

IN THE COURT OF SHRI UMED SINGH
PRINCIPAL DISTRICT & SESSIONS JUDGE,
SOUTH-EAST DISTRICT : SAKET COURTS : NEW DELHI

CNR No. DLSE01-001900-2016
CS DJ No. 209514/2016

Shri Jatinder Singh Sahni
Proprietor M/s Jatinder Construction Company
A-87, Lajpat Nagar, Part I,
New Delhi-110084.

.... Plaintiff

Versus

South Delhi Municipal Corporation
Through Executive Engineer (PR)
South-II, Under Bishm Pitamah Flyover,
Sewa Nagar
New Delhi-110003.

....Defendant

Date of Institution : 07.01.2016
Arguments heard on : 13.08.2026
Date of Judgment : 22.08.2026

JUDGMENT

1. This suit is for declaration and recovery of Rs.32,18,273/- with pendentelite interest @ 18% per annum till realization.
2. The plaintiff claims to be a government contractor and for the work of Reconstruction of Primary Health Center, M&CW Centre and Construction of Poly Clinic at Mehrauli, in South Zone, Delhi, he entered into a contract with defendant on 10.12.2007 for a contract value of Rs.3,21,82,733/- which was 55.80% above the estimated cost of Rs.2,06,56,440/-. The work was to be executed in two parts. Part A was a construction work and part B was for demolition of old structure. A formal

agreement was executed in which the stipulated date of start of work was 19.12.2007 and the work was to be completed within 20 months i.e. on 18.08.2009. It was actually completed on 16.02.2012.

The plaintiff had intention to complete the work even before stipulated time and so, he had mobilized his labour, material, machinery and equipments for the site but the work could not be started as the defendant had failed to fulfill following obligations :-

- a) Some MTNL telephones were existing there which were removed on 03.03.2008;
- b) High tension electric line was passing from that site which was to be shifted by the defendant and it was shifted only on 12.04.2008;
- c) A water line of Delhi Jal Board passing through the site was shifted by defendant only on 15.04.2008;
- d) There were some porta-cabins which were in possession of maintenance division and these cabins were hindering the construction activity and they were shifted by defendant on 18.05.2008;
- e) A big Neem tree existing on the site was removed on 29.06.2008;
- f) There was space crunch and hence it was decided by the defendant to take up demolition of existing 24 staff hostel of Type II, III & IV for first phase of the demolition work. But the site was surrounded from all corners by fully occupied structures and hence it was difficult to demolish the staff quarters without evacuating the occupied structures. So the defendant decided to revise the plan to avoid immediate mass evacuation. The single

storey staff quarters and public health center were vacated only on 28.06.2008 and demolition was completed by 18.07.2008. Some existing structures, mainly staff quarters, were finally vacated on 03.12.2010;

g) The design mixed formula of M-25 grade of RCC was approved on 20.06.2008. Before its approval, the plaintiff could not carry out any concrete work. In this way, 06 months were lost for site clearance and approval of job mix formula;

h) The electrical internal conduiting work of the other agencies also hindered the progress of civil work and these hindrances were finally cleared on 14.12.2009.

3. The defendant made following delay in the payment :-

a) First running bill of Rs.30 lacs was cleared after 02 months;

b) Second and third running bills of Rs.28 lacs and Rs.33 lacs respectively were cleared by a delay of 1 ½ months;

c) Fifth running bill of Rs.37 lacs was paid after 06 months of submission of the bill;

d) Sixth running bill of Rs.27 lacs was cleared after a delay of 14 months;

e) Seventh running bill of Rs.14 lacs was cleared after a delay of 12 months;

f) Eighth and ninth running bills of Rs.40 lacs and Rs.14 lacs respectively were paid after delay of 09 to 10 months;

g) Eleventh and twelveth running bills of Rs.25 lacs and Rs.17 lacs were cleared after a delay of 02 to 04 months.

Due to delay in clearance of the bills, the plaintiff could not cope up with the scheduled progress of the work as he was suffering from financial crunch and hence entire delay in

completion of the work is attributable solely to the defendant.

4. There were several hindrances which were notified to the defendant vide letters dated 26.04.2008, 21.05.2008, 06.06.2008, 23.06.2008, 23.08.2008, 03.09.2008, 25.09.2008, 05.12.2008, 23.12.2008, 09.02.2009, 18.03.2009, 16.04.2009, 31.07.2009, 07.08.2009, 30.11.2009, 04.05.2010, 17.06.2011, 14.11.2011.

Despite various hindrances and lapses on the part of the defendant itself, it imposed a penalty of Rs.32,18,273/- under clause 2 of the agreement, on 04.06.2015 though the contract had come to an end on 16.02.2012 i.e. on the day of completion of the work. The defendant did not issue him even a show cause notice before imposition of such a huge penalty. In penalty order, the defendant referred to a notice dated 24.04.2008 i.e. issued about 07 years back only by the Executive Engineer who was not competent to do so. Moreover, at the time of issuance of the notice, even the demolition work was not complete and that is why a proper reply given by him to that notice was acceptable to the defendant as it was fully satisfied with it. The penalty was imposed after 07 years of the notice and that also by an incompetent person i.e. by Executing Engineer and hence the same is void and illegal ab initio.

The clause 2 and 5 of the contract show that time was not essence of the contract. The original time of execution of the work was to come to an end on 18.08.2009 but the work was continued even thereafter though no time was fixed by the parties mutually regarding the completion of the work because both were uncertain about the various decisions / reasons like approval of drawings, availability of hindrance free site and payment and

some other factors. The time was kept at large. As the time was not essence of the contract, the defendants are totally unjustified to impose any penalty.

The penalty was imposed on 04.06.2015 whereas the work had already been completed on 16.02.2012 and hence, on the day of imposition of penalty, the contract was not in existence as it has already been executed. The penalty in clause 2 being excepted matter, cannot be referred to arbitration for adjudication and rather, it was to be decided by the court and due to that reason also, the levy is illegal. At last, it is claimed, the order dated 04.06.2015 levying penalty is illegal and it be set aside and also a decree of recovery of Rs.32,18,273/- along with pendente lite interest @ 18% per annum be passed in his favour.

