

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 344 of 1995

Present

Mr. Justice Muhammad Jaffer Raza

(M/s Turnier (Pakistan) International Versus Civil Aviation Authority)

Date of hearing : 03.02.2025
Date of announcement : 14.02.2025
For Plaintiff : Mr. Ghulam Rasool Korai, Advocate.
For Defendant : Mr. Sohail H.K. Rana, Advocate along with M.
Farooq Afzal Sr. Joint Director (Legal) Pakistan
Airport Authority.

J U D G M E N T

MUHAMMAD JAFFER RAZA – J : The plaintiff has filed the instant suit with the following prayers:-

- a) Judgment and decree be passed in favour of the Plaintiff against the Defendants for an amount of Rs 37,04,242/-.
- b) To award the markup @ 21% on the amount illegally withheld by Defendants from March, 1994 till filing of the suit which comes to Rs.7,77,890/- "And future markup may kindly be allow at the same rate from the date of suit till payment".
- c) Cost of the suit.
- d) Any other better relief/s as this Hon'ble Court may deem fit and proper

2. It is contended by the learned counsel for the plaintiff that the plaintiff is a partnership concern. The plaintiff was engaged by the predecessor of the defendant namely Airport Development Agency (“ADA”) for works which will be elaborated hereinbelow. It is further contended that the said Agency subsequently merged into Civil Aviation Authority in 1993, and predecessor of the defendant invited the tenders for construction of domestic lounge/ addition/ alteration in the existing terminal building of Islamabad International Airport (“work”). The plaintiff participated in the tender and being the lowest bidder its bid was accepted by the defendant. Soon after obtaining the work order, the Plaintiff mobilized construction machinery, staff and labour at site to

carry out the work. It is contended by the learned counsel for the plaintiff that since inception the defendant's attitude towards the contract was nonchalant at best and the delay, if any, can only be attributed to the defendant. Considering the delay above the counsel for the plaintiff stated that the plaintiff wrote various letters to the defendant, which according to the plaintiff reflects the plaintiff intent to expedite and carry out the task assigned. Details of the letters and the specific delay alleged shall be discussed at length in the findings below. It is also contended by the learned counsel for the plaintiff that a part of the task assigned to the plaintiff was also assigned to another company M/s Izhar Construction ("**contractor**"). The said contractor did not complete the task assigned and the plaintiff resultantly had to undertake extra work to remove the deficiency of the said contractor. Due to the delay in the work, which shall be delineated below, the plaintiff could not carry out the contract in a way and manner which was assigned and desired by the Plaintiff. As a result, the cost of construction rose significantly and the plaintiff in this respect suffered heavy losses. It is further alleged by the learned counsel for the plaintiff that the defendant also caused significant delay in disbursing the money outstanding to the Plaintiff and the Defendant also changed the drawings which was beyond the scope of the contract.

3. In response the Defendant filed written statement and specifically contended that all the drawings were supplied to the Plaintiff at the relevant time and no delay can be attributed to the Defendant. It has been further averred that the Plaintiff was slow in performance of the task and the work was of typical nature which had to be completed within the stipulated time. It is further contended in the written statement and also during arguments by learned counsel for the Defendant that the running bills of the Plaintiff were paid promptly by the Defendant, therefore all the averments raised by the Plaintiff were denied by the Defendant in his written statement.

4. Perusal of the record reveals that consent issues were framed vide order dated 22.03.1997 and the instant suit was dismissed against the Plaintiff vide judgment dated 19.11.2018. Subsequent to the same Plaintiff preferred High Court Appeal No.120/2019. The said High Court Appeal was allowed vide judgment dated 04.12.2020 and it was

observed that the parties are at liberty to raise get the issues settled earlier re-casted. This matter came up for hearing on 16.09.2022 and on the said date the Defendant's application for re-casting of issues under Order XIV Rule 5 CPC was allowed and by consent the following issue was framed:

“(i) Whether there was any privity of contract between the parties to the suit and if not whether the Plaintiff had any cause of action against the Defendant?”

