two invoices dated 16.08.2017 one for a sum of ₹24,58,207/- (Rupees Twenty Four Lakhs Fifty Eight Thousand Two Hundred and Seven) and another invoice i.e., an invoice dated 16.08.2017 for a sum of ₹6,94,973/- (Rupees Six Lakhs Ninety Four Thousand Nine Hundred and Seventy Three). Hence, the plaintiff demanded payment of a total sum of ₹31,53,180/- (Rupees Thirty One Lakhs Fifty Three Thousand and One hundred Eighty) (including GST) from the defendant. That the STP, in a working condition, was handed over by the plaintiff to the defendant.

4. It is the further case of the plaintiff that on 15.06.2017 and 06.09.2017 the defendant made part payment of ₹23,09,778/- (Rupees Twenty Three Lakhs Nine Thousand Seven Hundred and Seventy Eight). That it had supplied, installed/erected and commissioned the refurbished STP project site of the defendant, which process was completed on 31.10.2017. That after

commissioning the refurbished STP, they carried out O&M works as agreed between the parties and raised 6 invoices, the details of which are as under:

Invoice date	Period of O&M	Amount in ₹
21.09.2017	July 17 to Oct.17	2,71,400/-
01.03.2018	Nov.17 to Feb.18	2,71,400/-
01.03.2018	Mar. 18	67,850/-
03.05.2018	Apr.18	67,850/-
02.08.2018	May.18 & June.18	1,35,700/-
16.08.2018	July.18	67,850/-
		8,82,050/-

5. It is the case of the plaintiff that the defendant failed to pay the said amount. Hence, the plaintiff filed the suit and claimed the following amounts:

> "Thus the Plaintiff are entitled for the following sums from the defendant towards the balance amount and interest due and cost as follows
>
> | | |
> |---|---|
> | Principal amount due as per the tax invoices for supply of materials for refurbishing STP | ₹8,43,402/- |
> | Interest at 18% p.a. on the principal from 06.09.2017 to 05.11.2018 | ₹1,77,114/- |
> | Principal amount due as per invoice for O&M | ₹8,82,050/- |
> | Interest at 18% p.a., on the principal from 21.09.2018 to 05.11.2018 | ₹1,78,615/- |
> | Total amount due and payable by the Defendant | ₹20,81,181/-" |

6. The defendant entered appearance in the suit and filed a written statement denying the case of the plaintiff. It was contended by the defendant that an STP was established in the premises of the defendant in the year 2005 itself. The refurbishment of the said STP was sought to be done and accordingly, the price was quoted by the plaintiff, after inspecting the STP, was a sum of ₹29,98,900/- + GST (vide e-mail dated 14.06.2017). That the plaintiff also gave a quotation for O&M of the said STP. Accordingly, the defendant issued a purchase order dated 15.06.2017, in which 16 items were identified with their respective unit price and quantity for the agreed total value of ₹29,98,900/-. The defendant had also paid the plaintiff an advance of ₹14,69,461/-.

7. It is the case of the defendant that there was an inordinate delay in the completion of the project. That various correspondences were exchanged between the parties. A joint inspection was held by the plaintiff and the defendant in the presence of an observer on 27.01.2018. That despite various correspondences the plaintiff having failed to complete the necessary works, the defendant was constrained to engage the services of another concern entity to carryout the remaining

rectification works of the STP and the defendant incurred a further sum of ₹17,41,250/- (Rupees Seventeen Lakhs Forty One Thousand Two Hundred and Fifty) for the same. Accordingly, the defendant sought for dismissal of the suit as also made a counter claim for a sum of ₹21,74,468/- (Rupees Twenty One Lakhs Seventy Four Thousand Four Hundred and Sixty Eight) together with interest at 24% p.a.

