

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

CS No.52/2017  
CNR No. DLSE01-008339-2016

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 : 31.01.2007  
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.31,12,540/- 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.1596 at C.R. Park, New Delhi against which the plaintiff submitted tender which was accepted by the defendant/DDA and accordingly, an agreement no. 16/EE/SED-07/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 07.10.2005; 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 up to 07.10.2005, 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 rate 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 Agreement; that despite the fact that the work was completed as far back as on 07.10.2005 and despite the fact that there was an obligation upon the defendants under the 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 above-said 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.26,26,185/-; that the defendant/DDA was also liable to refund the security deposit of Rs.5,31,000/- alongwith Watch and Ward charges from October, 2005 to August, 2006 @ Rs.3,000/- for two persons amounting to a total amount of Rs.60,000/-; 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 07.04.2006, 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.5,31,000/- 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.26,26,185/- 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.60,000/- on account of Watch and Ward charges from October, 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 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.4,26,355/- on account of interest and thus, is liable to pay the total amount of Rs.31,12,540/- 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 defendant/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 was not settled by defendant/DDA in full and final settlement of their 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 account of the plaintiff and not on the defendant as is evident from various letters dated 06.03.2004, 14.07.2004, 28.07.2004, 10.01.2004, 17.05.2005, 16.03.2006 and 21.06.2006; that the plaintiff never carried out rectification work after the issuance of the Completion Certificate on 07.10.2005; that the plaintiff was to carry out removal of certain defects and remove deficiencies which was 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 DDA's various letters and therefore, the delay in settlement of the final bill is mainly on account of the fact that the plaintiff was to carry out the obligation of removing the defects/deficiencies in construction within the stipulated period. 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.55,10,577/- and the gross amount of work done upto 9<sup>th</sup> and final bill was Rs.1,19,37,742/-; that the work was physically completed on 07.10.2005; that the allegation of

the plaintiff that because of various hindrances created by the defendant/DDA, the work was actually completed on 07.10.2005 is false, baseless, denied and 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 cooperated 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 signed by both the parties; 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 is 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 contractor and 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 office letters dated 06.03.2004, 14.07.2004, 28.07.2004, 10.01.2005 and 17.05.2005; 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 16.03.2006 and 21.06.2006; 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.004620 at page 67-68 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 had 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 it is denied that the plaintiff submitted the rate analysis for the executed item which had exceeded the deviation limit and it is also denied that the plaintiff claimed extra rates based on the market rates; that the only time when the plaintiff raised the issue of market rate was for the first time taken in the legal notice dated 05.09.2006; that the plaintiff prepared the final bill after a lapse of considerable time. 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 (361) SED: 7/DDA/03-04/1034 dated 12.09.2006 with request to depute the representative for

joint measurement; that the allegation of the plaintiff is baseless, false and an afterthought as can be confirmed from the final bill MB No.9287 page 91, 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 amount 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.26,26,185/- towards final bill is false, baseless and is an afterthought; that in the final bill the gross work done was Rs.4,21,266/- which has already been paid to him for which the plaintiff has accepted the measurement as is evident from MB No.9287 at page 91; that no payment is outstanding towards final bill; that as far as security amount of Rs.5,31,000/- is concerned, the same was paid already through cheque against FDR No.SLT 231133 dated 22.11.2004 submitted by the plaintiff, however, the said FDR has also been released on 16.12.2006 in favour of the plaintiff; that the claim of Rs.60,000/- towards Watch and Ward charges, is false, baseless, denied and is an afterthought. There is no provision in the Agreement for payment of Watch and Ward charges by the defendant; that the claim of the plaintiff for interest @ 18% is baseless as there is no provision in the Agreement in this regard; that the plaintiff has already accepted the final measurement as can be confirmed from the final bill MB no.9287 page 91, wherein he has mentioned that “Item wise quantity and measurement accepted”; that there is no amount

outstanding in final measurement/bill. Rest of the averments made in the plaint were denied by the defendant.

4. In replication, plaintiff denied all the averments made by the defendants in written statement and reiterated the contentions made in the plaint.

5. Admission/denial of the documents was conducted on 08.12.2008 and 30.01.2009, during which, defendants admitted documents Ex.P-1 to P-4 and plaintiff admitted documents Ex.D-1 to D-21.

