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Decided on : 30.03.2026

Duration :
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**IN IN THE COURT OF 2ND ADDITIONAL SENIOR CIVIL JUDGE,
AHMEDABAD (RURAL) AT NAVRANGPURA, AHMEDABAD**

Sp.C.S No.180/1993

Exh._

Plaintiff **M/s. Shantilal R. Patel**
Add. : 9-Dhansadan Apartments,
Maninagar, Ahmedabad.

Versus

Defendant **The Housing Commissioner,
Gujarat Housing Board,**
Add : “Nava Vadaj”,
Nr. Pragati Nagar, Ahmedabad.

SUBJECT :- SUIT FOR COMPENSATION OF Rs.5,62,000/-

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- **Ld.Advocate Mr. K. G. Sukhwani** for the plaintiff.
 - **Ld.Advocate Mr. M. R. Gandhi** for the defendant.
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- : JUDGMENT : -

1. The precise facts of the plaintiff's case which are essential for the proper adjudication of this suit are as under:

1.1 That the plaintiff is a partnership firm duly registered under Partnership

Act and doing business on contract at the address mentioned in the cause title. Further it is submitted that the defendant has invited the tenders for the work of construction of 30 housing board residential apartment i.e. HIG group – 10 zone – 5 at Sola road Ahmedabad and in this regard the plaintiff has submitted its tender for construction work along with other tenders. Further after due process of tender allocation, the defendant had accepted the tender of the plaintiff and in this regard conveyed to the plaintiff through its Executive Engineer's vide letter dtd.30.09.1989.

- 1.2** Further in pursuance of the acceptance of tender by the defendant, the plaintiff has paid up the security deposit and signed the certain relevant documents and accordingly the defendant's Executive Engineer has issued the work order to the plaintiff with a certain condition that the work shall be completed within 21 months i.e. on or before 19.07.1991, however the plaintiff has failed to complete the work within the stipulated time frame on account of the defendant has failed to complete its contractual obligations under the circumstances that the defendant was failed to provide uninterrupted and exclusive possession of site with work order to the plaintiff as well as failed to furnish plans, drawings and detailed drawings, item wise detailed program. Moreover, the defendant's Superintendent Engineer has also failed to direct at what point and in which manner various items of work be executed. Further it is submitted by the plaintiff that the Executive Engineer of the defendant has also failed to provide the copy of the measurements as per Government Resolution and hence the plaintiff's full and regular payment of completed work was not released.
- 1.3** Further the plaintiff has satisfactorily completed the work on 24.12.1991 and thereafter the defendant has also handed over the physical possession of the property to the purchaser but till date the defendant has not made

payment of final bill as well as not refunded security deposit to the plaintiff, per contra, after 15 months of completion of work, the defendant wrote a letter to the bankers and demanded the payment of Bank guarantee from the plaintiff bankers. Further it is submitted by the plaintiff that, though the work was being satisfactorily completed by him on 24.12.1991, the defendant has failed to make legitimate payable due amount against work completion sum of Rs.5,62,000/- towards the plaintiff. Further in this regard the plaintiff has demanded his outstanding due amount from the defendant for many times, however the defendant has illegally and arbitrarily asked the bankers to make the payment of bank guarantee to him and hence in view of the above circumstances, the present suit has been filed and whereby prayed that to pass a decree in favour of the plaintiff and against the defendant amounting to Rs.562000/- together with 15% p.a. interest on the same from due date of payment till realization and awarded the cost of the suit.

2. Notice was issued and served to the defendant. The defendant has appeared through its Id. Advocate and filed written statement vide Ex.12, wherein he has inter-alia denied almost all the facts of the suit in toto. Further he has mainly submitted that there was no contract by and between the parties took place for work to be carried out within the local limits of jurisdiction of this court, the work of construction of 30 residential housing HIG group – 10 zone – 5 is at Sola road which is outside the local limits of jurisdiction of this court and hence the present suit is liable to be dismiss with costs. Further it is submitted that the defendant has already encashed the bank guarantee in question and hence present suit is not maintainable under the settled principal of law and thus in the interest of justice, the present suit is liable to be dismiss with costs.

3. Considering the above pleadings the following issues have been framed by my Id. Predecessor judge vide Exh.14,

: ISSUES :

1. Whether the plaintiff proves that it is registered partnership firm ?
 2. Whether plaintiff proves that he is very legally entitled for the suit claim from the defendant ?
 3. Whether defendant proves that plaintiff's suit is false and not maintainable ?
 4. Whether plaintiff is entitled for reliefs ?
 5. What order and decree ?
4. My findings for the above issues are as under:
1. In Affirmative.
 2. In negative.
 3. In negative.
 4. In negative.
 5. As per final order.
5. As the onus to prove the facts lies on the plaintiffs, the plaintiffs have filed the as oral evidence in support of its case.