5. The written statement is to the effect that the tender named as “Reconstruction of PHC, M & CW Center and Construction of polyclinic at Mehrauli in South Zone of Municipal Corporation” was floated vide NIT dated 28.06.2007 for a tender amount of Rs.2,06,56,440/- as Part A and Part B was for demolition of old structures for which reserve price was Rs.6,74,000/- which was to be recovered from tenderer after completion of demolition of old structures. It was mentioned in NIT (Notice Inviting Tender) that circular no. D/EE(P) III/27/2006-07 dated 19.05.2006 for clause numbers 7, 9, 9A and 10CA of general terms and conditions of contract shall be applicable. That circular is part and parcel of the agreement and it contains signature of plaintiff on all three pages suggesting his acceptance. The provision for payment of passed bills was that the payment was to be made strictly on queue basis. As per clause 9 of general terms and

conditions, the final bill is to be submitted by the contractor within three months of physical completion of the work or within one month of the date of final certificate of completion furnished by the Engineer-in-charge and thereafter no further claims can be made by the contractor. Payment of those items of the bills in which there was no dispute was to be made within three months if the tendered value of the work was up to Rs.5,00,000/- and it was to be made within six months if the tendered value of the work exceeded Rs.5,00,000/-.

The work was awarded to the plaintiff as he was the lowest bidder. The stipulated date of start was 19.12.2007 and completion date was 18.08.2009.

Clause 2 of general terms and conditions of the contract provided that if the contractor failed to maintain the required progress in terms of clause 5 to complete the work and clear the site, he will have to pay compensation @ 1% per day if the completion period did not exceed three months and @ 1% per week if the completion period exceeded three months. But in both cases, the total amount of compensation for delay cannot exceed 10% of the tendered value.

The clause 5 provided that the time was essence of the contract. But there was provision for extension of time in clause 5.3. For that purpose, an application was to be moved by the contractor in writing within 14 days of the happening of the event causing delay. The clause 5.4 provided that the concerned authority may give a fair and reasonable extension of time for completion of work.

6. The first letter was written by the plaintiff to them only on

07.03.2008 i.e. three months after the award of work. He had started citing hindrances after three months of issuance of work order whereas he was supposed to remove the temporary / vacant structures immediately. But he had not engage any employee / labour or JCB machines for that purpose.

7. It had issued letter dated 10.12.2007 to BSES to shift the OH/LT line. The Executive Engineer (W) South-I was issued letter dated 10.12.2007 to shift the existing water line. MTNL was requested vide letter dated 10.12.2007 to shift underground cable. The additional MHA, MCD Town Hall and Medical Officer-in-charge PHC, Mehrauli were requested vide letter dated 10.12.2007 to vacate the structures marked A, B, C and D and the date of inspection was fixed as 15.12.2007.

Seven architectural drawings and two structural drawings were sent to the plaintiff vide letter dated 23.01.2008 requesting him to take up the excavation at site.

SDMC had applied to DCF (South) vide letter dated 28.01.2008 to accord permission to cut one tree which was impeding the work. The said office acceded to the request vide letter dated 04.04.2008.

The BSES was sent cheque no. 198390 dated 05.02.2008 of Rs.8,40,983/- as shifting charges for LV lines, vide letter dated 13.02.2008 and the same was shifted on 12.04.2008 and that fact has been admitted by plaintiff even in his letter dated 15.04.2008.

It had again informed the Additional MHA, MCD, Town Hall and Medical Officer-in-charge, PHC, Mehrauli vide letter dated 13.02.2008 that now only building mark A needed to be vacated. The initial hindrance which was marked C, being a

triple storey staff quarter, was not required to be vacated for the construction of work order due to revised architectural plan.

A letter dated 13.02.2008 was handed over to plaintiff for redesigning of job mix formula for the grade of concrete of M-25. He was asked to submit that letter with the General Manager CDR, NCCBM, Ballabgarh, Faridabad. Till the date of issuance of that letter, the plaintiff had not requested SDMC to provide an official request to the authorized laboratory and that fact shows his lethargic and unprofessional approach.

It wrote a letter dated 13.02.2008 to BSES for providing temporary electrical connection as it had received a request letter from the plaintiff on 08.02.2008.

8. The Superintendent Engineer / Chief Engineer had visited the site on 11.02.2008 and found that already vacated temporary structure mark B was not taken up by the plaintiff for demolition and so, he was instructed to start the demolition work and complete the same on 03.03.2008. By that time, 85% of the area to be excavated was available to the plaintiff.

But there was poor response from the plaintiff and hence, the SDMC mentioned the ground reality in their reply dated 29.03.2008 to the letter dated 07.03.2008 of the plaintiff. Vide that reply, he was asked to accelerate the work at full swing because 85% of the area of excavation was available.

But the plaintiff was not speeding up and hence he was issued a letter dated 21.04.2008 followed by show cause notice dated 24.04.2008 under clause 2 of the agreement because he was not progressing despite the fact that the electrical poles of low tension lines had already shifted by BSES on 12.04.2008 and

DJB had also shifted their water line on 15.04.2008.

Vide letter dated 23.05.2008, he was asked to erect weighbatcher at site required for laying design mix concrete of M-25 grade. By that time, the porta cabins and single storey building mark A had already been vacated and same were under the process of dismantling but the work was not proportionate to the given time.

He was again sent a letter dated 30.06.2008 for gearing up because the process of removal of garbage of single storey building was very slow.

He was again written a letter dated 26.06.2008 that the progress was very slow due to ill planned excavation and untimely removal of the surplus excavated earth. He was asked to expedite the work.

Letter / reply dated 11.12.2008 in response to his letter dated 05.12.2008 was sent to expedite the progress of work. Huge heaps of garbage were still lying near block 1. The structural drawing nos. S-16 to S-20 for second floor were supplied to him vide letter dated 23.04.2008.

He was sent letter / reply dated 02.03.2009 in response to his letter dated 02.02.2009 reminding that it was not defendant but he who was lagging behind at every stage. He was requested to attend the hearing in the office of SE on 10.03.2009 at 03:30 pm to explain the lame excuses. But he did not attend on the pretext that he received information late. SDMC were worried that despite supply of structural drawings nos. S-21 to S-23 up to terrace floor level vide letter dated 26.02.2009, the work for all three blocks was below second floor level.

Upto 5th running bill dated 18.06.2009, the work up to

plinth level of all three blocks was complete and the financial progress was achieved only upto 50% in comparison to a lapse of time of 90%. Payment was made to him within six months.

9. The stipulated date of completion of work was 18.08.2009 but it was completed on 16.02.2012 with a delay of 02 years 05 months and 28 days.