**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.31,12,540/- 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. He deposed by way of affidavit Ex. PW-1/A and relied upon documents i.e. copy of Completion Certificate Ex.PW-1/1; receipt of letters dated 20.07.2004 and 22.09.2004 Ex.P1 and Ex.P2; copy of letter dated 27.12.2004 Ex.PW-1/2; receipt of letter dated 20.01.2005 Ex.P3; letters dated 16.05.2005 and 22.06.2005 Ex.P4 and Ex.P5; letters dated 20.08.2005 and 07.12.2005 Ex.P6 and P8; copy of letter dated 01.07.2006 Ex.PW/1/3; copy of letter dated 02.09.2006 Ex.PW-1/4; copy of notice under Section 53B of Delhi Development Act, 1957 Ex.PW/5 (colly) and acknowledgment of letter dated 27.10.2006 Ex.P7.

8. PW-1 deposed on the lines of facts as contained in the plaint. PW-1 deposed that he 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 he 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.1596 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. 16/EE/SED-07/DDA/2003-04 was executed between the parties. PW-1 further deposed that 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 07.10.2005. 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 up till 07.10.2005, the actual date of completion, without levy of compensation and a Completion Certificate Ex.PW-1/1 was duly granted by the competent authority.

9. 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 rate 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 and 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.

10. PW-1 further deposed about receipt of copy of letter dated

27.12.2004 Ex.PW 1/2 from the defendant in response. He further deposed that meanwhile when the plaintiff received a letter whereby defendant tried to pass buck on to the plaintiff, the plaintiff sent a detailed letter dated 20.01.2005 Ex.P3, drawing the attention of the Executive Engineer apprising the true facts which led to delay in execution of the work. PW-1 further deposed that the plaintiff made regular correspondence with the defendant vide letters dated 22.06.2006, 20.08.2005, 20.08.2005 and 07.12.2005 Ex.P4, Ex.P5, Ex.P6 and Ex.P8. PW-1 further deposed that the work was completed on 07.10.2005 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 notwithstanding the fact that the Completion Certificate was issued by the Superintendent Engineer on 30.11.2005.

11. PW-1 further deposed that even the rates for deviated quantities for which detailed analysis were submitted the plaintiff vide letter Ex.PW-1/3 before taking in hand execution of the deviated quantity were not approved nor extra payment for the aforesaid deviated quantities was released to the plaintiff. PW-1 further deposed 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 vide letter Ex.PW-1/4. PW-1

further deposed when the defendant did not pay any heed to the requests made by plaintiff, the plaintiff served a notice under Section 53B of Delhi Development Act ExPW-1/5 (colly) upon the defendant. PW-1 further deposed that after receipt of letter Ex.PW-1/5 (colly), the defendant released only the security amount of Rs.5,31,000/- on 15.12.2006, but did not release any payment towards the final bill, on the other hand, the defendant sent a letter dated 10.10.2006 and therefore, the plaintiff also sent a letter dated 27.10.2006 Ex.P7 to the defendant.

**Cross-Examination (PW-1):-**

12. PW-1 was cross-examined by learned counsel for defendants. During cross-examination conducted on 10.11.2010, PW-1 stated that he had completed the entire work according to drawings given by DDA to him and after completion of the work he had returned the drawings to DDA. PW-1 could not remember when he returned the drawings but stated that it was immediately after completion of the work. PW-1 further stated that he had not returned the same alongwith any covering letter and had also not obtained any receipt. On further cross-examination, after seeing the document Ex. PW1/6, PW-1 stated that there was no dispute with the DDA with respect to measurement and quantity. He voluntarily stated that the only dispute remained with regard to rates of the items listed at points A to Z and AA to AH. After seeing the document Ex. P-2, PW-1 further stated that he calculated the rates stated therein on the basis of running market rates which were approved by DDA. He further stated that

written approval remained with DDA only. PW-1 denied the suggestion that DDA had never approved the rates mentioned by him in Ex.P-2. PW-1 further stated that the rates regarding mate and baildar were also obtained by him and mentioned in Ex. P-2 on the basis of Delhi Scheduled Rates (DSR) of the year 2002. He further stated that at the time of giving original quotation to DDA he had not gone by DSR of the year but had offered lowest competitive rates to secure the tender.

13. During cross-examination conducted on 18.11.2010, PW-1 identified his signatures at points X on each page of Agreement dated 07.11.2003 Ex. PW1/D2 (colly). He further admitted that he had not raised the demand based on rates analysis within 7 days of completion of the foundation stage. He further stated that he had not raised the demand based on rates analysis within 7 days from the date of receipt of drawings of foundation work from the defendant. On further cross-examination, after seeing page 91 of original Measurement Book Ex. PW1/D3, he identified his signature at point X thereon.