Plaintiff Evidence :

Sr.no	witnesses examined	Ex.
1	Affidavit in lieu of chief in examination of Mr. Shantibhai R. Patel.	48

The plaintiffs have submitted following documentary evidences in support of their case.

Documentary Evidence:

Sr.no	Particulars	Ex.
1	Original work order issued by the defendant.	50
2	Original general power of attorney of plaintiff.	51
3	Copies of letters issued by the plaintiff to the defendant.	52 to 55
4	Original letter issued by the Bank of India to the plaintiff.	56
5	Copy of bank letter to the plaintiff.	58
6	Copy of firm registration certificate of plaintiff.	59
7	Closing pursis.	60

The defendant has filed the following documentary evidences in support of it's case.

Documentary Evidence:

Sr.no	Particulars	Ex.
1	True copy of reply of plaintiff in RCS No.1118/1994.	64
2	True copies of documentary evidences produced by the defendant in RCS No.1118/1994.	65
3	True copy of chief in examination with affidavit and cross-examination of defendant in RCS No.1118/1994.	66
4	Closing pursis.	67

6. Plaintiff Arguments:

The plaintiff argued that the suit made has been duly proven by evidence. as per the work order, was completed within the stipulated time limit, and the work order has been duly submitted. the work was completed within 21 months, and there has been no breach of contract. Exhibits 54 and 55 have also been submitted.

Further, notices were issued and bank guarantees were seized. Considering all the circumstances and facts of the case, and in accordance with the principles laid down in the judgments of the Hon'ble Supreme Court, it has been requested that the claim be granted.

Reliance has been placed on the following judgments:
AIR 1970 SC 1955, Maula Bux vs. Union of India;

AIR 1973 Guj 256, M/s Variety Body Builders vs. Union of India;

AIR 2006 SCW 3276, McDermott International vs. Burn Standard Co. Ltd. & Ors.;

AIR 1975 SC 763, Housing Board vs. Karbhase Naik & Co.;

AIR 1985 SC 607, Hyderabad Municipal Corporation vs. Krishnaswami Mudaliar & Anr.

7. Defendant Arguments:

The defendant argued that the plaintiff's suit does not fall within the jurisdiction of the Court, and that the plaintiff had previously filed a claim before the City Civil Court in 1992 and has subsequently filed the present claim, therefore, the suit is not maintainable.

Further argued that the defendant has filed a reply to the plaintiff's suit, contending that the plaintiff failed to complete the work within the stipulated time limit, thereby breaching the contract. the plaintiff had also

applied for an extension of time before the board, which was not granted. further, the plaintiff has admitted in his evidence that he had written a letter seeking extension of time.

Moreover, prior to filing the present suit, the plaintiff did not issue a notice as required under Section 71 of the Gujarat Housing Board Act; therefore, the claim is liable to be dismissed. and defendant reliance has been on the following judgments:

AIR 1989 sc 1239 ABC Liminart pvt.ltd v/s AP Agencies

REASONS

8. Generally, In terms of the burden of proof the burden is self does not shift during the legal proceedings, However the responsibility to present evidence may shift. whoever, that a fact occurred in the ordinary course of business must prove that fact, The burden of proof remain on them when both parties produced evidence regarding the fact, the court must compare the evidence and decide the matter based on which party proved more credible and reliable proof. While deciding a civil suit, the Court must take into account the provisions of the Civil Procedure Code (CPC), along with Sections 101 and 102 of the Indian Evidence Act.

- **Section 101 – Burden of Proof:**

Whoever desires any Court to give a judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

- **Section 102 – On Whom Burden of Proof Lies:**

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Furthermore, when evaluating the evidence produced and adduced by both the parties, the Court must decide in favor of the party whose evidences carries greater weight.

Issue No.1.

9. The burden of proving Issue No. 1 lies upon the plaintiff, the plaintiff's partnership firm is duly registered. In support of the same, the plaintiff has produced the Registrar's Certificate at Serial No.59. As no evidence to the contrary has been produced by the defendant, there is no reason to disbelieve the said documents. Considering all these facts issue No.1 is proved from the record. It confirming, therefore, I answer issue No.1 in affirmative.

Issues no. 3.