As the plaintiff had completed work with huge delay, he was asked vide letter dated 03.05.2013 and 20.05.2013 to apply for extension of time as per clause 5 of the contract so that the SDMC could process the case for extension of time, otherwise the case was to be processed as per available record. But the plaintiff did not reply any of the letter and hence it forwarded the final extension of time as per available record. This final extension of time was approved by the Commissioner vide letter dated 23.02.2015 with levy of compensation @ 10% on the tendered amount. The decision was informed to the plaintiff vide letter dated 04.06.2015 and he was directed to deposit the requisite amount of Rs.32,18,273/- in Municipal treasury.

Again, vide letter dated 18.06.2015, the SDMC asked plaintiff to deposit the said amount in treasury, otherwise it would be adjusted against the security for the said work.

In response to letters dated 04.06.2015 and 18.06.2015, the plaintiff had sent legal notice which was received on 18.06.2015 and it was replied vide reply dated 30.07.2015 in which the plaintiff was again asked to deposit the requisite amount in the treasury. When there was no response, it had no option than to recover the liquidated damages by adjusting the amount against the security deposit of Rs.20,60,175/-. So, vide letter dated

25.02.2016, the plaintiff was asked to deposit the balance of Rs.32,10,599/- - Rs.20,60,176/- = Rs.11,58,097/- in the treasury within 07 days of the receipt of the letter. But the amount has yet not been deposited and hence it is the defendant who is entitled to Rs.11,56,097/- from plaintiff. The plaintiff is not entitled to any amount from it.

10. Following issues were framed on 21.02.2017 :-

- 1. Whether the plaintiff is entitled for decree of declaration thereby declaring that the levy/penalty imposed by the defendants vide show cause notice dated 04.06.2015 is illegal and uncontractual? OPP*
- 2. Whether the plaintiff is entitled for a decree of Rs. 32,18,273/- against the defendants alongwith pendendlite and future amount @ 18 % per annum or not? OPP*
- 3. Whether the Executive Engineer was competent to issue the show cause notice dated 04.06.2015 as per contract ? OPD.*
- 4. Whether show cause notice/penalty imposed after lapse of 7 years of completion of work is uncontractual and illegal ? OPP*
- 5. Whether the delay if any in completion of project work was caused due to hindrance occurred on the part of the defendant or defendant has not given free access in terms of the contract? OPP*
- 6. Whether time is essence of contract? OPD*
- 7. Whether defendant has suffered any liquidated damages? OPD*
- 8. Relief.*

11. To prove the case, the plaintiff brought himself in the witness box as PW-1, reiterated the contents of the plaint in his affidavit in evidence as Ex.PW1/A and relied upon following documents :-

- i. Ex. P1 is work order no. 141 dated 10.12.2007;

- ii. Ex. P2 is letter dated 07.03.2008;
- iii. Ex. P3 is letter dated 15.04.2008;
- iv. Ex. P4 is letter dated 24.04.2008;
- v. Ex. P5 is letter dated 26.04.2008;
- vi. Ex. P6 is letter dated 21.05.2008;
- vii. Ex. P7 is letter dated 06.06.2008;
- viii. Ex. P8 is letter dated 23.06.2008;
- ix. Ex. P9 is letter dated 23.08.2008;
- x. Ex. P10 is letter dated 03.09.2008;
- xi. Ex. P11 is letter dated 25.09.2008;
- xii. Ex. P12 is letter dated 05.12.2008;
- xiii. Ex. P13 is letter dated 23.12.2008;
- xiv. Ex. P14 is letter dated 09.02.2009;
- xv. Ex. P15 is letter dated 18.03.2009;
- xvi. Ex. P16 is letter dated 16.04.2009;
- xvii. Ex. P17 is letter dated 07.08.2009;
- xviii. Ex. P18 is letter dated 30.11.2009;
- xix. Ex. P19 is letter dated 04.05.2010;
- xx. Ex. P20 is letter dated 17.06.2011;
- xxi. Ex. P21 is letter dated 14.11.2011;
- xxii. Ex.P22 is statement of payment made to the agency;
- xxiii. Ex.P23 is letter dated 02.07.2015;
- xxiv. Ex.P24 is letter dated 04.06.2015;
- xxv. Ex.P25 is letter dated 18.06.2015;
- xxvi. Ex.P26 is legal notice dated 19.06.2015;
- xxvii. Ex.P27 is relevant portion of contract (Ex.P1 to Ex.P27 are admitted by the defendant by way of admission / denial affidavit); and
- xxviii. Ex.PW1/1 is copy of Hindrance Register.

12. The defendant examined its Executive Engineer (Project)- II, South Zone as DW-1 who also reiterated the contents of written statement in his affidavit in evidence Ex.DW1/A and relied upon following documents :-

- i. Ex. DW1/1 is the copy of Cement Register;
- ii. Ex. DW1/2 is the statement of progress / payment;
- iii. Ex.DW1/3 is the copy of notice inviting tender dated 28.06.2007;
- iv. Ex.DW1/4 is the copy of letter of final offer;
- v. Ex.DW1/5 is the copy of letter dated 19.05.2006;
- vi. Ex.DW1/6 is the copy of Clause 9;
- vii. Ex.DW1/7 is the statement of payment;
- viii. Ex.DW1/8 is the copy of work order;
- ix. Ex.DW1/9 is the General Terms and Condition;
- x. Ex.DW1/10 is the copy of clauses no. 2 of contract;
- xi. Ex.DW1/11 is copy of clauses no. 5 of contract;
- xii. Ex.DW1/12 is copy of letter dated 10.12.2004;
- xiii. Ex.DW1/13 is copy of letter dated 23.01.2008;
- xiv. Ex.DW1/14 is copy of letter dated 28.01.2008;
- xv. Ex.DW1/15 is copy of letter dated 13.02.2008;
- xvi. Ex.DW1/16 is the copy of letter dated 13.02.2008;
- xvii. Ex.DW1/17 is the copy of letter dated 13.02.2008;
- xviii. Ex.DW1/18 is the copy of letter dated 13.02.2008;
- xix. Ex.DW1/19 is the copy of letter dated 29.03.2008;
- xx. Ex.DW1/20 is the copy of letter dated 21.04.2008;
- xxi. Ex.DW1/21 is the copy of letter dated 30.06.2008;
- xxii. Ex.DW1/22 is the copy of letter dated 27.08.2008;
- xxiii. Ex.DW1/23 is the copy of letter dated 11.12.2008;

xxiv. Ex.DW1/24 is the copy of letter dated 02.03.2009;
xxv. Ex.DW1/25 is the copy of letter dated 03.05.2013;
xxvi. Ex.DW1/26 is the copy of letter dated 04.06.2015;
xxvii. Ex.DW1/27 is the copy of letter dated 18.06.2015;
xxviii. Ex.DW1/28 is the copy of letter dated 30.07.2015;
xxix. Ex.DW1/29 is the copy of letter dated 25.02.2016; and
xxx. Ex.DW1/30 is drawing showing all the hindrance including original / revised plan of the proposed building.