14. After transfer of the suit from the Hon'ble High Court of Delhi, PW-1 was further 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, defendant led evidence and got examined Sh. Brijesh Kumar, Executive Engineer as DW-1 who deposed by way of affidavit Ex. DW-1/A before the Advocate Commissioner. DW-1 also relied upon following documents i.e. Agreement dated 07.11.2003 Ex.PW1/D2; award letter dated 04.11.2003 Ex.D-1; various letters dated 06.03.2004, 14.07.2004, 24.03.2004, 27.07.2004, 28.07.2004, 06.09.2004, 20.09.2004,

08.10.2004, 10.01.2005, 17.05.2005, 07.07.2005, 04.08.2005, 04.10.2005, 30.01.2006, 16.03.2006 and 21.06.2006 issued by defendant Ex.D-4 to Ex.D-19; letters dated 20.10.2003 and 31.12.2006 issued by defendant Ex.D-2 and Ex.D-3; copy of MB No.004620 pages 67-68 Ex.DW-1/1; copy of Application for Extension of Time filed by plaintiff Ex.D-21 and Ex.D-22; copy of letter dated Ex.D-20; Final bill Measurement Book no.9287 page 91 Ex.DW-1/2; office letter No. F50(361)SED:7/DDA-03-04/711 dated 21.06.2006 Ex.D-19; letters dated 16.03.2006 and 21.06.2006 Ex.D-18 and Ex.D-19; and Master Register Ex.D-23.

18. DW-1 deposed that the defendant floated a tender for construction of Convenient Shopping Center against which the plaintiff submitted its tender which was accepted and accordingly an Agreement dated 07.11.2003 Ex PW1/D2 was executed. DW-1 further deposed that the defendant had never created any hinderances in completion of work by the plaintiff. DW-1 further deposed that the work was awarded to M/s Bansal Construction Co., plaintiff with the stipulated date of start and completion as 14.11.2003 and 13.04.2004 respectively for CSC at plot no.1596, C.R. Park, New Delhi and the tender amount of the work was Rs. 55,10,077/- and the gross amount of work done upto 9th and final bill was Rs. 1,19,37,742/-. DW-1 further deposed that the work was physically completed on 07.10.2005.

19. DW-1 further deposed that the hindrances were not created by the defendant but it was the poor and slow pace of work on the part of the plaintiff because of which there were delay in

completion of work by the plaintiff. DW-1 further deposed that there is a provision in the Agreement for grant of extension of time which was availed by the plaintiff. DW-1 further deposed that the defendant co-operated with the plaintiff by way of grant of extension of time without levy of compensation. 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 defendant as is evident from various letters issued by defendant dated 06.03.04, 14.07.04, 24.03.2004, 27.07.2004, 28.07.04, 06.09.2004, 20.09.2004, 08.10.2004, 10.01.05, 17.05.05, 07.07.2005, 04.08.2005, 04.10.2005, 30.01.2006, 16.03.06 and 21.06.06. Plaintiff did not submit any letter to the defendant that he was not willing to execute the extra work.

20. DW-1 further deposed that the plaintiff has benefitted also by executing extra work and is unnecessarily blaming the defendant. DW-1 further deposed that the plaintiff being registered Class-1 contractor was well aware about the provision of clauses of Agreement that payment for extra work shall be derived and paid to 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 office letter dated 06.03.2004, 14.07,2004, 28.07.2004, 10.01.2005 and 17.05.2005.

21. DW-1 further deposed that even after completion of the

work so many defects were to be attended by the plaintiff for which letters were issued to him vide office letters dated 16.03.2006 and 21.06.2006. 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 (MB) No. 004620 page 67-68 Ex. DW 1/1 where Completion Certificate has been recorded and duly accepted by the plaintiff without any protest. DW-1 further deposed 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 SI no. 1 to 14 in the completion certificate".

22. DW-1 further deposed that the plaintiff has also undertaken in Extension of Time Performa Part-1 that "I will not claim any thing extra on account of extended period of contract". DW-1 further deposed that the payment has already been made to the plaintiff by the defendant under clause 12 of the Agreement for the extra work. 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(361) SED: 7/DDA/03-04/1034 dated 12.09.2006 Ex.D-20 with request to depute the representative for joint measurement. DW-1 further deposed that final bill Measurement Book no. 9287 page 91 Ex.DW-1/2 is already on record.