8. The plaintiff filed its written statement denying the counter claim made by the defendant.

9. Consequent to the pleadings of the parties, the Commercial Court framed the following issues:

> "1. Whether the plaintiff proves that it has executed the work of supply, installation and commissioning of refurbishment of existing STP and also O & M as per the contract dated 15.06.2017?
>
> 2. Whether the defendant proves that the plaintiff has failed to perform its part of obligation as per contract dated 15.06.2017?
>
> 3. Whether the defendant proves that the deficit work of the plaintiff was got done by engaged the services of another agency and has incurred expenditure?
>
> 4. Whether the plaintiff is entitled to the claim of ₹20,81,181/- with current and future interest at the rate of 18% p.a?

5. Whether the defendant is entitled for the counter claim of ₹21,74,468/- with interest at the rate of 24% p.a?

6. What order or decree?"

10. The CEO of the plaintiff was examined as PW.1. Exs.P1 to P32 were marked in evidence. The defendant examined its Associate Professor as DW.1 and marked Exs.D1 to D24 in evidence. Its Chairman was examined as DW.2 and Exs.D25 to D35 were marked in evidence.

11. The Commercial Court, vide the impugned judgment and decree, decreed the suit and dismissed the counter claim. Being aggrieved, the present appeal is filed by the defendant impugning the decreeing of the suit as well as dismissal of the counter claim.

CONTENTIONS:

12. It is the contention of the learned counsel for the appellant/defendant that the Commercial Court erred in holding that the plaintiff had completed the work that was required to be done despite various material on record, which indicated to the contrary. Detailed references have been made to various documents (which have been marked as exhibits) as well as the oral evidence on record. It is also contended that rejection of the counter claim by

the Commercial Court is erroneous having regard to the fact that the defendant was constrained to hire another agency to complete installation of the STP and also for the maintenance of the same. It is contended that despite adequate material on record including the invoices raised by the agency engaged by the defendant to complete the works and the same having been produced and marked in evidence, the Commercial Court erred in rejecting the counter claim.

13. *Per contra,* the learned counsel for the respondent/plaintiff justifying the impugned judgment and decree contends that the Commercial Court on a proper appreciation of the oral and documentary evidence on record has rightly decreed the suit of the plaintiff and dismissed the counter claim made by the defendant. It is further contended that the material on record (evidence - both oral and documentary) as well as the pleadings of the parties clearly indicate that the plaintiff had completed the work as entrusted by the defendant, both with regard to the refurbishment of the STP as well as carrying out the maintenance works and that the defendant had not paid the amounts due and payable to the plaintiff.

DISCUSSION AND REASONING:

14. The entrustment of the work of refurbishment of the STP and carrying out of O&M works for the said refurbished STP is admitted. In this regard, it is to be noted that the quotation dated 14.06.2017 (Ex.P1) of the plaintiff for the refurbishment of the STP was for ₹29,98,900/- + GST. Vide the said Ex.P1, the plaintiff also agreed to carry out the O&M works for a sum of ₹57,500/- per month including consumables excluding GST for the first year and that every year there would be an increase of 10%. It is further admitted that the plaintiff, contending that it had carried out the works of refurbishment had raised two invoices on 16.08.2017 for ₹24,58,207/- and ₹6,94,973/-. The defendant has made payments of ₹23,09,778/- and ₹8,43,400/-.

REGARDING CLAIM TOWARDS REFURBISHMENT WORKS:

15. It is pertinent to note that the purchase order dated 15.06.2017 (Ex.P3) was issued by the defendant to the plaintiff, whereunder the details of the items that were required to be supplied by the plaintiff to the defendant were set out. The terms and conditions of the purchase order clearly indicate that the civil

works of tank leakages, other civil works required, pit preparation and cover up were not within the scope of work of the plaintiff.

16. It is sought to be contended by the defendant that although the civil works were required to be carried on by it, the manner in which the same was required to be done, including the plan and the specifications for the same were required to be intimated by the plaintiff to the defendant and the defendant was required to carry out the civil works in terms of the said specifications to enable the plaintiff to complete the refurbishment of the STP.