10. The burden lies upon the plaintiff to prove that the plaintiff's claim is maintainable or not ?. The plaintiff has claimed an amount of Rs. 5,62,000/- with interest in the present suit. In support of the said claim, reliance has been placed upon Work Order Letter No. GHB/EE/AAA/TC/2499 dated 30/09/1989 issued by the defendant, whereby the work was allotted to the plaintiff under Contract No. B-1/2 of 1989 with a stipulated period of completion of work within 21 months. the defendant has contended that the work was not completed within the stipulated period i.e. 21 months. It is further argued that some of the blocks constructed under the said work have been collapsed and destroyed. Gujarat High Court Variety Body Builders A Partnership vs The Union Of India. para 15 the Court is competent to award reasonable compensation in case of breach , even if no actual damage is proved to have been suffered in consequence of the breach of the contract, their Lordships have observed as under:

"But the expression 'whether or not actual damage or loss is proved to have been caused thereby' is intended to cover different classes of contracts which come before the Courts. In cases of breach of some breach, while in other cases compensation can be calculated in accordance with established rules. Whether the Court is unable to assess the compensation, the sum named by the parties if it be regarded as a genuine pre-estimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of a penalty. Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him".

These observations show that it was the duty of the railway administration to plead and prove the facts necessary to justify the forfeiture of the amount of security deposit or part thereof. The law on the subject was clear even before the suit was filed and , therefore, I see no justification for remaining the matter to the trial Court.

Thus, upon considering the submissions of both the parties and the evidence available on record, it appears that the plaintiff has not served the statutory notice as required under Section 71 of the Gujarat Housing Board Act prior to filing the present suit. The said fact is also reflected in the affidavit of evidence filed by the plaintiff. Since the mandatory requirement of issuing such notice has not been complied with, the statutory provision has not been followed.

Further, under Agreement No. B-1/2 of 1989-90, the plaintiff was required to complete the work within a stipulated period of 21 months. The record shows that the plaintiff has failed to complete the work within the stipulated period mentioned therein. On the contrary, a letters seeking an extension of 60 days have been placed on record at Exh 52 and 53 respectively. It clearly indicates that the work was not completed within the prescribed time frame under the work order. Additionally, the plaintiff

has failed to serve the mandatory notice as required under Section 71 of the Gujarat Housing Board Act before instituting the present suit.

Thus, upon considering the submissions of both the parties, the evidences available on record as well as the provisions of law and in view of the above discussion of the evidences, the plaintiff has failed to serve the mandatory notice as required under Section 71 of the Gujarat Housing Board Act before instituting the present suit. the defendant has also submitted that this Court has no jurisdiction to entertain the present matter. moreover, as per Section 71 of the Gujarat Housing Board Act, it is mandatory to give two months prior notice before filing such a suit. Since no such notice has been given by the plaintiff, the present claim is not maintainable. so issue No. 3 answered in the negative.

Issue No. 2 and 4

11. So far as issue No.2 & 4 are concerned, both the issues are inter woven and hence for the sake of convenience and avoiding repetition herein decided together, in both the issues the plaintiff claims suit value from the defendant, upon considering the submissions of both the parties, the evidences on record as well as the relevant provisions of law, it appears that the plaintiff failed to complete the work within the stipulated period i.e. 21 months as per the work order and the contract. moreover, the plaintiff has failed to serve the mandatory statutory notice upon the defendant before filing the present suit. in 1970 SC 1955 **Maula Bux v/s Union Of India** (Uoi) para 5, [Section 74](#) of the Indian Contract deals with the measure of damages in two classes of cases (i) where the contract names a sum to be paid in case of breach, and (ii) where the contract contains any other stipulation by way of penalty...the measure of damages in the case of breach of a stipulation by way of penalty is by [Section 74](#) reasonable compensation not exceeding the penalty stipulated for.

hence, the suit made by the plaintiff is not sustainable. accordingly, Issue Nos. 2 and 4 are answered in the negative.

12. Thus, in view of the aforesaid length discussion on merit, in my view, the plaintiff's suit is liable to be dismissed and accordingly for Issue No. 5, the following final order is passed in the interest of justice.

- ORDER -

- The plaintiff suit is hereby **dismissed**.
- Both the parties shall bear their costs of the suit.
- Decree to be drawn, accordingly.

Signed and pronounced in open court today i.e. on 30th March, 2026.

Date : 30.03.2026.
Place: Ahmedabad.

[N. H. Nandaniya]
2nd Addl. Sr. Civil Judge,
Ahmedabad (Rural) at Navrangpura,
Ahmedabad
(UID : GJ00906)