5. For the purposes of adjudication, the preliminary issue framed above shall be treated as issue No.1 and the issues framed earlier vide order dated 22.03.1997 shall re-numbered as issue Nos.2 to 12. Therefore, the issues requiring adjudication are reproduced below: -

1. Whether there was any privity of contract between the parties to the suit and if not whether the Plaintiff had any cause of action against the Defendant?
2. Whether there was any delay in completing the job by the Plaintiff on account of non-furnishing of required drawings by the Defendant?
3. Whether the claim raised in Para 5 of plaint is justified?
4. Whether the job given to M/s Izhar Construction was part of the original contract?
5. Whether the Defendant was justified to award the job to M/s Izhar Construction and the Defendant was made to bear extra burden for failure of the Plaintiff to complete the Job?
6. Whether the Plaintiff's claim raised in Para 8 and 9 is entertainable due to rise in prices of cement and steel as alleged by the Plaintiff?
7. Whether the running bills of Plaintiff were paid promptly by the Defendant and claim on this account raised in Para 10 of plaint is justified?
8. Whether the claim of the Plaintiff raised in Para 11 of plaint is entertainable under the terms of contract?
9. Whether the Defendant has made all payments to the Plaintiff under the terms of contract and nothing is due to the Plaintiff as claimed in Pars 12 and 13 of the plaint?
10. Whether the deductions made by the Defendant in certain bills were due to excess rates charged by the Plaintiff against agreed rates?
11. Whether the Plaintiff is entitled to recover any amount from the Defendant as detailed in Para 14 of plaint?
12. What should the decree be and consequences of costs?

FINDINGS

ISSUE NO:1	In Affirmative
ISSUE NO:2	In Affirmative
ISSUE NO:3	In Affirmative
ISSUE NO:4	In Negative
ISSUE NO:5	In Negative
ISSUE NO:6	In Affirmative
ISSUE NO:7	In Affirmative
ISSUE NO:8	In Affirmative
ISSUE NO:9	In Negative
ISSUE NO:10	In Negative
ISSUE NO:11	As under
ISSUE NO:12	Suit of the Plaintiff is decreed to the extent of Rs.3,199,280/- with interest at the rate of 14% per annum

Issue No.1

6. Issue No.1 is a preliminary issue and goes to the very root of the matter. The said issue pertains to whether there was privity of contract between the parties. In this respect learned counsel for the Plaintiff invited my attention to paragraph No.1 of the plaint and the same is reproduced herein below: -

“1. That the Plaintiff is a partnership concern and engaged in the business of contractor/construction while the Defendant is a Government functionary and is responsible to look after/build the Airports and buildings thereof in whole of Pakistan having their Head Office at Karachi. Before January 1993, the Airport Development Agency Limited was the company who was responsible to carry on the above said jobs which was signed with Civil Aviation in the year 1993.”

7. In response to the said paragraph the Defendant filed written statement and in reply clearly and categorically stated that the contents of paragraph No.1 of the plaint (reproduced above) are “not disputed”. Further my attention was invited to paragraphs Nos.8, 9, 10 and 12 of the written statement wherein the Defendant has not denied the

relationship and in the said paragraphs has attributed the delay to the Plaintiff. The Defendant in response to the said averments of the Plaintiff has denied existence of any relationship with the Plaintiff. It has been most vehemently argued that contract of the Plaintiff was with defunct Airport Development Agency (“ADA”) who is not a party in the instant proceedings.