17. The purchase order dated 15.06.2017 (Ex.P3) issued by the defendant to the plaintiff is undisputed whereunder sixteen items were required to be supplied by the plaintiff to the defendant for a total sum of ₹29,98,900/- + GST. It is admitted by DW1 in the cross examination that all the sixteen items have been supplied by the plaintiff.

18. It is the case of the plaintiff that despite the materials having been supplied, the refurbishment works have been carried out and the O&M works also having been carried out, since the defendant had not paid the amounts due and payable to the plaintiff for more than a year, it has stopped carrying on further works of the

defendant. However, it is the case of the defendant that since the plaintiff has abandoned the works entrusted to it, the defendant was required to engage the services of an another vendor (Bisineer Sales and Marketing) for the purpose of completing the work of refurbishment of the STP.

19. It is to be noted that vide the e-mail dated 14.06.2017, Ex.P1**,** the plaintiff has furnished the details to the defendant towards the refurbishment project as well as O&M. The details of the description in respect of the refurbishment as well as O&M have been sent as an attachment to the said e-mail dated 14.06.2017 (Ex.P1). A perusal of the same indicates that the final price for refurbishment quoted by the plaintiff was a sum of ₹29,98,900/- + GST. The payment terms towards refurbishment cost also was indicated that 50% was to be paid in advance, 40% on the supply of materials and 10% on erection and commission. It was also indicated that the electrical panel board, civil works of tank leakages, other civil works required, pit preparation and cover is not within the scope of the cost of refurbishment as quoted by the plaintiff. With regard to maintenance, the plaintiff had quoted a sum of ₹57,500/- per month which included consumables. It was further stated that every year there shall be increase of 10% per annum.

20. Vide e-mail dated 15.06.2017 (Ex.P2), the purchase order dated 15.06.2017 (Ex.P3) was sent which indicated that the defendant had accepted the quotation of the plaintiff including the scope of work and payment terms. The invoice dated 16.08.2017 (Ex.P4) and the other material on record indicates that the plaintiff had supplied the material as enumerated in the invoice. The total amount of the said invoice was ₹24,58,207/- There is an endorsement dated 23.08.2017 (part of Ex.P4) which indicates that the materials have been received at the site and the work is in progress. Another invoice dated 16.08.2017 (part of Ex.P4) indicates that the description of work mentioned in the said invoice is with regard to the design, repair and erection works. The total amount mentioned in the said invoice was ₹6,94,973/-. There is an endorsement made in the said invoice that materials have been received and work is in progress.

21. It is averred in the plaint that the plaintiff completed supply of material between on 01.07.2017 and 25.09.2017. It is also averred in the plaint that invoices dated 16.08.2017 (two numbers) for ₹24,58,207/- and ₹6,94,973/- i.e., a cumulative sum of ₹31,53,180/- have been raised. It is also averred that delivery challans numbers

20 and 21 dated 16.08.2017 have been issued along with the delivery of the complete materials.

22. Further, it is admitted by the parties that the defendant has made payments to the plaintiff on 15.06.2017 and 06.09.2017 in a total sum of ₹23,09,778/-.

23. Ex.P5 to Ex.P9 are delivery challans (five numbers) between the period 17.07.2017 and 26.10.2017 which indicates supply of certain materials. The inward register (Ex.D28 and Ex.D29) also indicates that on 07.02.2018 and 17.04.2018 respectively, certain materials was supplied by the plaintiff to the defendant.

24. Admittedly, the items detailed in the purchase order (Ex.P3) have been supplied by the plaintiff. The cumulative value of the said items is a sum of ₹29,98,900/- The said Ex.P3 also contains various works which were required to be carried out by the plaintiff. The defendant has not pointed out to any specific items/aspect in Ex.P3, that has not been done. It has merely averred in general that the STP was not working properly.

