

IN THE COURT OF DISTRICT JUDGE - 02
SOUTH-EAST, SAKET: NEW DELHI

CS No.372/2017

CNR No. DLSE01-001759-2017

Rameshwar Bansal
S/o Sh. M.R. Bansal
Sole Proprietor,
M/s. Bansal Construction Co.
R/o 44, Shaktikunj,
D-3, Church Road,
Vasant Kunj, New Delhi-110070.

..... Plaintiff

Versus

1. Delhi Development Authority
INA, Vikas Sadan,
New Delhi-110023
Service to be effected through its
Vice-Chairman/Secretary.

2. Executive Engineer
SED-7, Delhi Development Authority,
Kalkaji Extension, New Delhi.

..... Defendants

Date of institution : 24.01.2007
Date of reserving Judgment : 04.02.2026
Date of pronouncement : 27.03.2026

SUIT FOR RECOVERY OF MONEY

JUDGMENT

Plaintiff filed the present suit on 31.01.2007 for recovery of Rs.23,60,475/- alongwith *pendente-lite* and future interest @ 18 % per annum.

Pleadings:

2. Facts as per the plaint are that the plaintiff is a civil contractor and is carrying on the business of building contractor and constructions for the last several years under the name & style of M/s. Bansal Construction Co. of which the plaintiff is the sole proprietor; that the plaintiff is a Class-1 contractor duly registered with the defendant/DDA; that the defendant no.1/DDA floated a tender for construction of Convenient Shopping Centre (CSC) at Plot No.406 at C.R. Park, New Delhi against which the plaintiff submitted its tender which was accepted by the defendant/DDA and accordingly, an agreement no. 15/EE/SED-7/DDA/2003-04 ('the Agreement') was executed between the parties; that defendant no.2 was the Engineer In-Charge of the said work; that as per the Letter of Award dated 04.11.2003, the date of start of work was 14.11.2003 and the stipulated date of completion was 13.04.2004, however, because of the work having been exceeded and because of the various hindrances created by the defendant/DDA, the work was actually completed on 14.03.2005; that since the delay occurred because of the quantities having exceeded and also because of the

hindrances created by the defendant/DDA, the extension of time was granted upto 14.03.2005, the actual date of completion, without levy of compensation and a Completion Certificate was duly granted by the competent authority; that during the execution of the work, certain items exceeded the deviation limits individually and the plaintiff became entitled to claim the extra rates based upon the then prevailing market rates and accordingly, the plaintiff submitted the rates analysis for the said items which had exceeded the deviation limits, which were never refuted by defendant no.2 throughout the execution of the said work and thus, the defendants now cannot refuse payment of the extra rates which are otherwise based on the then prevailing market rates which the plaintiff is entitled in terms of the aforesaid Agreement; that despite the fact that the work was completed on 14.03.2005 and despite the fact that there was an obligation upon the defendants under the aforesaid Agreement to finalize the final bill within a period of six months of completion of the said work, neither any action was taken to prepare the final bill nor any payment due to the plaintiff was released in favour of the plaintiff; that even the rates for deviated quantities for which detailed analysis were submitted by the plaintiff before taking in hand execution of the deviated quantity was not approved nor extra payment for the abovesaid deviated quantities was released to the plaintiff for which various reminders were given; that after waiting for sufficient time, the plaintiff prepared the final bill of its own based upon the actual measurements at site and submitted the same to the defendant/DDA on 02.09.2006 and a request was

made to make the payment as early as possible; that as per the final bill, which was submitted by the plaintiff, the defendant/DDA was liable to pay to the plaintiff a sum of Rs.16,61,685/-; that the defendant/DDA was also liable to refund the security deposit of Rs.5,08,000/- alongwith Watch and Ward charges from March, 2005 to August, 2006 i.e. eighteen months @ Rs.3,000/- for two persons each amounting to Rs.1,08,000/-; that since the said payment was not being made, which was otherwise the liability of the defendant/DDA to release within a period of six months from the date of completion of the work i.e. latest by 14.09.2005, therefore, the defendant became liable to pay interest @ 18% per annum which is the rate of interest prevailing in the trade in which the plaintiff is working; that since the defendant was not releasing the payment, therefore, the plaintiff issued a statutory notice under Section 53B of the Delhi Development Act, 1957 on 05.09.2006 for release of the said payment which was duly received by defendant no.2/Executive Engineer on 12.09.2006 and by the Vice-Chairman also on 12.09.2006; that after receipt of the said notice dated 05.09.2006, the defendant released only the security deposit amount of Rs.4,57,000/- on 15.12.2006 but the defendant did not release any payment towards the final bill; that now the defendant is liable to pay a sum of Rs.16,61,585/- on account of the work done not paid as reflected in the final bill and in addition thereto, the defendant/DDA is further liable to pay a sum of Rs.1,08,000/- on account of Watch and Ward charges from March, 2005 to August, 2006 because despite the work having been completed,