8. On this preliminary issue I have heard the parties at length and the following deduction is made.

9. The relationship between the parties cannot be denied as the same has been very categorically admitted by the Defendant in its written statement. It is apparent from the record that the Defendant is the successor-in-interest of the now defunct Airport Development Authority. The admission on behalf of the Defendant being the successor-in-interest of the now defunct ADA is sufficient to answer the present issue in the Affirmative. Reference in this regard can be made to Article 113 of the Qanoon-e-Shahadat Order, 1984 and the same reproduced below for the sake of convenience: -

“113. Facts admitted need not be proved: No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

10. However, a deeper analysis on the issue was required and for the said purpose this court has examined the file of Judicial Miscellaneous Application No. 06/1997 filed under Section 387(5) of the Companies Ordinance 1984 read with Section 151 CPC. It is apparent from the examination of the file that ADA was primarily incorporated to carry out construction and maintenance of airports in Pakistan as an agency of the Civil Aviation Department of Government of Pakistan, which was made a statutory authority under the Civil Aviation Authority Ordinance 1982. Subsequently ADA was wound up and merged with the Civil Aviation Authority (Defendant). In light of what has transpired

upon examination of the above-mentioned Judicial Miscellaneous Application it is inconceivable for the defendant to deny the relationship with the plaintiff.

11. It is also undeniable that the Defendant repeatedly paid sums of money to the Plaintiff and the objection regarding privity of contract was not raised by the Defendant at any material time. The said objection was raised for the first time when the plaintiff filed HCA 120/2019 and it will be unjustified and incomprehensible for this objection to succeed after years of litigation. Issue No.1 is answered as above.

12. After having adjudged issue No.1 it is imperative to adjudicate the remaining issues. Before deciding the same, it is imperative to highlight both the Plaintiff and Defendant filed their affidavits-in-evidence and the respective witnesses were cross-examined by the learned advocates. It is also pertinent to mention that the Defendant filed affidavit-in-evidence of two witnesses, however, only one witness was examined namely Ghulam Qadir Lakhan. The Plaintiff along with his affidavit-in-evidence filed 33 documents and the same have been exhibited before the Commissioner. Since some of the documents in primary form are available with the Defendant hence notice was also served under Order XI Rule 12 CPC. The Defendant in reply took a plea that the said documents were in possession of FIA.

Issue No.2.

13. This issue pertains to the delay in completing the contractual obligations assigned to the Plaintiff. In this regard the Plaintiff's counsel invited my attention to letters dated 23.11.1992 (Exhibit P/6), 30.11.1992 (Exhibit P/7), 10.12.1992 (Exhibit P/8), 10.01.1993 (Exhibit P/9), 23.01.1993 (Exhibit P/10), 15.02.1993 (Exhibit P/11) and 04.03.1993. Same letters, primary in nature, only highlighted that the Plaintiff repeatedly complained to the Defendant and continuously sought requisite drawings. In reply to the said letter the Defendant informed the Plaintiff vide letter dated 16.01.1993 (Exhibit P/12), the relevant part of the said letter is reproduced below:

“The work is in progress and you have been provided with the drawings initially required and are sufficient to achieve the desired progress. The remaining drawings for the next stage shall also be applied in due course”.

14. According to the learned counsel for the Plaintiff this letter is an admission on part of the Defendant of not supplying the drawings at the commencement of work. Further the learned counsel invited my attention to cross-examination of DW.1, relevant part of the cross examination is reproduced below:

“Structural and construction drawings are important and should be present at the commencement of work and that the employment of labour and staff by the contractor is also important for the execution of job in question. The drawings were supplied to the contractor as and when the contractor employed for the work. The drawings needed for the work had also been given along with tender. I see Exh. P/6 to P/12 and P/14. As already stated, I neither confirm nor deny these documents as they are not available with the Defendant. May be available with FIA. I do not know that the plaintiffs had mobilized the work immediately after the acceptance of the tender. I also do not know that the Plaintiff had also employed the required labour and staff.”

15. It is also contended by learned counsel for the Plaintiff that the receipt and contents of the letter mentioned above were not denied by the Defendant. On the other hand the Defendant has denied the contention of the Plaintiff and has stated in reply that vide letter dated 16.01.1993 (Exh.P/12) the Plaintiff was informed that the drawing had already been supplied to the Plaintiff. Finding on the above issue is as follows.