25. With regard to the completion of the refurbishment work, it is the admitted case of the parties that the plaintiff was required to

supply the requisite material and complete the refurbishment work of the STP. However, the civil works that were required to be done were not within the scope of work of the plaintiff and were required to be done by the defendant. The said aspect of the matter is clear and forthcoming from the quotation (Ex.P1) as well as the purchase order (Ex.P3) as also the invoice (Ex.P4).

26. It is contended by the defendant that the civil works that were required to be carried out by it were to be done as per the instructions of the plaintiff. However, neither the quotation nor the purchase order, nor the invoices indicate that the civil works were to be carried out by the defendant as per the requirement of the plaintiff. In this regard, reliance has been placed by the plaintiff on various e-mails.

27. E-mail dated 21.06.2017 (Ex.D7) indicates that the plaintiff had sent to the defendant the STP layout drawing and the details of the civil work required. Further, confirmation was sought with regard to the drawing. E-mail dated 29.06.2017 (part of Ex.D7), indicates that that the plaintiff had enclosed the STP layout drawing and civil works required as also the enclosed space required for placing the OGS. E-mail dated 04.07.2017 (part of Ex.D7) indicates

that the defendant had indicated that 'constructing additional LAUNDER FOR CLARIFIER is very difficulty in this stage' and 'available on the launder (one side) to be used'. E-mail dated 15.07.2017 (part of Ex.D7), indicates that the defendant had sought for certain details with regard to the 'FCT to clarifier tank sleeves' for completion of the civil works.

28. Reliance is placed by the defendant on the work schedule that was stated vide e-mail dated 02.08.2017 (Ex.D.33). The same indicates that the plaintiff had represented that the work would commence on 27.07.2017 and completed on 19.08.2017. The said work schedule also indicates the dates on which various items of work would be completed between the said period. Reliance is also placed by the defendant on e-mails dated 12.08.2017 and 17.08.2017 (Ex.D.5) to indicate that the defendant had repeatedly written to the plaintiff stating that the STP installation works were not happening as per the schedule.

29. The e-mail correspondence exchanged between the parties indicate that the plaintiff had sent the STP layout drawings and the civil works that were required to be done to the defendant. However, the defendant sought for various clarifications as to the

manner in which the said civil works were to be carried out. The plaintiff taking into consideration the clarification sought for by the defendant, once again sent the drawings.

30. Although there are various e-mails which indicate that the defendant had communicated to the plaintiff that the STP refurbishment works were not happening as per schedule, it is noted that a joint inspection carried out between the parties (Ex.D2). It is also noticed that an independent observer was present in the said joint inspection.

31. The minutes of the meeting of the joint inspection dated 27.01.2018 (Ex.D2) clearly indicate that although various issues have been pointed out by the defendant to demonstrate that the refurbished STP was not working properly, it is also forthcoming that the STP was functioning smoothly for 3 weeks prior to the said inspection. The same is forthcoming from the description made at Sl.No.3 of Ex.D2. Various other aspects stated at Sl.Nos.6 and 8 of Ex.D2 clearly indicate that there were certain aspects, which was a result of oversight of the plaintiff. However, the said issue appears to have been addressed by the plaintiff. In this regard, it is also pertinent to note that at Sl.No.5 of Ex.D2, the Independent

Observer, who was present at the joint inspection stipulated on tests to be carried out by taking samples and a report of the same was required to be provided by the plaintiff.

32. It is the contention of the plaintiff that the said test reports (Ex.P10) have been furnished by the plaintiff to the defendant vide e-mail dated 02.08.2018 (Ex.P11). The defendant seeks to assail the test reports by contending that the defendant was not aware as to when and from where the samples have been taken by the plaintiff and the expert who conducted the tests has not been examined so as to prove the test reports (Ex.P10) and hence, the reliance placed on the test reports by the Commercial Court is erroneous. In this context, it is pertinent to note that the Independent Observer in the joint inspection specifically stipulated the requirements of conducting the tests. It was not stipulated that the samples for the test were required to be taken by the plaintiff in the presence of the defendant/its representative. It is clear that pursuant to what was stated in the joint inspection which is forthcoming from the minutes of the meeting (Ex.D2), the plaintiff has got the requisite tests conducted and the test reports have been sent to the defendant vide the email dated 02.08.2018 (Ex.P11). The test reports were only for the purpose of

demonstrating/indicating that the STP was functioning. There is no response by the defendant to the test reports, consequent to the same having been sent to the defendant.