Issue No. 6

13. Ld. counsel for plaintiff admitted that the work was to be completed within 20 months up to 18.08.2009 but there were clause numbers 5, 5.1, 5.2, 5.3 and 5.4 regarding extension of time and imposition of the penalty in case of delay in work. Due to existence of these provisions in the agreement, the time was not essence of the contract.

Ld. counsel for defendant argued that as per work order Ex.P1 dated 10.12.2007, the work was to be completed within 20 days to be reckoned from 19.12.2007. So, it was to be completed maximum by 18.08.2009 but it was completed actually on 16.02.2012. As per clause 5 of the contract, the time allowed for execution of the work for the extended time in accordance with the conditions, shall be the essence of the contract. He further submitted that the clause 5, seals the issue in favour of the defendant.

14. Let us see whether the time was essence of the contract or not.

The clause nos. 2 and 5 of GCC have been cited by the

parties frequently on this point and so, those are reproduced verbatim as under :-

Clause (2):

"The time allowed for carrying out the work as entered in the tender shall be strictly observed by the contractor and shall be deemed to be essence of the contract and shall be reckoned from the tenth day after the date on which the order to commence the work is issued to the contractor. The work shall throughout the stipulated period of the contract be proceeded with all due diligence and the contractor shall pay as compensation an amount equal to one percent or such smaller amount as the Superintending Engineer (whose decision in writing shall be final) may decide on the amount of the estimated cost of the whole work as shown in the tender, for every day that the work remains uncommenced or unfinished after the proper dates. And further to ensure good progress during the execution of the work, the contractor shall be bound in all cases in which the time allowed for any work exceeds, one month (save for special jobs) to complete one-eighth of the whole of the work before one-fourth of the whole time allowed under the contract has elapsed, three eighths of the works, before one-half of such time has elapsed and three-fourths of the work; before three-fourths of such time has elapsed. However for special jobs if a time-schedule has been submitted by the Contractor and the same has been accepted by the Engineer-in-Charge. The contractor shall comply with the said time schedule. In the event of the contractor failing to comply with this condition, he shall be liable to pay as compensation an amount equal to one percent or such small amount as the Superintending Engineer (whose decision in writing shall be final) may decide on the said estimated cost of the whole work for every day that the due quantity of work remains incomplete. Provided always that the entire amount of compensation to be paid under the provisions of this clause shall not exceed ten per cent, on the estimated cost of the work as shown in the tender."

CLAUSE 5 :

Time and Extension for Delay

The time allowed for execution of the work as specified in the Schedule 'F' or the extended time in accordance with these conditions shall be the essence of the Contract. The execution of the works shall commence from the 10th day or such time period as mentioned in Letter of Award after the date on which the Engineer-in-Charge issues written orders to commence the work or from the date of handing over of the site whichever is later. If the Contractor commits default in commencing the execution of the work as aforesaid MCD shall without prejudice to any other right or remedy available in law, be at liberty to forfeit the earnest money and performance guarantee absolutely.

5.1 As soon as possible after the Contract is concluded the Contractor shall submit a Time & Progress Chart for each milestone and get it approved by the Department. The Chart shall be prepared in direct relation to the time stated in the Contract documents for completion of items of the works. It shall indicate the forecast of the dates of commencement and completion of various trades of sections of the work and may be amended as necessary by agreement between the Engineer-in-Charge and the Contractor within the limitations of time imposed in the Contract documents, and further to ensure good progress during the execution of the work, the contractor shall in all cases in which the time allowed for any work, exceeds one month (save for special jobs for which a separate programme has been agreed upon) complete the work as per milestones.

5.2 If the work(s) be delayed by :-

- (i) force majeure, or
- (ii) abnormally bad weather, or
- (iii) serious loss or damage by fire, or
- (iv) civil commotion, local commotion of workmen, strike or lockout, affecting any of the trades employed on the work, or
- (v) delay on the part of other contractors or tradesmen engaged by Engineer-in-Charge in executing work not forming part of the Contract, or
- (vi) any other cause which, in the absolute discretion of the authority mentioned in Schedule 'F' is beyond the Contractor's control.

then upon the happening of any such event causing delay, the Contractor shall immediately give notice thereof in writing to the Engineer-in-Charge but shall nevertheless use constantly his best endeavours to prevent or make good the delay and shall do all that maybe reasonably required to the satisfaction of the Engineer-in-Charge to proceed with the works.

5.3 Request for rescheduling of Milestones and extension of time, to be eligible for consideration, shall be made by the Contractor in writing within fourteen days of the happening of the event causing delay on the prescribed form. The Contractor may also, if practicable, indicate in such a request the period for which extension is desired.

5.4 In any such case the authority mentioned in Schedule 'F' may give a fair and reasonable extension of time and reschedule the milestones for completion of work, such extension shall be communicated to the contractor by the Engineer-in-Charge in writing, within 3 months of the date of receipt of such request. Non application by the contractor for extension of time shall not be a bar for giving a fair and reasonable extension by the Engineer-in-Charge and this shall be binding on the contractor.”

In “**Hind Construction Vs. State of Maharashtra**”, AIR 1979 SC 720, the construction agreement contained clauses for extension of time and imposition of penalty for delayed execution of the work. The Hon’ble Apex court came to the conclusion that the time was not essence of the contract. It further held as under :-

“8. It will be clear from the aforesaid statement of law that even where the parties have expressly provided that time is of the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental, for instance, if the contract were to include causes providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract. ...”

“10. ... If time was not of the essence of the contract or if the stipulation as to the time fixed for completion had, by reason of waiver, ceased to be applicable then the only course open to the respondent-defendant was to fix some time making it the essence and if within the time so fixed the appellant-plaintiff had failed to complete the work the respondent-defendant could have rescinded the contract. ...”