the defendant/DDA did not take over the material lying surplus at the site and the plaintiff was made to keep Watch and Ward for the same till it was taken over in August, 2006; that in addition to the said payment, the defendant/DDA is also liable to pay Rs.51,000/- on account of withheld security amount plus interest on the aforesaid amount and also on the amount of security deposit till it was actually released on 15.12.2006 and thus, the defendant/DDA is bound to pay Rs.5,39,790/- on account of interest and is liable to pay the total amount of Rs.23,60,475/- to the plaintiff forthwith which sum the defendant/neglected/refused to pay despite repeated requests and demands made in this connection and despite the legal notice dated 05.09.2006 duly received by the defendants on 12.09.2006, hence, the present suit.

3. The defendants/DDA contested the suit by filing written statement, taking preliminary objections that the present suit is liable to be dismissed being without merits and substance as the final bill of the plaintiff's was not settled by defendant/DDA in full and final settlement of the claim; that the amount of final bill assessed and the settlement was fully expedited by the defendant and therefore, the present suit is an afterthought and deserves dismissal on this ground alone; that the plaintiff neither raised any objection nor made any communication protesting against the settlement of the final bill; that the present suit is also liable to be dismissed as the plaintiff is bound by the terms of the final settlement arrived at between the parties; that the plaintiff has not been able to prove or even pledge any exception to the said

settlement wherein the plaintiff has agreed to accept the entire item in full and final settlement of its case; that there is no claim which can be assumed to be settled between the plaintiff and the defendant through the present suit which has no legs to stand on; that the plaintiff cannot be allowed to take advantage of its own fault as the delay in completion of work was on the part of the plaintiff and not on the defendant as is evident from various letters dated 20.01.2004, 14.07.2004, 10.01.2005, 30.05.2005, 29.06.2005, 04.10.2005, 18.02.2006, 21.06.2006, 12.09.2006 and 10.10.2006; that the plaintiff never carried out rectification work after the issuance of the Completion Certificate on 17.05.2005; that the plaintiff was to carry out removal of certain defects and deficiencies which were pointed out in the Completion Certificate itself; that the defendant pointed out and gave reminders to the plaintiff for carrying out the rectification work vide various letters and therefore, the delay in settlement of the final bill is mainly on account of the fact that the plaintiff did not carry out the obligation of removing the defects/deficiencies in construction within the stipulated period.

4. In reply on merits, it is denied by the defendant/DDA that the work could not be completed because the various hindrances were created by the defendant. It is stated that the work was awarded to M/s. Bansal Construction Co., the plaintiff with the stipulated date of start and completion as 14.11.2003 and 13.04.2004 respectively; that the tender amount of the work was Rs.46,64,441/- and the gross amount of work was done upto 7th

and final bill was Rs.84,98,112/-; that the work was physically completed on 14.03.2005; that the allegation of the plaintiff that because of various hindrances created by the defendant/DDA, the work was actually completed on 14.03.2005 is false, baseless, denied is an afterthought; that actually the hindrances were not created by the defendant/DDA, but were unforeseen and unavoidable, which could not have been ascertained before start of work for which there is a provision in the Agreement to grant extension of time; that the defendant co-operated with the plaintiff by way of grant of extension of time without levy of compensation; that during the execution of work, some extra work cropped up for which the contractor was bound to execute the same as per provisions of the Agreement; that the contractor was also himself willing to execute the extra work over and above the agreement amount as he did (not) submit any letter to the defendant that he was not willing to execute the extra work; that the plaintiff has benefited also by executing extra work and is unnecessarily blaming the defendant; that the plaintiff is registered in government department as Class-1 and he is well aware about the provisions of clauses of Agreement that payment for extra work shall be derived and paid to him under clause 12 of the Agreement; that during the execution of work, the progress of the work was very slow due to poor planning of the plaintiff and so many defects were to be rectified by him for which various letters were issued to him vide letters dated 14.01.2004, 14.07.2004, 10.01.2005; that even after completion of work, so many defects were to be attended by the plaintiff, for which

letters were issued to him vide office letters dated 30.05.2005, 29.06.2005, 04.10.2005, 18.02.2006, 21.06.2006 and 10.10.2006; that the Completion Certificate was recorded subject to rectification of defects and some left out works which was not done by the plaintiff before completion of work as is evident from the Measurement Book (MB) No. 004606 at page 98-99 where Completion Certificate has been recorded and duly accepted by the plaintiff without any protest; that the plaintiff has also mentioned in the MB where Completion Certificate has been recorded that “the completion certificate recorded is agreeable to me subject to the rectification of defects/observation brought out from Sl. No.1 to 14 in the completion certificate which shall be our liability.”; that the plaintiff has also undertaken in Extension of Time Performa Part-I that “I will not claim anything extra on account of extended period of contract.”; that in view of the above, the plaint deserves to be dismissed with costs; that the plaintiff never raised such type of allegation and continuously executed the work and received the payment of running account bills without any protest; that the plaintiff submitted the rates analysis for the executed item which had exceeded the deviation limit. It is denied that the plaintiff claimed extra rates based on the market rates to the defendant at any point of time; that the only time when the plaintiff raised the issue of market rates was for the first time taken in the legal notice dated 05.09.2006; that the allegation of the plaintiff is baseless, false and an afterthought as can be confirmed from the final bill Measurement Book No.004608, page 53 wherein the plaintiff has mentioned that