33. Although the defendant places reliance on the joint inspection report (Ex.D2) to contend that various aspects with regard to refurbishment of the STP have not been done, it is clearly forthcoming from the said joint inspection report itself that the STP is functioning in all respects. As noticed above, the joint inspection report merely points out to certain circumstances, which were avoidable. However, there is nothing in the said joint inspection report, which indicates that the works that had been entrusted to the plaintiff i.e., refurbishment of the STP, has not been done.

34. Reliance is placed by the plaintiff on the e-mail dated 06.06.2018 (Ex.D1) sent by the Managing Trustee of the defendant to the plaintiff wherein, it is specifically stated that the defendant will not pay any more money till the issues with regard to the installation are addressed. In the said e-mail, it is specifically stated that the defendant will forfeit the money payable to the plaintiff and legal action will have to be taken. Vide the said e-mail,

the defendant has also enclosed an STP performance report which has also been produced along with the Ex.D1.

35. It is to be noted that the payment terms indicated in the quotation (Ex.P1) by the plaintiff are that 50% was to be paid in advance, 40% upon the supply of materials and 10% on erection and commission. However, in the purchase order (Ex.P3) the payment terms mentioned by the defendant are that 50% advance, 40% on supply of materials, 5% on completion of work and retention of 5% which was to be released after six months.

36. Having regard to the terms of payment, admittedly 50% of the advance amount has been paid. 40% was required to be paid on the supply of materials. Admittedly, the materials have been supplied as is forthcoming from Ex. P4. With regard to the balance 10% in terms of the quotation, the same was to be paid on erection and commission. However, in terms of the purchase order (Ex. P3), 5% was to be paid on completion of work and 5% was to be released after six months. The work has been completed by the plaintiff, whilst the defendant contends that the installation has not been done properly. The joint inspection has been carried out as

already noticed above and six months have elapsed from the same.

37. Although, it is the vehement contention of the learned counsel for the defendant that the STP was not functioning properly, as noticed above, minutes of the joint inspection (Ex. D2) clearly indicate that the STP was functioning and the issues highlighted by the defendant have been addressed by the plaintiff. The test reports stipulated to be furnished by the independent observer has also been furnished by the plaintiff.

38. The Commercial Court while considering the claim of the plaintiff towards the balance cost of refurbishment has relied upon the test reports to come to a conclusion that the STP was working properly. It was further held that having regard to the test reports the onus shifted upon the defendant to demonstrate that the STP was not working properly, which has not been done.

39. Upon re-appreciation of the materials on record, as noticed above, the plaintiff has furnished the test reports as required by the independent observer. The Commercial Court was justified in holding that the defendant is liable to pay the balance amount towards the cost of refurbishment works.

40. It is to be noticed that the plaintiff had claimed a sum of ₹8,43,402/- towards the amount due with respect to the refurbishment of the STP together with interest at the rate of 18% per annum from 06.09.2017 to 05.11.2018.