16. The letter by the Plaintiff to the Defendant are self-explanatory and it is surprisingly to note that only one letter was sent by the Defendant in reply. Even in that letter dated 16.01.1993 the Defendant did not categorically state that all the drawings had been given prior to the commencement of work. In fact the Defendant very categorically stated that in addition to the drawing already supplied the remaining shall be supplied in due course. The repeated letters of the Plaintiff (not denied by the Defendant) lead to an irresistible conclusion that the Plaintiff was eager to complete the task assigned and it was only the delay on part of the Defendant due to which task could not be completed within the stipulated time. It was held in the case of *Syed Caterers versus Government of*

*Pakistan*¹ that where the plaintiff through his conduct could his willingness to perform his part of the contract and the authorities failed to take steps despite repeated reminders, the inaction on part of the authorities was illegal and malafide. In light of what has been held above issue No.2 is answered in the Affirmative.

Issue No.3.

17. The said issue pertains to paragraph No.5 of the plaint. The said paragraph is reproduced as under:

“5. Soon after having the work order, the Plaintiff mobilized construction machinery, staff and labour at site to carry on the job when it was revealed that the drawings were not in accordance to the existing plan/structure which was pointed out to the Defendants who agreed with the pointation.

In the meantime, the Defendant informed the Plaintiff to start the work for excavation for columns and steel fixing and assured that the complete revised drawings will be furnished at their earliest but the Defendant failed to do so, which resulted inordinate delay in work and the labour remained idle. Considering the circumstances and difficulties, the Plaintiff, wrote letters dated November 23,1992, November 30,1992, December 10, 1992, and January 1993 wherein they informed that extra expenses are being incurred on account of labour payments as Defendants are delaying in providing of the drawings. The total amount thus, borne by Plaintiff on this account was Rs.666,244. Defendant vide letter dated 16.01.1993, admitted this fact and furnished the initial drawings and for the remaining assured that the same will also be provided in due course of time.”

18. In the said paragraph the Plaintiff is essentially seeking an amount of Rs.666,244/- on the basis that the Plaintiff mobilized all staff and labour at the site. However, the drawings belatedly supplied by the Defendant were not according to the existing plan/structure. It is further contended by the learned counsel for the Defendant that the Defendant informed the Plaintiff to start the working for excavation for columns and steel fixing and assured that the complete revised drawings will be furnished at the earliest possible and due to failure of the Defendant there was delay in work and the labour remained idle. In this respect the Plaintiff wrote letters dated 23.11.1992, 30.11.1992, 10.12.1992 and January 1993 (all letters referenced in paragraph No.____) informing the Defendant that extra payments were due on account of the delay caused to

¹ 2000 MLD 265

labour. The Plaintiff has once again referred to letter dated 16.01.1993 and has argued most vehemently that the same is an admission on behalf of the Defendant. More particularly attention was invited to the following part of the letter:

"The work is in progress and you have been provided with the drawings initially required and are sufficient to achieve the desired progress. The remaining drawings for the next stage shall also be applied in due course"

19. On the other hand the Defendant in this regard has failed miserably to controvert the allegation made in paragraph No.5 of the plaint with any tangible evidence and evasive reply has been furnished by the Defendant stating that the Plaintiff did not employ the required manpower to complete the task in hand and has stated that the Plaintiff was reminded by the Defendant from time to time to expedite the work. The finding on this issue is as follows.

20. It is evident also on discussion of the issue No.2 above that delay in supplying of the drawings can be attributed to the Defendant and the Plaintiff has discharged its burden on the said issue. Likewise it is admitted that due to the absence of drawings the averments of the Plaintiff are true and correct. The Defendant has given an evasive reply to the contention raised by the Plaintiff and has even upon the query of this Court not pointed out a single reply to the letter referred by learned counsel for the Plaintiff, therefore issue No.3 is answered in the Affirmative.