In “**Welspun Specialty Solutions Ltd. & Ors. Vs. Oil and Natural Gas Corporation Ltd. & Ors.**” MANU/SC/1059/2021, the contract contained clauses for extension of time for executing the contract and imposition of the penalty if the contract was not performed within time. The Hon’ble Supreme Court held that the time was not essence of the contract.

In the case in hand, though it is mentioned in NIT and work order that the PHC was to be demolished and reconstructed within 20 months to be reckoned from the 10th day of work order

dated 10.12.2007 but there are clause nos. 2 and 5 for extension of time and imposition of penalty for delayed execution of the work, heavily suggesting that time was not essence of the contract.

15. In view of the above discussion, this issue is decided in favour of the plaintiff and against defendant.

Issue No. 5

16. The counsel for plaintiff argued that the work could not be completed on time due to reasons which were not within the control of his client. The delay is solely attributable to the defendant. In this regard, he cited following reasons :-

- i. The defendant failed to hand over hindrance free site to enable him to start the work as per programme;
- ii. The construction site was surrounded from all corners by some structures. The single storey staff quarters and public health center were vacated only on 28.06.2008 and its demolition was completed by 18.07.2008.
- iii. The high tension electric wire was shifted only on 12.04.2008;
- iv. The MTNL line and poles were removed only on 03.03.2008;
- v. The water line of Delhi Jal Board was shifted on 15.04.2008;
- vi. A big Neem tree was cut and removed on 29.06.2008;
- vii. The porta cabins were removed by defendant as late as 18.05.2008;
- viii. The design mix formula of M-25 grade of RCC was approved by defendant only on 20.06.2018. Before it, the plaintiff could not have carried out the concrete work. Six

months were consumed by the plaintiff for a trivial matter.

ix. The electrical internal conduiting work of other agencies hindered the progress of civil work and these hindrances were finally cleared on 14.12.2009.

x. The design and drawings etc. were not provided on time due to which the work was delayed.

xi. The location was congested as the site had a road of only 12 feet on which the residents used to park their vehicles which made plaintiff difficult for transportation of debris.

xii. The existing structure of staff quarters occupied by doctors were vacated after persistent persuasion.

xiii. The sewer line causing hindrance in the execution work was also diverted quite late.

xiv. For some time, the work was delayed due to heavy rain in 2008 and 2009.

The defendant did not make payment of the bills on time due to which he could not cope up with the schedule of the work.

The counsel next argued that though the hindrance register was being maintained by the defendant for recording of any problem in the execution of the work but all actual hindrances were not recorded. Moreover, any hindrance coming in the way of execution of the work after 06.12.2009 was not recorded in that register.

17. The counsel for defendant replied that the Superintending Engineer found plaintiff guilty for delayed execution of the work. This court, being the court of first instance, can also review its decision.

He further argued that one of the general condition of

contract was that the plaintiff will not get any claim in case of delay by any department for removal of any hindrance. At the most, he is entitled to extension of time which was granted for the reasonable delay.

He further argued that though there were some hindrances but for removal of the same, the defendant had sent letters to the concerned department on the day of execution of contract itself requesting them for removal of hindrances. The same were within 5-6 months and at the most, he can claim extension of time 5-6 months which had already been granted to him but he had delayed the work by 30 months.

Regarding delayed payment, he submitted that some payments were delayed and despite it such delay was within the terms and conditions of the contract as the plaintiff and defendant had agreed that payment shall be made on the queue basis and the same has been made as per that only and hence he cannot now claim that the payment was delayed one.

18. In M/s Rama Construction Company (supra), one of the question before Hon'ble Delhi High Court was whether the court of first instance can look into issue whether the responsibility of delayed execution of the work was totally fixed by the authority or not and following was held :-

“In M/s J.G.Engineers Pvt. Ltd. v. Union of India & Anr. AIR 2011 SC 2477, Supreme Court considering a clause identical to clause 2 of the agreement between the parties to this suit, inter alia held as under:

14. Thus what is made final and conclusive by clauses (2) and (3) of the agreement is not the decision of any authority on the issue whether the contractor was responsible for the delay or the

department was responsible for the delay or on the question whether termination/rescission is valid or illegal. What is made final, is the decisions on consequential issues relating to quantification, if there is no dispute as to who committed breach. That is, if the contractor admits that he is in breach, or if the Arbitrator finds that the contractor is in breach by being responsible for the delay, the decision of the Superintending Engineer will be final in regard to two issues. The first is the percentage (whether it should be 1% or less) of the value of the work that is to be levied as liquidated damages per day. The second is the determination of the actual excess cost in getting the work completed through an alternative agency. The decisions as to who is responsible for the delay in execution and who committed breach is not made subject to any decision of the respondents or its officers, nor excepted from arbitration under any provision of the contract.

Supreme Court in this regard also referred to the following view taken by it in *Bharat Sanchar Nigam Limited v. Motorola India Limited* (2009) 2 SCC 337:

x x x The decision contemplated under Clause 16.2 of the agreement is the decision regarding the quantification of the liquidated damages and not any decision regarding the fixing of the liability of the supplier. It is necessary as a condition precedent to find that there has been a delay on the part of the supplier in discharging his obligation for delivery under the agreement.

5. It would thus be seen that in the present case, it is for this Court to decide whether delay in execution of the work within the time stipulated in the agreement is attributable to the plaintiff or to the defendant. ...”

So, as per above judgment, this court is competent to decide whether the responsibility of late execution of the work was properly fixed by the concerned authority or not.

19. For proper appraisal of arguments of the counsel on this issue, the contents of clause no. 14 of general conditions of contract are relevant and hence, the same are reproduced verbatim as under :-

“14. The contractor will not have any claim in case of delay by the department in removal of trees or shifting, raising, removing

of telephone, or electric line (over head or under ground) water or sewer line or any other structure, if any, which may come in the way of work. However, suitable extension of time can be granted to cover such delays, as provided in terms of contract.”

So, as per above clause, the contractor cannot claim anything in case of delay in removal of trees and shifting of electrical lines. At the most, he can claim the extension of time.