“item wise measurement accepted”; that the plaintiff is precluded from claiming anything extra over and above the final bill which was agreed by him; that no claim over and above the final bill is payable to the plaintiff; that 90% of the security has been released by defendant in favour of plaintiff on 16.12.2006; that the balance 10% was released subsequently; that the claim of the plaintiff for Rs.16,68,685/- towards final bill is false, baseless and is an afterthought; that in the final bill the gross work done was for Rs.1,38,133/- which has already been paid to him for which the plaintiff has accepted the measurement as is evident from Measurement Book No.004608 at page 53; that no payment is outstanding towards final bill; that as far as security amount of Rs.5,08,000/- is concerned, the same was already paid through cheque against FDR No. SLT 231123 dated 05.11.2004 submitted by the plaintiff and the said FDR has also been released on 16.12.2006; that the claim of Rs.1,08,000/- towards Watch and Ward charges, is false, baseless, denied and is an afterthought; that the plaintiff has already accepted the final measurement as can be confirmed from the final bill Measurement Book no.004608 page 53, wherein he has mentioned that “Item wise quantity and measurement accepted”; that no amount is outstanding in final measurement/bill. Rest of the averments made in the plaint were denied by the defendant.

5. In Replication, plaintiff denied all the averments made by the defendant in written statement and reiterated contentions made in the plaint. Admission-denial of documents was conducted on

08.12.2008 during which defendants admitted documents Ex.P1 to Ex.P8. During admission-denial of documents conducted on 30.01.2009, plaintiff admitted documents Ex.D1 to Ex.D24.

Issues:-

6. Vide order dated 12.02.2009, as per pleadings of parties, following issues were framed :

i. Whether the plaintiff is entitled to recover a sum of Rs.23,60,475/- from the defendants alongwith *pendente-lite* future interest @ 18% per annum or at any other rate? OPP

ii. Whether the suit of the plaintiff is barred by estoppels after the plaintiff had received full and final payment against the final bill as claimed by the defendants? OPD

iii. Relief.

Plaintiff's Evidence:

Examination-in-Chief (PW-1):-

7. Plaintiff got examined himself as PW-1 and deposed by way of affidavit Ex. PW-1/A. He relied upon documents i.e. copy of Completion Certificate dated 17.05.2005 Ex.PW-1/1; copy of

letter dated 27.10.2004 Ex.PW-1/2; copy of application dated 10.05.2005 Ex.PW/1/3; copy of performance report dated 03.12.2004 Ex.PW-1/4; copy of letter dated 01.07.2006 Ex.PW-1/5; copy of letter dated 02.09.2006 Ex.PW-1/6 and copy of notice under Section 53B of Delhi Development Act, 1957 Ex.PW/7 (colly).

8. Plaintiff also relied upon receipt of letters dated 20.07.2004 and 22.09.2004 admitted by the defendants i.e. Ex.P1 and Ex.P2 and receipt of letter dated 20.01.2005 Ex.P3.

9. PW-1 deposed on the lines of facts as contained in the plaint. PW-1 deposed that the plaintiff is a civil contractor and is carrying on the business of building contractor and constructions for the last several years under the name & style of M/s. Bansal Construction Co. of which the plaintiff is the sole proprietor; that the plaintiff is a Class-1 contractor duly registered with the defendant/DDA. PW-1 further deposed that the defendant no.1/DDA floated a tender for construction of Convenient Shopping Centre (CSC) at Plot No.406 at C.R. Park, New Delhi against which the plaintiff submitted its tender which was accepted by the defendant/DDA and accordingly, an Agreement no. 15/EE/SED-7/DDA/2003-04 was executed between the parties. PW-1 further deposed that the defendant no.2 was the Engineer In-Charge of the said work and as per the Letter of Award dated 04.11.2003, the date of start was 14.11.2003 and the stipulated date of completion was 13.04.2004, however, because

of the work having been exceeded and because of the various hindrances created by the defendant/DDA, the work was actually completed on 14.03.2005. PW-1 further deposed that since the delay occurred because of the quantities having exceeded and also because of the hindrances created by the defendant/DDA, the extension of time was granted upto 14.03.2005 without levy of compensation and a completion certificate was duly granted by the competent authority vide Completion Certificate dated 17.05.2005 Ex.PW-1/1.