Issue Nos.4 & 5

21. The said issues are interlinked and can conveniently be decided together. In respect of the said issues the Plaintiff has contended that in sheer violation of the terms of the contract, the Defendant awarded a part of the work to another contractor, M/s Izhar Construction. The Plaintiff protested against this unjust and illegal act but the Defendant ignored the same. The construction carried out by the newly awarded contractor was not satisfactorily completed and the burden of the same fell upon the Plaintiff. The same fact

was highlighted by the Plaintiff vide its letter dated 09.05.1993. To rebut the contention of the Plaintiff, the Defendant has stated that the work of fabrication of steel trusses which was not part of the original contract was started by the Plaintiff. The Defendant has also stated that the work activity of the Plaintiff was very slow and the work was of critical nature, therefore the remaining work was awarded to the new contractor who completed remaining work within 5 days. The finding on these issues are as follows.

22. To answer these issues I have examined the examination of the respective witnesses. During the cross-examination of the witness of the Defendant, he feigned ignorance about the notice being given to the Plaintiff regarding the task being assigned to the new contractor. The relevant part of the cross-examination is reproduced as follows:

“I do not know whether any notice was given to the plaintiff before inducting M/s. Izhar Construction to assist the Plaintiff in execution of balance work of steel trusses. No payment has been made to M/s Izhar Construction for the work as the same payment issue is to be resolved between the plaintiffs and M/s. Izhar Construction. The defendants asked M/s Izhar Construction Ltd to resolve the payment issue with the plaintiffs.”

23. In the same vein I have also examined the cross-examination of the witness of the Plaintiff who has admitted that he does not remember whether there was any letter regarding handing over the entire area to the Plaintiff for the works. I have also examined the letter dated 09.05.1993 in which a protest has been raised by the Plaintiff regarding induction of M/s Izhar Construction.

24. In view of the above it is held that the Plaintiff has been unable to establish its case and has not furnished any evidence of the extra burden being imposed on the Plaintiff due to the alleged failure on the part of the newly inducted contractor. The burden of these issues would rests on the Plaintiff and no evidence in this regard has been furnished, therefore the said issues are answered in the Negative and the claim of the Plaintiff fails on this count.

Issue No.6.

25. Since the answer to issue No.2 has already been given in the affirmative, this issue must be decided in the same vein. It is argued by the learned counsel for the Plaintiff that due to the inordinate delay in furnishing the drawings on the part of Defendant, the Plaintiff could not carry out the contracted job with full force and hence the project could not be completed in time. As a consequence the prices of the construction material increased significantly. However, the Defendant in this regard specifically made a formal request to State Cement Corporation for allocation of cement. Since the required quantity of cement could not be made available from State Cement Corporation, the Plaintiff had no other option but to purchase the cement from open market. The total additional cost for purchasing the cement borne by the Plaintiff was Rs.163,694/- and the same was informed to the Defendant vide letter dated 19.01.1994. It has also been argued that the price of steel also increased and due to the delay on the part of the Defendant the Plaintiff purchased steel and in this account an additional amount of Rs.35,925/- was also borne by the Plaintiff. It was further contended that the Plaintiff informed the Defendant vide letter dated 20.01.1994 of the escalation in price. In reply to the said issue the Defendant has given a very evasive denial and has simply put the burden on the Plaintiff to prove the said issue. Finding on the said issue is as under.