20. On the day of allotment of work, the defendant sent letter Ex.DW1/2 dated 10.12.2007 to Additional MHO, MCD Town Hall and Medical Officer-in-charge, PHC, Mehrauli to remove four buildings marked A, B, C and D as the work was to be taken up shortly. Seven architectural and two structural drawings were sent to plaintiff vide letter dated 23.01.2008 Ex.DW1/13. It wrote a letter Ex.DW1/14 on 28.01.2008 to the Deputy Conservator of Forest for cutting one Neem tree that was obstructing the work and permission for the same was granted by that office on 04.04.2008. On 13.02.2008, vide letter Ex.DW1/15, the defendant asked BSES to shift their line and also sent the electricity authority a cheque of Rs.8,40,983/- to meet the expenses. The Additional Commissioner, Health and MHO, MCD were sent letter Ex.DW1/16 on 13.02.2008 to vacate single storey building mark H which was obstructing the work. It handed over plaintiff a letter Ex.DW1/17 on 13.02.2008 to hand over the sample RCC to the authority situated at Ballabhgarh for getting permission for design mix concrete of M-25. It was approved in June, 2008. The defendant wrote a letter Ex.DW1/18 to BSES on 13.02.2008 asking for a temporary connection of 2.00 KW for 20 months as the same was requisitioned by the plaintiff.

21. It has been admitted even by plaintiff in written arguments that following work was done on following dates :-

- i. The single storey staff quarters and public health center were vacated on 28.06.2008;
- ii. High tension electricity cable was shifted on 12.04.2008;
- iii. MTNL line was removed on 03.03.2008;
- iv. The main feeder water line of Delhi Jal Board was shifted on 15.04.2008;
- v. A big Neem tree was removed on 29.06.2008;
- vi. Porta cabin was removed on 18.05.2008;
- vii. Design mix formula of M-25 grade of RCC was approved on 20.06.2008.

22. It has been alleged by the plaintiff that electrical internal conducting works of other agencies hindered the progress of the civil work and the same were finally cleared on 14.12.2009. But the plaintiff did not depose in detail about that work and the name of the agencies whose activities were hampering its work. Similarly, it has been alleged that sewer line passing through the site was diverted later on. But the date of diversion thereof has not been mentioned. There is no document on record on that point.

It has been alleged that hindrances only up to 06.12.2009 have been mentioned in the hindrance register. No hindrance occurring thereafter has been mentioned. In this regard, the plaintiff is correct to some extent. But the cement register Ex.DW1/1 specifically finds mention that the work was halted intentionally by the plaintiff on following dates :-

- i. 16.12.2008 to 31.12.2008 (15 days);
- ii. 31.01.2009 to 18.02.2009 (18 days);
- iii. 21.02.2009 to 17.03.2009 (24 days);
- iv. 01.04.2009 to 15.05.2009 (45 days);
- v. 27.03.2010 to 05.09.2010 (5 months and 9 days);
- vi. 31.11.2010 to 02.03.2011 (2 months and 15 days);
- vii. 24.03.2011 to 16.09.2011 (5 months and 23 days); and
- viii. 16.10.2011 to 18.12.2011 (2 months and 3 days).

It has also been alleged that drawings etc. were not given on time by defendant but the plaintiff is totally wrong to say so because such drawings were supplied vide letter Ex.DW1/13 dated 23.01.2008.

23. It is the admitted case of the plaintiff vide document Ex.P22 and also of the defendant vide document Ex.DW1/7, that the payment was made to plaintiff as per following detail :-

S. No.	R/A bill and date	Gross	Net	Paid vide cheque no. & date	Remarks
1.	1 st R/A bill dt. 28.07.2008	Rs.3086607	Rs.2804252	Rs. 2804252 paid vide cheque no. 174465 dated 23.09.2008	02 months
2.	2 nd R/A bill dt. 17.10.2008	Rs.2769435	Rs.2624411	Rs. 2624411 paid vide cheque no. 174448 dated 03.12.2008	01 & ½ month
3.	3 rd R/A bill dt. 19.02.2009	Rs.3302171	Rs.3128280	Rs.3128280 paid vide cheque no. 593967 dated 23.03.2009	01 month 04 days
4.	4 th R/A bill dt. 31.03.2009	Rs.3133694	Rs.2767537	Rs.2767537 paid vide cheque no. 595028 dated 31.03.2009	Same day
5.	5 th R/A bill dt. 18.06.2009	Rs.3689508	Rs.3258408	Rs.3258408 paid vide RTGS on dated 21.12.2009	06 months 3 days
6.	6 th R/A bill dt. 18.06.2009	Rs.2705121	Rs.2377812	Rs.1300000 paid vide RTGS on dated 21.12.2009 & Rs.1077812 paid vide RTGS on dated 17.08.10	06 months 14 months
7.	7 th R/A bill dt. 22.10.2009	Rs.1388906	Rs.1315850	Rs.378906 paid vide RTGS dt. 17.08.10 & Rs.936944 paid vide RTGS dt. 29.10.10	10 months 12 months
8.	8 th R/A bill dt. 29.01.2010	Rs.4071693	Rs.3554324	Rs.3554324 paid vide RTGS dated 29.10.2010	09 months

9.	9 th R/A bill dt. 30.03.2010	Rs.1391794	Rs.758037	Rs.383575 paid vide RTGS dt. 29.10.10 & Rs.374462 paid vide RTGS 27.01.11	07 months 10 months
10.	10 th R/A bill dt. 30.03.2011	Rs.2165428	Rs.1681458	Rs.1681458 paid vide cheque no. 007343 dated 31.03.2011	-
11.	11 th R/A bill dt. 10.10.2011	Rs.2578502	Rs.2069439	Rs.2069439 paid vide RTGS dated 23.12.2011	2 ½ months
12.	12 th R/A bill dt. 30.03.2012	Rs.1683130	Rs.1668244	Rs.1668244 paid vide RTGS dated 26.07.2012	04 months

24. Above detail show that there was delay of 6 months to 10 months in making payment appearing from serial numbers 5 to 9. But as per clause 9 of GCC (part of agreement) the payment for final bill was to be made within 03 or 06 months if the value of the tendered work was upto Rs.5 lacs or more than Rs.5 lacs, as the case may be. In the case in hand, the tendered amount was more than Rs.5 lacs and so, the payment was to be made within 06 months. But the agreement contains a notification dated 19.05.2006 also to the effect that payment of the bill was to be made strictly on queue basis i.e. first, the passed bill will be cleared and after that, the release of payment for passed bills will be in order of bills received at head quarter under particular head of account. The plaintiff did not place on record any document to show that the payment was not made on queue basis and so, the court cannot presume on its own that the payment was delayed one.