41. It is the contention of the defendant with regard to the payment of the invoices raised by the plaintiff, that the defendant admittedly paid the plaintiff a sum of ₹14,69,461/- on 15.06.2017 and deposited TDS amount of ₹29,989/-. The defendant (at the first instance) had paid a total sum of [₹14,69,461 + ₹29,989] ₹14,99,450/-. The defendant made a further payment of ₹8,10,328/- on 06.09.2017 and deposited TDS of ₹16,587/-. The defendant (at the second instance) had made a total payment of ₹8,26,865/-. Accordingly, as against the total invoice amount of (₹24,58,207 + ₹6,94,973) ₹31,53,180/-, the defendant paid a total sum of (₹14,99,450 + ₹8,26,865) ₹23,26,315/-. Hence, the balance amount that has remained unpaid with regard to the claim for cost of refurbishment is of ₹8,26,865/-. However, the plaintiff had claimed a sum of ₹8,43,402/-, which has been decreed by the Commercial Court. In view of the same, the decree of the Commercial Court with respect to the claim made towards refurbishment is required to be modified accordingly.

REGARDING CLAIM TOWARDS O & M:

42. With regard to the O&M works claimed by the plaintiff, the plaintiff has produced the invoices, which are summarized as under:

a. Ex.P27 - invoice dated 01.03.2017 - O&M works for the period from November 2017 to February 2018 (four months);

b. Ex.P28 - dated 01.03.2017 - March 2018;

c. Ex.P29 - dated 21.09.2017 - July 2017 to October 2017;

d. Ex.P30 - dated 02.08.2018 - May and June 2018;

e. Ex.P31 - dated 03.05.2018 - April 2018; and

f. Ex.P32 - dated 16.08.2018 - July 2018.

43. It is the contention of the plaintiff that since the charges towards the O&M works, i.e., invoices - Exs.P27 to P32 were not paid, it stopped carrying out the O&M works.

44. It is the contention of the defendant that the invoices raised towards O&M works i.e., Ex.P27 to Ex.P32 were not produced by the plaintiff at the first instance; and was produced only after the matter was remanded to the Commercial Court. It is also contended that the plaintiff had never sent the said original invoices to the defendant and demanded the payments of the same. That

the original invoices (Ex.P27 to Ex.P32) were produced and marked for the first time before the Commercial Court after remand.

45. It is relevant to note that the plaintiff, vide Ex.P1, had given had given a quotation for carrying out O&M works, and subsequently, the purchase order (Ex.P3) was issued. The details of the said O&M were attached along with Ex.P1, wherein, it was stated that the charges towards one year per month i.e., ₹57,500/- including consumables with 10% increase every year. It is further pertinent to note that apart from the materials supplied vide the invoices dated 16.08.2017 (Ex.P4), various products have been delivered and materials have been supplied by the plaintiff to the defendant. It is forthcoming that delivery challans (three numbers) have been produced (Ex.D25 to D27-which are dated 06.09.2017, 20.10.2017 and 09.02.2018, respectively), which indicate supply of material, apart from the material supplied initially (vide Ex.P4). Further, the inward register (Ex.D28 and D29) also indicates material supplied on 07.02.2018 and 17.04.2018, respectively. The said materials have been supplied after the date of the initial supply of material vide Ex.P4.

46. In this regard the Commercial Court while adjudicating the claim of O&M works held as under:

> "20….. It is to be noted that Ex.P.10, quotation dated 23.08.2018 issued by another agency "Bisineer Sales and Marketing" for Rs.4,98,520/-. It is to be noted that from the date of refurbishment until July 2018, the plaintiff has operated and maintained the STP. 26 Com.OS.No.25013/2019 Only after the plaintiff abandoned the work, the defendant inevitably engaged the services of another agency i.e., "Bisineer Sales and Marketing". It is not in dispute that the plaintiff has raised invoices for Rs.8,82,050/- towards the operation and maintenance of the STP. The defendant has not disclosed that who actually maintained the STP from July 2017 to July 2018. Therefore, the only probable inference would be that the plaintiff has not only refurbished the STP but also operated and maintained the same from July 2017 to July 2018. Subsequent to the matter remanded by the Hon'ble High Court, the defendant has produced Ex.D.25 and D.29 to prove that the plaintiff has supplied certain spare parts during February 2018 and April 2018. The version of the defendant is that until April 2018 the refurbishment work was not completed. It is to be noted that the plaintiff has not only refurbished the STP but also maintained the same from July 2017 to July 2018. The articles found in the inward registers marked as Ex.P.28 and P.29 are the spare parts supplied towards maintenance of the STP. …"