23. DW-1 further deposed that the claim of the plaintiff for Rs. 26,26,185/- towards the final bill is false, baseless and an afterthought. DW-1 further deposed that in the final bill the gross work done was Rs. 4,21,266/which has already been paid to him for which the plaintiff has accepted the measurement as is evident from MB no. 9267 at page 91. DW-1 further deposed that no payment is outstanding towards the final bill and as far as security amount of Rs. 5,31,000/- is concerned, the same was already paid through cheque against FDR no. SLT 231133 dated 22.11.2004 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. 60,000/-towards Watch and Ward charges is also false, baseless and 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 and in this connection, neither the defendant 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. Besides, no intimation was given by the plaintiff to the defendant and no account was submitted in this regard.

24. DW-1 further deposed that the plaintiff raised the issue of market rates for the first time in the legal notice dated 05.09.2006. DW-1 further deposed that the delay in settling the final bill was on account of the fact that plaintiff faltered in not carrying out the rectification work as set out in the Completion Certificate and 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 16.03.2006 and 26.06.2006, inspite of this, the defendant co-operated with the plaintiff and paid the final bill. DW-1 further deposed about the letter dated 16.03.2006 and 21.06.2006 Ex.D-18 and Ex.D-19. 25. DW-1 further deposed that no amount is outstanding in final measurement/bill. The gross amount of final bill was Rs. 4,21,266/- which has been paid to the plaintiff and payment for the same has already been received by him. DW-1 further deposed that payment towards Watch and Ward charges is beyond the purview of the Agreement. DW-1 further deposed that no staff/chowkidar was engaged by the plaintiff at site and no account for the same was submitted by the plaintiff. DW-1 further deposed that the full security amount has also been released in favor of the plaintiff, and no payment is outstanding on this account. DW-1 further deposed that the claim of the plaintiff on account of interest is also baseless and is an afterthought.

**Cross-Examination (DW-1):-**

26. DW-1 was cross-examined by learned counsel for plaintiff. During cross-examination conducted on 24.05.2022, DW-1 stated the tender amount to be Rs. 55,10,577/-. He further stated that the legal notice dated 05.09.2006, Ex. PW1/7 (also Ex. DW1/P1) was received on 12.09.2006. He further stated that the final bill dated 02.09.2006 Ex. DW1/P4 (colly) (also Ex. PW1/6) was submitted by the plaintiff on 06.09.2006. On further cross-

examination, DW-1 stated that the final bill Ex.PW1/6 (colly) was denied by the defendant by letter dated 12.09.2006 Ex. D-20.

27. DW-1 further stated that the department had asked for the joint measurement. Further, the plaintiff accepted the final measurement only. He further stated that on the basis of MB no. 9287, page 91, plaintiff had accepted the bill at point C as "Item wise final measurement accepted". On further cross-examination, DW-1 stated that the final bill amount passed by DDA was Rs. 1,19,37,742/- and part of bill was already paid amounting to Rs. 1,15,16,477.6/- leaving the balance amount of Rs. 4,21,266/-.

28. DW-1 further stated that final bill was paid in the month of December 2006. On further cross-examination DW-1 stated that the analysis of rates was submitted after the expiry of permissible period i.e. one month as per the agreement.

29. DW-1 further admitted that 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, however, he stated that extension of time was granted without levy of compensation for 542 days.

30. During cross-examination conducted on 26.05.2022, DW-1 stated that the security amount was already released. He was not aware if any demand was raised in respect of the defect in the execution of work. DW-1 also feigned ignorance when the contactor submitted his willingness to execute the extra work

over and above the Agreement amount. DW-1 further stated that there was no dispute regarding measurement in the final bill submitted by the plaintiff as the item wise measurement was already accepted by the contractor.

### **Final Arguments:-**

31. I heard final arguments advanced by Sh. S.K. Jain, learned counsel for the plaintiff and Ms. Promila Kapoor, learned counsel for defendants. Both the learned counsels argued as per their respective contentions contained in the pleadings. Learned counsel for the plaintiff also filed written submissions in support of his contentions.

### **Analysis and Findings:-**

32. Having heard the submissions and perused the entire material available on record, my issue-wise findings are as under:

#### **Issue no.1**

Whether the plaintiff is entitled to recover a sum of Rs.31,12,540/- 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

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

34. 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.31,12,540/-, plaintiff has neither stated the total final 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.26,26,185/- on account of unpaid work, Rs.60,000/- on account of Watch and Ward, Rs.4,26,355/- on account of interest on security deposit 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.