25. Above discussion shows that hindrances etc. if any, were got removed by defendant from the concerned departments maximum by June, 2008. So, about 06 months were consumed in removal of the hindrances and for that period, the defendant was more than liberal to grant plaintiff extension of time. But the plaintiff delayed the work by 30 months for which he has no

explanation. So, this issue is decided in favour of defendant and against the plaintiff.

Issue No. 3

26. Ld. counsel for plaintiff argued that penalty of Rs.32,18,273/- was imposed upon his client vide letter dated 04.06.2015 issued by Executive Engineer but as per clause 2 of GCC, it is only the Superintendent Engineer who can impose penalty. So, the order of imposition of penalty has not flowed from the proper authority and hence it is illegal and void.

The counsel for defendant argued that vide letter dated 04.06.2015, the plaintiff was only intimated by the Executive Engineer that the competent authority had imposed penalty. The penalty was imposed not by the Executive Engineer but the Superintending Engineer and the same is proper.

27. In issue, the letter dated 04.06.2015 has been wrongly termed as show cause notice because the show cause notice Ex.DW1/20 was issued to plaintiff by defendant on 21.04.2008. In fact, the letter dated 04.06.2015 Ex.DW1/26 is not show cause notice and rather, it is the intimation letter to the plaintiff. It is mentioned in it that plaintiff was issued show cause notice under clause 2 on 24.04.2008 to explain why the compensation be not imposed for delay in completion of the work. It is further mentioned that the reply by the plaintiff was not satisfactory and hence not acceptable to the department. It is further mentioned that two letters dated 03.05.2013 and 20.05.2013 were issued to the plaintiff to apply for grant of extension of time in prescribed format within 05 days of receipt of letter, otherwise the

department would process the case for extension of time without further correspondence. It is next mentioned that the plaintiff did not apply for extension of time nor sent any reply. So, the final extension of time was approved by the **competent authority** vide order dated 23.02.2015 with levy of compensation @ 10% on the tendered value of the work under reference which comes out to Rs.32,18,273/-.

Bare perusal of the letter Ex.DW1/26 shows that it bears the signatures of Executive Engineer. But the last paragraph of the letter itself shows that the penalty was not imposed by Executive Engineer and rather, it was approved by the competent authority. Only after approval by the competent authority, the Executive Engineer simply communicated the decision of that authority to plaintiff. The Executive Engineer terms the authority which imposed the penalty as competent one. It means that the said authority was superior in rank to Executive Engineer. One rank superior to Executive Engineer is Superintending Engineer. So, it can be presumed that the competent authority was at least Superintending Engineer. As per clause 2 of the GCC, it is the Superintending Engineer who can impose penalty. In the case in hand, it has been imposed by an officer of that rank and hence this issue is decided in favour of defendant and against plaintiff.

Issue No. 4

28. Ld. counsel for plaintiff argued that show cause notice Ex.DW1/20 for delay in work was issued way back on 21.04.2008 and the penalty was imposed on 04.06.2015 i.e. after 07 years which is clearly barred by limitation period of three years and so, the order of imposition of penalty is void.

The counsel for defendant replied that the limitation period bars only the remedy and not right.

29. During entire arguments, the counsel for plaintiff did not tell the court about the provision of law that penalty can be imposed within 03 years of issuance of show cause notice. Even if, it is presumed that prescribed period is 03 years, despite it, the defendant was fully justified for imposing penalty because expiry of limitation period bars only remedy and not the right. In this regard, the following observation of the Hon'ble Apex Court in **Punjab National Bank Vs. Surendra Prasad Sinha**, AIR 1992 SC 1815 is highly relevant :-

“...The time-barred debt does not cease to exist by reason of Section 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What Section 3 refers is only to the remedy but not to the right of the creditors. Such debt continues to subsist so long as it is not paid. It is not obligatory to file a suit to recover the debt. It is settled law that the creditor would be entitled to adjust, from the payment of a sum by a debtor, towards the time-barred debt. It is also equally settled law that the creditor, when he is in possession of an adequate security, the debt due could be adjusted from the security in his possession and custody... Therefore, though the remedy to recover the debt from the principal debtor is barred by limitation, the liability still subsists. In terms of the contract the bank is entitled to appropriate the debt due and credit the balance amount to the saving bank account of the respondent. Thereby, the appellant did not act in violation of any law, nor converted the amount entrusted to them dishonestly for any purpose.”

30. In view of the above discussion, it is held that the defendant is perfectly justified in imposing penalty even after 07 years of issuance of show cause notice. This issue is also decided in favour of defendant and against plaintiff.

Issue No. 7

31. The counsel for plaintiff argued that the defendant did not produce any evidence regarding its suffering from liquidated damages due to non performance of contract on time by plaintiff. Moreover, the time was not essence of the contract. Due to that reason also, the order of imposition of penalty is void.

The counsel for defendant replied that the innocent party is not required to prove actual loss of damage. Rather, the burden lies on the plaintiff to demonstrate that no loss was likely to have been suffered by the defendant. He further submitted that the plaintiff did not produce any evidence to show that the defendant did not suffer any damage. Also, the plaintiff did not place on record any document to that effect.

32. It has already been held that it was plaintiff who is at fault for not executing the work on time. In a similarly situated case **M/s Rama Construction Company Vs. MCD**, CS OS No. 921/2005 decided on 20.12.2011, the Hon'ble Delhi High Court held in following words that if the court finds that delay was attributable to the plaintiff, the decision of Superintending Engineer in respect of quantum of compensation to be levied on the plaintiff would be final and binding on the parties and the court cannot review it :-

“5. It would thus be seen that in the present case, it is for this Court to decide whether delay in execution of the work within the time stipulated in the agreement is attributable to the plaintiff or to the defendant. If the Court finds that the delay is attributable solely to the defendant, the decision of the Superintending Engineer levying compensation on the plaintiff is liable to be held without jurisdiction. On the other hand, if the Court finds that the delay is attributable to the plaintiff, the decision of the Superintending Engineer in respect of the quantum of compensation to be levied on the plaintiff would be

final and binding on the parties and it would not be open to the Court to review the decision of the Superintending Engineer with respect to quantum of compensation and take a view contrary to the view taken by the Superintending Engineer. Similarly, if the Court finds that the Contractor failed to maintain progress of the work in terms of clause 5 of the agreement and the defendant was not responsible for the failure of the plaintiff to maintain the required progress, it would not be open to the Court to interfere with the amount of compensation levied by the Superintending Engineer, his decision with respect to quantification of the compensation being final and binding on the parties.”