10. PW-1 further deposed that during the execution of the work, certain items exceeded the deviation limits individually and the plaintiff became entitled to claim the extra rates based upon the then prevailing market rates and accordingly, the plaintiff submitted the rates analysis for the said items which had exceeded the deviation limits, which were never refuted by defendant no.2 throughout the execution of the said work and thus, the defendants now cannot refuse payment of the extra rates which are otherwise based on the then prevailing market rates which the plaintiff is entitled in terms of the aforesaid Agreement. Plaintiff sent letters dated 20.07.2004 and 22.09.2004 Ex.P1 and Ex.P2, wherein the plaintiff requested the defendant to decide the rates for exceeding quantity so that the work could be completed within the stipulated time.

11. PW-1 further deposed about receipt of letter dated 27.10.2004 Ex.PW1/2 from the defendant in response. He further

deposed that meanwhile plaintiff received a letter dated 10.01.2005 whereby the defendant tried to pass the buck on to the plaintiff, the plaintiff sent a detailed letter dated 20.01.2005 Ex.P3 drawing the attention of the Executive Engineer and apprising the true facts which led to delay in execution of the work. PW-1 further deposed that the work was completed on 14.03.2005 and despite the fact that there was an obligation upon the defendants under the aforesaid Agreement to finalize the final bill within a period of six months of completion of the said work, neither any action was taken to prepare the final bill nor any payment due to the plaintiff was released in favour of the plaintiff, notwithstanding the fact that the Completion Certificate was issued by the Superintending Engineer on 17.05.2005. PW-1 further deposed that according to performance report of works dated 03.12.2004 Ex.PW1/4 issued by Executive Engineer SED/7 DDA, the quality performance of the plaintiff was found good.

12. PW-1 further deposed that even the rates for deviated quantities for which detailed analysis were submitted the plaintiff vide letter dated 01.07.2006 Ex.PW-1/5 before taking in hand execution of the deviated quantity was not approved nor was extra payment for the aforesaid deviated quantities released to the plaintiff. PW-1 further deposed after waiting for sufficient time, the plaintiff prepared the final bill of its own based upon the actual measurements at site and submitted the same to the defendant/DDA vide letter dated 02.09.2006 Ex.PW-1/6 (colly). PW-1 further deposed that as per the final bill, the

defendant/DDA was liable to pay to the plaintiff a sum of Rs.16,61,685/- as shown in the final bill and defendant/DDA was further liable to refund the security deposit amount of Rs.5,08,000/- alongwith Watch and Ward charges of Rs. 1,08,000/- from March, 2005 to August, 2006 i.e. eighteen months for two persons @ Rs.3,000/- and accordingly, the defendant was liable to pay a total sum of Rs.22,77,685/- to the plaintiff.

13. PW-1 further deposed that since the defendant was not releasing the payment, therefore, the plaintiff issued a statutory notice under Section 53B of the Delhi Development Act, 1957 Ex.PW-1/7 (colly) which was received by the defendant on 12.09.2006 and by the Vice-Chairman also on 12.09.2006. PW-1 further deposed that after receipt of the said notice dated 05.09.2006, the defendant released only the security amount of Rs.4,57,000/- on 15.12.2006 but has not released any payment towards the final bill. PW-1 further deposed that, on the other hand, the defendant sent a letter dated 04.10.2005 the contents of which were surprising as certain defects were pointed out, of which the defendant sought rectification, which was factually incorrect. PW-1 further deposed that plaintiff duly sent a letter dated 07.12.2005 and 27.10.2006 Ex.P4 which has been acknowledged by the defendant. PW-1 further deposed that the work done by the plaintiff has always been of good quality as it is apparent from the performance reports dated 03.12.2004 and 19.08.2005 Ex.PW1/8 which makes it clear that quality of work

was good and extension of time was granted without levy of compensation.

Cross-Examination (PW-1):-

14. After transfer of the suit from the Hon'ble High Court of Delhi, PW-1 was cross-examined on 03.07.2019.

15. During cross-examination conducted on 03.07.2019, PW-1 stated that he had been working with DDA since 1988 and has done approximately 15-20 projects. He was confronted with page-19, clause 7 of Ex. PW1/D1 and was asked that under clause 7, the contractor had to submit the final bill within one month of completion of work which was admitted by him. PW-1 further stated that he submitted the final bill sometime in 2006. He could not remember when the work was completed. He categorically admitted that he had not submitted the final bill within the time period agreed by the parties as recorded in clause 7.

16. Vide order dated 17.08.2019 as the learned counsel for defendant failed to appear, the opportunity for further cross-examination of PW-1 was closed. Subsequently, vide order dated 12.12.2019, on moving application, opportunity for cross-examination was granted to the defendants. Vide order dated 23.12.2021, Advocate Commissioner was appointed for recording evidence, however, the plaintiff failed to appear for recording evidence and accordingly, vide order dated 06.04.2022,

the plaintiff's evidence was closed.