35. 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.55,10,577/-, the gross amount of actual work done upto the 9<sup>th</sup> and final bill came to be Rs.1,19,37,742/-.

36. 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 27.12.2004 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.55,10,577/-. As per note-sheet Ex. PW-1/2, the approximate cost of the work was stated likely to increase upto Rs.125.00/- lacs (Rs.1.25 crores).

37. 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 was for Rs.1,19,37,743/-, which in itself, is much higher than the original tendered amount of Rs.55,10,577/-.

38. During cross examination of DW1 dated 24.05.2022, as per answer no. 16, he specifically stated that the final bill was for Rs.1,19,37,742/-. Thus, it was only after the original tendered amount was increased to Rs.1,19,37,742/-, that the defendant no.1 could finalize the total upto 9<sup>th</sup> bill, as per Ex.PW-1/D-3 (Measurement Book No.9287 at page 91), at Rs.1,19,37,742/- which was close to the approximate and likely increased cost estimation of the defendant no.2 of Rs.1.25 crores, for which, he

had sought an approval of the defendant no.1 by way of note-sheet dated 27.12.2004 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.1,19,37,742/- was arrived at.

39. The plaintiff then wrote a letter dated 02.09.2006 Ex.PW-1/6 (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.1,41,42,663/-. In the said bill, the plaintiff also admitted about receiving payment of Rs.1,15,16,478/- having been paid upto 8<sup>th</sup> bill. The plaintiff thereby, by way of letter dated 02.09.2006 Ex.PW-1/6 (colly) demanded the balance amount of Rs.26,26,185/- from the defendants. The plaintiff, immediately thereafter, got a legal notice dated 05.09.2006 Ex.PW-1/7 (colly), served upon the defendants wherein a demand of payment of total amount of Rs.32,17,185/- was made to be paid by the defendants.

40. During cross examination dated 10/11/2010, the plaintiff (PW-1) stated as follows:

*“I have seen the document already exhibited as Ex PW1/6 and today I state with respect to the measurement that there is no more any dispute between me and DDA with respect to Quantity. Vol. The only dispute that remains is w.r.t. rates. After going through Ex.PW1/6, I state that the dispute remains w.r.t. the items listed therein which are now*

*being marked at points A to Z and AA to AH.”*

41. Therefore, as per the case of the plaintiff, the only dispute which remained between the parties was with respect to the specific items listed from points A to Z and AA to AH in letter dated 02/09/2006 Ex.PW1/6. Even, taking this statement of the plaintiff as gospel truth, the final amount, as claimed by the plaintiff in Ex.PW1/6, was Rs. 1,41,42,663/-. The said amount was allegedly for all the items mentioned in the said document Ex.PW1/6 and not just for items listed at points A to Z and AA to AH in Ex.PW1/6. On this ground itself, the plaintiff himself contradicted his own claim. The amount claimed by way of this suit by the plaintiff is out of the alleged final bill of Rs.1,41,42,663/-, because, both parties admitted that Rs.1,15,16,478/- was duly received by the plaintiff from the defendant out of the final bill amount. Therefore, once the plaintiff himself stated that the only items at points A to Z and AA to AH in Ex.PW1/6 remained unpaid, he himself contradicted his own final bill claim of Rs.1,41,42,663/-. Therefore, the balance amount to be recovered, even as per the case of the plaintiff himself, cannot be sustained..

42. Moreover, vide his statement contained in Ex.PW-1/D-3 (Measurement Book No.9287 at page 91), the plaintiff made an acceptance dated 16.12.2006, of the item wise final measurement bill amount of Rs.1,19,37,743/-. The said page 91 of Ex.PW-1/D-3 further reflects that Rs.1,15,16,477/- was already

paid to the plaintiff in the 8<sup>th</sup> R/A bill vide P-53/TMB out of the total amount of Rs.1,19,37,743/-. It is further reflected on the said page 91 that balance amount of Rs.4,21,266/- was outstanding. The plaintiff admitted his signatures on the said endorsement dated 16.12.2006 at point 'A' on page 91 of Ex.PW-1/D-3 during his evidence.