The above observation was upheld by division bench of Hon’ble High Court in **Rama Construction Company Vs. MCD**, RFA (OS) 16/2012 decided on 24.08.2012.

In view of the above, this issue is also decided in favour of defendant and against plaintiff.

Issue No. 1

33. The counsel for plaintiff argued that there is delay of more than 900 days in execution of the work and the same is solely attributable to the defendant and so the penalty imposed vide intimation letter dated 04.06.2015 is illegal and uncontractual. The contract had expired by efflux of time on 18.08.2009 and the work was actually completed on 16.02.2012 and penalty was imposed on 04.06.2015. So, on the date of imposition of penalty, the contract was not alive. He further argued that provisional extension of time was granted by defendant unilaterally and once time is extended, it is not open for the promisee to levy penalty in terms of clause 2 of the contract. He further argued that as per clause 2 of the agreement, Executive Engineer was not competent to levy penalty. Moreover, the penalty was imposed after 07 years of issuance of show cause notice and the same is

barred by limitation period.

Next submission is that before levy of penalty, opportunity of hearing was not given to the plaintiff and last argument is that defendant's right to impose penalty was adjudicated by defendant itself and not by any court of law. Last submission is that whatever extension was granted by the defendant, was unilateral in which the plaintiff did not have any role to play.

34. The counsel for defendant replied that the sole responsibility of delayed execution of contract is upon the plaintiff. Despite non completion of work on time, the defendant kept the contract alive by extending the period and it was acceptable even to defendant and that is why, it executed the work after extension of time. He next argued that it was not Executive Engineer who imposed the penalty. Rather, it was Superintending Engineer who did it after 07 years and he was very much justified to do so because the limitation period bars only remedy and not the right. He further argued that two letters were sent to the plaintiff before imposition of penalty to put forth his case but he did not reply any of them. Last argument is that if the reasons of delay of execution of work have been decided by the defendant, the same can be reviewed by this court in these proceedings.

35. In other issues, following points have already been decided:-

- i. It is only the plaintiff who is responsible for delay in work;
- ii. The penalty was not imposed by the Executive Engineer and it was imposed by Superintending Engineer. The Executive

Engineer had merely sent intimation letter to plaintiff regarding imposition of penalty.

iii. The order imposing penalty by the Superintending Engineer is not barred by period of limitation. Even if it is presumed that it is barred, the limitation period finishes only the remedy and not the right.

iv. The court of first instance can decide who is responsible for delay in execution of the work.

36. For the proper appreciation of arguments of the counsel for plaintiff, section 55 of Indian Contract Act, 1872 is reproduced verbatim as under :-

“Section 55. Effect of failure to perform at fixed time, in contract in which time is essential. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.--If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.--If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.”

As per above section, if the time is essence of the contract and the contract is not executed within that time frame, the promisee may refuse the contract. But if time is not essence, it

does not become voidable by the failure to execute work before specified time. In that case, the promisee would be entitled to compensation from the promisor for any loss occasioned provided he gives notice to the promisor of his intention to do so.

It has already been held that time was not essence of the contract. The record shows that when the plaintiff did not gear up as per the expectation of the defendant, it was constrained to issue plaintiff show cause notice Ex.DW1/20 on 21.04.2008 mentioning that despite repeated requests and reminders the progress of the work was very slow. So, he was asked to show cause why the action in terms of clause 2 of the agreement be not initiated. The notice was replied which was not found suitable by the defendant. Thereafter, the defendant granted extension of time unilaterally in which the plaintiff was not a party. Despite unilateral extension, the plaintiff executed and it suggests that he had also concurred in extension. Due to time being not essence, the defendant accepted its delayed execution and simultaneously issued notice to the plaintiff that he was liable to pay compensation as per clause 2 of the agreement. Despite getting that show cause notice, the defendant executed the work. So, as per the provision of section 55 of Indian Contract Act, the defendant is totally within its right to impose penalty despite accepting execution of work belatedly.

It is correct that the work was to be completed maximum by 18.08.2009 and it was completed only on 16.02.2012 and penalty was imposed on 04.06.2015. The contention of plaintiff's counsel is that the contract was not in existence when penalty was imposed. But there is no requirement of law that the contract should be alive on the date of imposition of the penalty. His

argument on that point is of no effect.

The defendant had sent letter Ex.DW1/25 to plaintiff on 03.05.2013 mentioning that he had completed the work on 16.02.2012 after a delay of 02 years 05 months and 28 days and that last running 12th bill was accepted by him on 30.03.2012 with statement “final measurement accepted”. It is further mentioned that as per clause 5 of the general terms and conditions of the contract, he was to apply for grant of extension of time in prescribed proforma. He was requested to apply for extension otherwise it would decide the case as per available record. When no response was sent by the plaintiff, the defendant sent another letter on 20.05.2013 mentioning that he was being given final opportunity to apply for grant of extension of time within 05 days of receipt of the letter otherwise, the department would process the case for according extension and decide the case as per available record. When no response was received, the defendant ultimately imposed a penalty of Rs.32,18,273/- and communicated the same to plaintiff vide letter Ex.DW1/26 on 04.06.2015. It shows that before imposing penalty, the plaintiff was sent letters dated 30.05.2013 and 20.05.2013 to join the proceedings but he did not deem it fit to contact the defendant. Now, he cannot be heard to say that before imposing penalty, he was not allowed to put forth his case.

It is correct that whatever extension of time was granted, was unilateral. Despite it, the plaintiff kept on executing the work and this shows that he had also concurred in extension.

37. In view of the above discussion, it is held that imposition of penalty is neither illegal nor uncontractual. This issue is

decided in favour of defendant and against plaintiff.

Issue No. 2

38. It has already been held in issue no. 1 that the defendant had imposed penalty of Rs.32,18,273/- correctly. Hence, the plaintiff is not entitled to that amount from defendant.

Issue No. 8

39. Consequent to decision of issues nos. 1 to 7, it is held that plaintiff is not entitled to any relief. The suit is hereby dismissed.

40. Parties to bear their own costs. Decree Sheet be prepared accordingly. File be consigned to Record Room.

Announced in the open
Court today i.e. 22.08.2026

(UMED SINGH)
Principal District & Sessions Judge
South East, Saket Courts
New Delhi