Defendant's Evidence:

Examination-in-Chief (DW-1):-

17. Thereafter, defendants led evidence and got examined Sh. Brijesh Kumar, Executive Engineer as DW-1 who deposed by way of affidavit Ex. DW-1/A. He relied upon following documents i.e. letter dated 14.07.2004 Ex.DW1/1; copy of Measurement Book no.4606 at page 98-99 Ex.DW1/2; various letters Ex.D1 to Ex.D21; final bill Measurement Book no.4608 at page 53 Ex.PW1/D1; and Agreement dated 07.11.2003 Ex.PW1/D2.

18. DW-1 deposed that the defendant floated a tender for construction of Convenient Shopping Center (CSC) against which the plaintiff submitted its tender which was accepted. DW-1 further deposed that the work was awarded to M/s. Bansal Construction Co. vide Award Letter dated 14.11.2003 Ex.D-1 with the stipulated date of start and completion as 14.11.2003 and 13.04.2004 respectively for CSC at Plot No.406, C.R. Park, New Delhi and the tender amount of the work was Rs.46,64,441/- and the gross amount of work done upto 7th and final bill was Rs.84,98,112/-. DW-1 further deposed that the work was physically completed on 14.03.2005. DW-1 further deposed that the hindrances were not created by the defendant, but were created by the plaintiff because of which there was a delay in completion of work on the part of the plaintiff. DW-1 further

deposed that there is a provision in the Agreement to grant extension of time which was availed by the plaintiff. DW-1 further deposed that the plaintiff cannot be allowed to take advantage of its own fault as the delay in completion of work was on account of the plaintiff and not on the part of the defendant as is evident from various letters Ex.D1 to D18 and Ex.DW1/1 issued by defendant

19. DW-1 further deposed that the plaintiff never carried out rectification work after the issuance of the Completion Certificate on 17.05.2005 and the plaintiff was to carry out removal of certain defects and remove deficiencies which were pointed out in the Completion Certificate Ex.PW1/1 itself, but the plaintiff, never carried out the rectification of the said defects and failed to remove the same. DW-1 further deposed that the defendant pointed out and gave reminders to the plaintiff for carrying out the rectification work vide DDA's various letters and therefore, the delay in settlement of the final bill is mainly on account of the fact that the plaintiff failed to carry out obligation of removing the defects/deficiencies in construction within the stipulated period.

20. DW-1 further deposed that during execution of work some extra work cropped up for which the contractor was bound to execute the same as per provision of the Agreement signed by both the parties and the contractor was also himself willing to execute the extra work over and above the Agreement dated

07.11.2003 Ex.PW-1/D2. DW-1 further deposed that the plaintiff is registered in government department as Class-1 contractor and he is well aware about the provision of clauses of agreement that payment for extra work shall be derived and paid him under clause 12 of the Agreement. DW-1 further deposed that during the execution of work, the progress of the work was very slow due to poor planning of the plaintiff and so many defects were to be rectified by him for which various letters were issued to him vide this office letter dated 20.01.2004, 14.07.2004, 10.01.2005. Letter dated 20.01.2004, 14.07.2004, 10.01.2005 Ex. D-3, Ex DW 1/1 and D-11. DW-1 further deposed that the even after completion of the work, so many defects were to be attended by the plaintiff for which letters were issued to him by the defendant vide its office letter dated 30.05.2005, 29.06.2005, 04.10.2005, 18.02.2006, 21.06.2006, 10.10.2006, 30.05.2005, 29.06.2005, 04.10.2005, 18.02.2006, 21.06.2006 and 10.10.2006 Ex. D-12, Ex. D-13, Ex. D-14, Ex. D-15, Ex. D-16 and Ex. D-18.

21. DW-1 further deposed that the Completion Certificate was recorded subject to rectification of defects and some left out works which was not done by the plaintiff before completion of work as is evident from Measurement Book No. 004606 page 98-99 Ex.DW-1/2 where Completion Certificate has been recorded and duly accepted by the plaintiff without any protest and the plaintiff has also mentioned in the Measurement Book that "the completion certificate recorded is agreeable to me subject to the rectification of defects/observation brought out from SI no. 1 to

14 in the completion certificate which shall be our liability". DW-1 further deposed that the plaintiff has also undertaken in Extension of Time Performa Part-1 that "I will not claim anything extra on account of extended period of contract". DW-1 further deposed that the Application for Extension of Time Ex.D-19 filed by the plaintiff with the defendant is already admitted by the plaintiff and on it plaintiff gave an undertaking i.e. "I will not claim anything extra on account of extended period of contract".