43. It is thus evident that the plaintiff admitted the final bill amount of Rs.1,19,37,743/- as per Ex.PW1/D-3 (Measurement Book No.9287 at page 91) on 16.12.2006. The plaintiff cannot be allowed to raise any objection to the final bill after admitting it as per the said MB. Also, perusal of the said statement dated 16.12.2006 clearly shows that the said acceptance was made by the plaintiff without recording any protest whatsoever. Once the plaintiff admitted the final bill in the MB in writing vide his endorsement dated 16.12.2006, he is estopped from challenging the same subsequently. Whatever grievance the plaintiff had with respect to his letter dated 02/09/2006 Ex.PW1/6, came to an end with his accepting the final bill in the measurement book vide his acceptance statement dated 16.12.2006.

44. 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.26,26,185/- 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.26,26,185/- was actually outstanding and

payable by defendant no.1 in his favour.

45. Furthermore, plaintiff in his letter dated 01.07.2006 Ex.PW-1/5, addressed to defendant no. 1, demanded Rs.12,00,000/- and odd as outstanding and payable by the defendant no.1 which shows stark inconsistency in the version of the plaintiff and he is clearly not coming with clean hands before this Court.

46. The plaintiff also conceded in his replication in para 1 of reply to preliminary objections that defendant/ DDA released the amount of Rs.5,31,000/- on 15.12.2006 and thereafter final bill was received for Rs.4,21,266/- against bill submitted of Rs.26,26,185/- which he had accepted under protest. Perusal of the Measurement Book Ex.PW1/D3 at page no.94 shows that the 9<sup>th</sup> and the final bill was accepted by the plaintiff without prejudice to his rights in the present suit. The said endorsement in Ex.PW1/D3 at page no.94 is dated 30.03.2007. Moreover, DW-1, in his cross-examination dated 24.05.2022, in answer to question no.18, stated that the final bill was paid in the month of December, 2006. It is seen that there is no suggestion from the plaintiff that the final bill was not paid in December, 2006. Therefore, by filing the present suit in January, 2007, the plaintiff could not have claimed the payment of Rs.4,21,266/-, which he later, in his replication, admitted to have received.

47. As per the statement of DW-1, the payment of entire final bill was made by the defendant no.1 to the plaintiff in December,

2006. It was only after the final remaining payment of Rs.4,21,266/- was stated to have been made by the defendant no.1 in its written statement that the plaintiff admitted in replication to have received the payment of Rs.4,21,266/-but again with audacity, did not whisper a word in this regard in his evidence affidavit Ex. PW 1/A dated 29.10.2009.

48. In the above-discussed facts and circumstances, the plaintiff has totally failed to show, even going by his own case, how the final balance payment of Rs.22,04,999/- (after adjusting the alleged further payment of Rs.4,21,266/-, out of the original claimed amount of Rs.26,26,185/-) was due and payable by the defendant no.1.

49. The act of the plaintiff, in accepting the final and 9<sup>th</sup> bill through his endorsement dated 30.03.2007, does not help him in any manner whatsoever. Once the plaintiff admitted the final item wise measurement bill of Rs. 1,19,37,743 and also admitted having received a sum of Rs.1,15,16,477/-, what remained outstanding was only Rs. 4,21,266/-.The plaintiff admitted in his replication to have received a payment of Rs 4,21,266/- (out of the total claimed sum of Rs.26,91,274/- earlier claimed in the plaint).Therefore, the claim of the plaintiff that Rs. 26,26,185/- were outstanding out of the final bill cannot be accepted.

50. The plaintiff thus, failed to prove the outstanding amount of 26,26,185/-, as claimed in the plaint, to be payable by defendant no.1. Further, the plaintiff failed to show any provision for

charges towards Watch and Ward in the Agreement between the parties, for which he claimed Rs. 60,000/-. 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 ten months cannot be accepted. Neither particulars of any such persons were provided nor any evidence to substantiate the same was led by the plaintiff. Therefore the claimed payment of Rs.60,000/- towards Watch and Ward charges is not recoverable. Accordingly, plaintiff is also not found entitled to claim interest amount of Rs.4,26,355/-.

51. Therefore, in the above-discussed facts and circumstances, in my considered opinion, plaintiff miserably failed to prove the outstanding amount of Rs.26,26,185/- as claimed in the plaint. Consequently, the plaintiff is not entitled to recover total sum of Rs.31,12,540/- and *pendente-lite* and future interest @18% per annum from the defendants.

52. Both the issues are decided against the plaintiff.

**Relief:-**

53. 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.

54. Decree-sheet be drawn.

55. File be consigned to records after necessary compliance.

**Pronounced in the Open Court on  
this 27<sup>th</sup> day of March, 2026**

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