26. I have examined the document as mentioned above and cross examination of the witness of the Defendant. It is important to specify that the Plaintiff under the said head is only seeking price escalation on the ground of delay due to late furnishing of the drawings by the Defendant and the issue pertaining to the delay has already been discussed in issue No.2 above. Therefore, it is only to be seen whether the price escalation is warranted and/or justified. The Defendant has categorically admitted price escalation as the witness of the Defendant admitted that the letters dated 31.10.1992 (Exhibit P/4), **02.11.1992**, **03.11.1992** and **05.11.1992** were made part of the contract. Moreover, the Defendant's letter dated 03.02.1994 does not deny the claim of the Plaintiff and only stated that the matter may be taken up after consultation with the senior management. Relevant part of the letter is reproduced below:-

“In our opinion, the matter in question needs to be considered and decided at higher level in consultation with the Director General. Therefore, it is requested that the matter please be taken up at your end.”

27. In the case of *Miangul Badshah versus Land Acquisition Collector*² it was held that a delay of two or three years had to be considered as a factor for enhancing compensation due to the inflationary trends and depreciation of currency. Inflationary trends and depreciation of currency was also noted in favour of the Plaintiff in the judgment of *Shahnawaz engineering (pvt) Ltd versus National Insurance Corporation*³. It was held that the Plaintiff had no control over the devaluation or depreciation of local currency and in cases where no delay could be attributed to the plaintiff, the plaintiff could not be held liable for the differential. Therefore, issue No.6 is answered in the Affirmative and the Plaintiff is entitled to the price escalation.

Issue No.7.

28. It is contended in paragraph No.10 of the plaint that the Defendant was required to release the payment against the bills submitted by the Plaintiff from time to time and the Defendant for one reason or the other delayed the payment of those remaining bills. On the other hand the Defendant has denied the delay in the payment and has stated that the payments were made as per the schedule agreed between the parties. It has been further alleged by the Defendant that the rates communicated by the Defendant to the Plaintiff were subject to approval by the competent authority and since the rate was not approved by the said authority therefore the claim of the Plaintiff were not entertainable. The Plaintiff in this regard furnished letters dated 26.06.1993, highlighting the delay in the clearance of the running bills, Plaintiff further agitated release of the bill vide letter dated 20.12.1993 and 01.02.1994 following by the schedule of payments.

29. It is evident that various letters were written to the Defendant for the release of pending payments and the reason of delay were specified in the said letters. It is also very much clear that the Defendant did not pay any heed to the said letters and had not

² 2012 CLC 1212

³ 2005 CLD 678

specifically denied the expenses loss alleged by the Plaintiff in this regard. It was held in the case of *Syed Altaf Hussain v Province of Sindh*⁴ that: -

"unrebutted evidence produced by the Plaintiff had established that entire amount claimed by Plaintiff was withheld by Authorities and by not paying admitted outstanding amounts of Plaintiff's bills and balance retention money. Authorities committed deliberate and willful breach of the agreement. The Authorities were directed to pay balance outstanding amount of disputed running bills towards balance retention money and also directed to pay damages".

30. In the judgement of *Pakistan Engineering Consultants versus PIA*⁵ it was held that since the defendants failed to attribute the breach of contract to the plaintiff hence the defendants were liable to pay the withheld amount. Similar finding was given in the case of *Syed Altaf Hussain* (supra) and *Javed Garments Industries versus Grain Lodge Ltd*⁶. The admission in this regard is the absence of denial by the Defendant therefore it is held that the Plaintiff in this respect is entitled for an amount of Rs.626,209/-. The above issue is answered in the Affirmative.

Issue Nos. 8 & 10.

31. The said issues are interconnected and will be dealt with together. However, the findings may differ primarily due to the manner in which the respective issues have been framed. In paragraph 11 of the plaint the Plaintiff has given a detailed breakdown of the cost incurred and the said rates were communicated to the Defendant vide letter dated 26.03.1993. The Defendant has acknowledged these rates and fixed the rate as per schedule vide letter dated 31.03.1993. Accordingly, the bill for the agreed rates were submitted by the Plaintiff. It is further alleged that the Defendant without any rhyme or reason reduced the amount of the said bill for which the Plaintiff is entitled to Rs.504,962/- and the Plaintiff in this regard approached the Defendant several times for payment of the aforesaid amount. On the other hand learned counsel for the Defendant contended that the running bills of the Plaintiff were paid promptly by the Defendant and the said bill subject to approval by the competent authority was not granted and therefore