(emphasis supplied)

47. The plaintiff vide the quotation (Ex.P1) indicated the cost of O&M works including consumables to be ₹57,500/- per month. After carrying out the refurbishment work there is material on record to indicate that various other materials were supplied by the plaintiff and delivered to the defendant. The Commercial Court considering the said material has recorded a finding that the same are towards maintenance of the STP.

48. Although it is the vehement contention of the learned counsel for the defendant that the invoices towards O & M works have not been sent by the defendant to the plaintiff and were produced for the first time in the suit after remand, it is clear and forthcoming from material on record that the plaintiff, after carrying out the refurbishment works, has continued to maintain the STP. Although the defendant has construed the same as the plaintiff continuing with the refurbishment works in view of the various alleged discrepancies pointed out by the defendant in the functioning of the STP, having regard to the admitted position that the plaintiff had sent a quotation (Ex.P1) indicating that maintenance works would be carried out, including consumables, at a cost of ₹57,500/- per month; having regard to the material on record that the various parts were delivered by the plaintiff to the defendant; the finding of

the Commercial Court holding that the defendant is liable to pay the claim of the plaintiff towards O&M work in the absence of the defendant producing any material on record to demonstrate as to who was maintaining the STP, cannot be stated to be erroneous, warranting interference by this Court in the present appeal.

REGARDING COUNTER CLAIM:

49. It is contended by the defendant that although the subsequent vendor [Bisineer] engaged by it had initially given a quotation for a sum of ₹17,41,250/- for carrying out the rectification works, the total bills submitted by the said vendor amounted to ₹21,74,468/-.

50. It is pertinent to note that the invoices raised by the said vendor have been produced as Exs.D16 to D24, which are of a cumulative value of ₹21,74,465/-. Further, the defendant has produced the bills for STP equipment and rectification works (Ex.D11 and D12) issued by the said subsequent vendor. The total amount mentioned in Ex.D11 and D12 is a sum of (₹4,98,520/- + ₹8,70,625/-) ₹13,69,145/-.

51. However, the defendant has not examined any representative of Bisineer to prove the incurring of the further expenses. The defendant has also not produced any material to demonstrate that the payments as indicated in the invoices (ExsD16 to D24) have been paid. In the absence of the same, the appellant has failed in demonstrating that the rejection of the counter claim by the Commercial Court is erroneous and liable to be interfered with.

REGARDING INTEREST

52. The Commercial Court while decreeing the suit had awarded interest at 18% in respect of the cost of refurbishment works of ₹8,43,402/- from 06.09.2018 till date of payment; as also interest at 18% per annum in respect of the O&M works of ₹8,82,050/- from 21.09.2018 till date of actual payment.

53. Although it is the contention of the learned counsel for the defendant that the rate of interest has not been agreed between the parties, the Commercial Court has noticed that the transaction between the parties was a commercial one and hence, awarded interest at 18% per annum.

54. The Commercial Court was also justified in awarding interest at 18% per annum as the transaction between the parties was a commercial one.

55. In view of the aforementioned, the appeal filed by the appellant-defendant is partly allowed with proportionate costs and the judgment and decree of the Commercial Court is modified to the limited extent of holding that the defendant is liable to pay the plaintiff a sum of ₹8,26,865/- instead the sum of ₹8,43,402/- (as indicated in para 1 of the operative portion of the impugned judgment). The rest of the judgment and decree of the Commercial Court remains unaltered and is affirmed.

SD/-
(VIBHU BAKHRU)
CHIEF JUSTICE

SD/-
(C.M. POONACHA)
JUDGE

ND/BS/PMP/RKM/YAN