22. DW-1 further deposed that as per the terms of the Agreement clause 8, the plaintiff was required to prepare the final bill and submit the same to the department, but in the present case, the plaintiff did not prepare the final bill in time and prepared the same after a lapse of considerable period therefore the delay in preparing the final bill was on the part of the plaintiff. DW-1 further deposed that the final bill submitted by the plaintiff was incorrect and for the same a letter was issued to him vide office letter No. F 50(36) SED: 7/DDA/03-04/1035 dated 12.09.2006 Ex.D-17. DW-1 further deposed that the plaintiff is precluded from claiming anything extra over and above the final bill which was agreed by him and no claim over and above the final bill is payable to the plaintiff. DW-1 further deposed that the 90% of the security amount has been released by defendant in favor of the plaintiff on 16.12.2006, the balance 10% was released subsequently and the claim of the plaintiff for Rs. 16,68,685/- towards the final bill is false, baseless and is an

afterthought. DW-1 further deposed that in the final bill the gross work done was for Rs. 1,38,133/- which has already been paid to him for which the plaintiff has accepted the measurement as is evident from Measurement Book no. 004608 at page 53 and no payment is outstanding towards the final bill.

23. DW-1 further deposed that as far as security amount of Rs.5,08,000/-is concerned, the same was paid already through cheque against FDR no. SLT 231123 dated 05.11.2004 submitted by the plaintiff and the said FDR has also been released on 16.12.2006 in favor of the plaintiff. DW-1 further deposed that the claim of Rs. 1,08,000/-towards Watch and Ward charges, is also false, baseless, denied and is an afterthought. DW-1 further deposed that there is no provision in the Agreement for payment of Watch and Ward charges by the defendant, DDA. DW-1 further deposed that the defendant neither requested the plaintiff to deploy any staff/chowkidar nor the plaintiff engaged any staff/chowkidar at site after completion of work for Watch and Ward and besides that, no intimation was given by the plaintiff to the defendant. He also had not submitted any account in this regard. DW-1 further deposed that although the plaintiff was requested so many time to clear the site but after completion of the work, the T&P i.e., cement concrete mixture, surplus sand and shuttering materials were not removed from the site by the plaintiff for which a letter was issued to the plaintiff vide this office letter No. F 50 (361)/SED:7/DDA/03-04/711 dated 21.06.2006 Ex D-16.

24. DW-1 further deposed that the plaintiff raised the issue of market rate for the first time in the legal notice dated 05.09.2006 and the delay in settling the final bill was on account of the fact that plaintiff himself faulted in so far as not carrying out the rectification work as set out in the Completion Certificate. DW-1 further deposed that it was obligatory on the part of the plaintiff under the terms of the Agreement to carry out the rectification work which the plaintiff failed to do. DW-1 further deposed that before the payment of final bill all the codal formalities of the Agreement was required to be attended, which was also binding upon the contractor and besides that, so many defects were to be rectified by the plaintiff, which were not done by him even after completion of the work as is evident vide letter dated 30.05.2005, 29.06.2005, 04.10.2005, 18.02.2006, 21.06.2006 yet the defendant cooperated with the plaintiff and paid the final bill.

Cross-Examination (DW-1):-

25. DW-1 was cross-examined by learned counsel for plaintiff. During his cross-examination, DW-1 stated that he deposed on the basis of record available with the department. He further stated that the final bill dated 02.09.2006 was submitted by the plaintiff on 06.09.2006 vide Ex.PW-1/4 (colly) which was denied by the defendant vide letter dated 12.09.2006 Ex.D-17. He further stated that the department had asked for the joint measurements. DW-1 answered in affirmative that the plaintiff accepted the final measurement only. He denied that the plaintiff

has not accepted the bill and asserted that the bill was accepted. He also stated about the Measurement Book no.4608 page no.53 at point 'C' mentioning "item wise quantity plus measurement accepted". He further stated that the department received the letter dated 20.07.2004 sent by the plaintiff on 20.07.2004 Ex.P-1. DW-1 admitted that the plaintiff had submitted the analysis of rate for the work executed beyond permissible deviation limit vide letter dated 22.09.2004 Ex.P-2. He further stated that the final bill amount passed by DDA was Rs.84,98,112/- although a part payment amounting to Rs.83,59,979/- was already paid leaving the balance amount to Rs.1,38,133/-.

26. To the question regarding action taken on the letter dated 01.07.2006, DW-1 stated that the final bill was paid. On further cross-examination, DW-1 stated that the permissible deviation limit as per the Agreement was 20%. Further as per clause 12A of the Agreement, submission of rates for the work executed in excess of the deviation limit was applicable for foundation work within seven days from the receipt of order.

27. DW-1 further stated that the contractor submitted the analysis of the rates. He voluntarily stated that the analysis of rates were submitted after the expiry of period of one month as per the Agreement. DW-1 denied if any written instruction was given to the contractor for executing the work beyond the deviation limit.