⁴ 2013 CLC 824

⁵ 2006 PLD 511 Karachi

⁶ 1991 MLD 1232

the said revision was impressable. The letter of the Defendant dated 31.03.1992 reflects that certain rate revisions proposed by the Plaintiff were reduced and subsequently agreed upon by the Defendant. The said letter according to the Plaintiff was executed by the Director who was in communication with the Plaintiff all along.

32. The findings on the said issues are as under.

33. I have examined the relevant documentation referred to above and also perused the examination of the parties in this regard. It is clear from the letters referred to above that the Defendant agreed to the revision of rates after negotiation with the plaintiff. In fact the said letter as mentioned above is titled "Finalization of rate for extra/substituted items". The said letter has been signed by the same Deputy Director of the defendant who was corresponding with the plaintiff during the performance of the contract. The said letter does not make the approval of competent authority contingent on the finalization of the rates. Hence there is no basis on which the defendant having agreed earlier could seek an arbitrary withdrawal of the plaintiff's claim. Therefore, the answer to issue No. 8 is in the affirmative and issue No.10 in the negative.

Issue No.9.

34. The Plaintiff in this regard has given a breakup in paragraphs 12 and 13 of the plaint. Learned counsel for the Plaintiff has argued that it is evident from the bare perusal of the correspondence between the parties that all the payments due to the Plaintiff were not paid by the Defendant. The Defendant has categorically denied the said allegation and has very clearly made statement that nothing is due to the Plaintiff as claimed in the paragraphs above. The findings on this issue are as follows.

35. I have examined the evidence and record with the assistance of both the learned counsel and have also read the examination of the parties in this regard. It is important to reproduce the cross examination of the Defendant witness as under:

"The Measurement Book also contains the payments withheld by the defendant due to any particular issue. As far as I recall, some

of the payments have been withheld. It is incorrect to suggest that an amount ranging from Rs. 35 Lacks to 38 Lac were withheld by the defendant. During the execution of the work, the rate of certain item were reduced on account of Audit Objection. I do not know whether the Audit Objection was communicated to the plaintiffs. The department had reduced the rate of the non-constructed extra/substituted item cropped up during the execution. During the execution of the work, some of the items of the work were substituted and also extra items were non-contracted item. There was no delay in payments of running bill as far as I know. I do not know that once the rates are approved by the competent authority they become the part of the contract. The final bill has been paid to the plaintiffs. I do not recall whether completion certificate has been given to the plaintiffs. The plaintiffs are not entitled to get the claims made in the suit.”

36. In the above reproduced examination it is evident that the Defendant witness has admitted to withholding certain payments of the Plaintiff. However, the quantum of the same has not been elaborated upon by the said witness. However, he has made a generic statement that the rate of certain items were reduced on account of certain audit objections. The said witness is also unsure about the fact whether any audit objection was communicated to the plaintiff. The issue regarding the payments due to the plaintiff has already been delineated in the findings given in issues number 2-10 and therefore this issue requires no further deliberation and is answered in the negative.

Issue Nos.11 and 12.

37. In light of what has been held above the Plaintiff is entitled to the amounts in the following heads:

Sr. No.	Item	Rupees
1	Cement escalation	199,019/-
2	Labour expenses	666,244/-
3	Financial expenses	626,209/-
5	Grantie work	273,120/-
6	Civil work (Original cost)	1,090,313/-
7	Electrical work (Original work)	273,482/-
8	Against new contracts	70,893/-
	Total	3,199,280/-

38 The suit is decreed to the extent of Rs.3,199,280/- With interest at the rate of 14% per annum. Office to prepare the decree in the above terms.

JUDGE