28. On further cross-examination, DW-1 stated that extension of time was granted without levy of compensation up to 14.03.2005 as the execution of work was delayed due to non-availability of site, shortage of steel, trees on the site, non-availability of architectural drawings, due to electric cable, non-availability of cement, etc. He further stated that no escalation was paid to the contractor on account of labour and material. DW-1 showed his ignorance if the security amount could be released without removing the defects. He was also not aware when the contractor submitted his willingness to execute the extra work over and above the Agreement amount. DW-1 lastly denied about any measurement dispute in the final bill submitted by the plaintiff stating that there was no dispute as the item wise measurement was accepted by the contractor. DW-1 denied the suggestions put to him.

29. I heard final arguments advanced by Sh. S.K.Jain, learned counsel for the plaintiff and Ms. Promila Kapoor, learned counsel for defendants and perused the record. Both the learned counsels argued as per their respective contentions contained in the pleadings.

Analysis and Findings:-

30. Having heard the submissions and perused the record, my issue-wise findings are as under:

Issue no.1

Whether the plaintiff is entitled to recover a sum of Rs.23,60,475/- from the defendants alongwith pendente-lite/ future interest @ 18% per annum or at any other rate? OPP

Issue no.2

Whether the suit of the plaintiff is barred by estoppels after the plaintiff had received full and final payment against the final bill as claimed by the defendants? OPD

31. Both the issues are being decided together being inter-connected.

32. A perusal of the pleadings, testimonies of witnesses and documents relied upon by the parties would show that though the plaintiff has claimed a total recovery of Rs.23,60,475/-, plaintiff has neither stated the total final measurement bill qua the complete work done for the tendered project in question nor has he explained in the plaint as to how the claimed amount is due and payable by the defendant no.1/DDA in his favour. In para 13 of the plaint, plaintiff only mentioned that defendant/DDA is liable to pay a sum of Rs.16,61,685/- on account of unpaid work, Rs.1,08,000/- on account of Watch and Ward, Rs.51,000/- on account of withheld security amount plus interest on the aforesaid amount and also on the amount of security deposit till it was actually released on 15.12.2006 and thus, the defendant/DDA is bound to pay Rs.5,39,790/- on account of

interest and is liable to pay the total amount of Rs.23,60,475/- but there is no averment in either the plaint or in the replication which can show the break-up of the amount claimed in the present suit.

33. On the other hand, the defendant no.1 has categorically stated in its written statement that even though the tendered amount of the work was Rs.46,64,441/-, the gross amount of work done upto the 7th and final bill was Rs.84,98,112/-.

34. At this stage, reference can be made to a letter dated 22.09.2004 Ex.P-2 of the plaintiff himself, addressed to the defendant no.2, whereby the plaintiff requested for approval of his rates for the exceeding quantity beyond the permissible limit of the agreement quantity. The plaintiff also attached the said rates alongwith his said letter dated 22.09.2004 which are also part of Ex.P-2. In response to the said letter, the defendant no.2 sought principal approval from the defendant no.1/DDA for getting the work executed through the plaintiff. The note-sheet dated 27.10.2004 Ex.PW-1/2, seeking the approval of defendant no.1/DDA, reflects that due to the changes in the architectural drawing, the structural changes were to be made and owing to this, the scope of work had exceeded the tendered amount which was initially Rs.46,64,441/-. As per note-sheet Ex. PW-1/2, the approximate cost of the work was stated likely to increase upto Rs.95.00 lacs.

35. It is worthy to note that there is no approval letter of the

DDA on record to show whether the said approval, which was sought by way of note-sheet Ex.PW-1/2, was granted or not. Nonetheless, the defendant no.1/DDA maintains that the total final bill amount passed was Rs.84,98,112/-, which in itself, is much higher than the original tendered amount of Rs.46,64,441/-.

36. During cross examination of DW1 dated 26.05.2022, as per answer no. 16, he specifically stated that the final bill was for Rs.84,98,112/-. It was only after the original tendered amount was increased to Rs.84,98,112/-, that the defendant no.1 could finalize the total and final 7th bill at Rs.84,98,112/- which was close to the approximate and likely increased cost estimation of the defendant no.2 of Rs.95.00 lacs, for which he had sought an approval of the defendant no.1 by way of note-sheet dated dated 27.10.2004 Ex.PW-1/2 Therefore, it is clear that the defendant no.1 increased the total tendered amount after accepting the higher rates given by plaintiff. It was after increasing the said tendered amount that the final bill of Rs.84,98,112/-/- was arrived at.

37. The plaintiff then wrote a letter dated 02.09.2006 Ex.PW-1/4 (colly) raising the final bill prepared by him with the defendants. It is in this letter dated 02.09.2006 that the plaintiff, for the first time, raised a total bill of Rs.1,00,21,664/-. In the said bill, the plaintiff also admitted about receiving payment of Rs.83,59,979/- having been paid upto 6th bill. The plaintiff thereby, by way of letter dated 02.09.2006 Ex.PW-1/6 (colly) demanded the balance

amount of Rs.16,61,685/- from the defendants. The plaintiff, immediately thereafter, got a legal notice dated 05.09.2006 Ex.PW-1/5, served upon the defendants wherein a demand of payment of total amount of Rs.22,77,685/- was made to be paid by the defendants.

38. As per Completion Certificate dated 14.03.2005 Ex. DW1/2, the same was agreeable to the plaintiff subject to rectification of defects/ observations brought out from Sl. no. 1 to 14 in the said Certificate which shall be his liability. Similarly, in Application for Extension of Time Ex.D-20, plaintiff categorically stated on 16.05.2005, "I will not claim anything extra on account of extended period of contract". Admittedly, extension of time was granted without levy of compensation. Furthermore, vide his statement contained in Ex.PW-1/D-1 (Measurement Book No. 4608 at page 53), the plaintiff made an acceptance dated 10.10.2006 at point A, of the item wise quantity and measurement.

39. It is thus evident that the plaintiff admitted the bill amount of Rs.83,59,979/- as per Ex.PW-1/4. Notably, all the above-mentioned acceptances were made by the plaintiff without recording any protest whatsoever and accordingly, he is estopped from challenging the same subsequently.

40. Furthermore, nowhere in his pleadings - either in the plaint or the replication, the plaintiff even cared to clearly state the actual final agreed bill amount between the parties. The plaintiff

merely stated the outstanding amount of Rs.16,61,685/- which was due and payable by the defendant no.1 as per the case of the plaintiff. The plaintiff even failed to substantiate as to how the said amount of Rs.16,61,685/- was actually outstanding and payable by defendant no.1 in his favour.

41. The plaintiff also conceded in his replication in para 1 of reply to preliminary objections that defendant/ DDA released the security amount of Rs.4,57,000/- on 15.12.2006 and thereafter final bill was received for Rs.1,38,133/- on 30.03.2007 against bill submitted of Rs.16,61,685/- which he received without prejudice to his claims in the present suit. It is worthy to note that DW-1, during cross-examination conducted on 26.05.2022, in answer to question no. 16, stated in clear terms that final bill amount passed by DDA was Rs.84,98,112/- and part of bill amounting to Rs.83,59,979/- was already paid, leaving the balance to be Rs.1,38,133/-. The testimony of DW-1 could not be impeached in any material terms and is worth believing, more so when plaintiff admitted in replication about receiving Rs.1,38,133/- on 30.03.2007. As observed earlier, plaintiff receiving the said sum 'without prejudice' is not believable in the absence of recording any protest either in Completion Certificate Ex. DW1/2, or in Application for Extension of Time Ex.D-20 or in Ex.PW-1/D-1 (Measurement Book No. 4608 at page 53).

42. In the afore-discussed facts and circumstances, in my considered opinion, plaintiff failed to prove the outstanding

amount of 16,61,685/-, as claimed in the plaint, to be payable by defendant no.1. Further, the plaintiff in his replication, admitted to have received a payment of Rs 1,38,133/- i.e., the balance amount of final bill of Rs.84,98,112/- passed by defendant no.1. Admittedly, entire security amount of Rs.5,08,000/- was paid to the plaintiff. Furthermore, the plaintiff also failed to show any provision for charges towards Watch and Ward in the Agreement between the parties, for which he claimed Rs.1,08,000/-. No provision for Watch and Ward in the Agreement which carries any terms for the same and provides for Rs. 3,000/- per month for two persons could be shown by the plaintiff. Therefore, the claim of the plaintiff that he employed two persons for Watch and Ward for a period of 18 months cannot be accepted. Neither particulars of any such persons were provided nor any evidence to substantiate the same was led by the plaintiff. Accordingly, the claimed payment of Rs.1,08,000 /- towards Watch and Ward charges is not recoverable. Accordingly, plaintiff is also not found entitled to claim interest amount of Rs.5,39,790/-.

43. Therefore, in the above-discussed facts and circumstances, in my considered opinion, plaintiff miserably failed to prove the outstanding amount of Rs.16,16,685/-as claimed in the plaint. Consequently, the plaintiff is not entitled to recover total sum of Rs.23,60,475/- and *pendente-lite* and future interest @18% per annum from the defendants.

44. Both the issues are decided against the plaintiff.

Relief:

45. In view of findings on both issues no.1 and 2, plaintiff is held not entitled to recover suit amount with interest as claimed from the defendants. Accordingly, suit is dismissed with costs.

46. Decree-Sheet be drawn accordingly.

47. File be consigned to records after necessary compliance.

**Pronounced in the Open Court on
this 27th day of March, 2026**

**(Kuldeep Narayan)
District Judge - 02,
South-East, Saket Courts, Delhi/sk**