

Duly sworn on 02.11.2023.

Cross-examination by: Sri TVP Advocate.

3. I have been proprietor of the plaintiff firm for more than 22 years. I am having other business as well. It is true to suggest that I am the proprietor of Concan Engineering Consultancy firm. The plaintiff firm and the aforesaid Concan Engineering Consultancy firm are separate and independent businesses. I manage the day to day business activities of both these firms as the Proprietor.

Q: Is it true that you undertake construction of projects through the plaintiff company and so also you give consultancy services to the same projects through Concan Engineering Consultancy?

Ans: Concan Specialized Engineering Services is a construction company and Concan Engineering Consultancy Services is an Engineering and Consultancy Services Company. Yes, I am extending consultancy services through Concan Engineering Consultancy to the projects executed through plaintiff company namely Concan Specialized Engineering Services.

Q: As a signatory how many agreements have you signed with the defendant company?

Ans: There are two agreements. 1) Construction of the project by the plaintiff company and 2) Engineering Consultancy through Concan Engineering Consultancy.

Q: Out of the above two agreements you have relied on one agreement in this case which is agreement dated 22.02.2016?

Ans: I have relied on the agreement concerned to the contract of plaintiff company which is the subject matter of this suit.

Q: Do you admit that you have executed the contract agreement dated 22.02.2016 of which the notarized copy is now shown to me in favour of the defendant?

Ans: Yes, I have executed but it relates to some other contract and the same has been executed as proprietor of Concan Engineering Services. (Since the witness has admitted the document confronted to him the same is marked as Ex.D.1).

Q: Is it true that Ex.D.1 was executed by me for construction of godown and factory of the defendant?

Ans: Yes.

Q: Do you agree that both the agreements go hand in hand between the plaintiff, defendant and Concan Engineering Consultancy?

Ans: Yes.

Q: Do you agree that the terms and conditions of both the agreements are binding on all the parties thereto?

Ans: Yes.

Q: In your affidavit and in the plaint you have stated that the rates mentioned for the construction of the said projects are as per the schedule of rates of Karnataka Public Works Department. Have you produced that schedule to the defendant company and so also relied on the same in this case?

Ans: The rates are based on the Karnataka Public Works Department schedule of rates but they are as finally agreed by both the parties. I have not produced KPWD schedule of rates as the same was not required for the case.

Q: It is true to say that the expenditure towards the material used for construction and labour cost was to be directly paid by the defendant firm to the vendors and labour contractors upon invoice raised by the plaintiff company?

Ans: The payments were directly made to the vendors / suppliers on the certification by the plaintiff company and the invoices were in the name of the vendors or suppliers.

Q: What was your last invoice raised by plaintiff company which was acknowledged and paid by the defendant directly to the vendor / supplier?

Ans: I do not remember.

Q: Have you placed the said last invoice acknowledged by the plaintiff company before the Court?

Ans: Yes the said last invoice is produced but I do not remember whether the same had been acknowledged by the defendant company.

Q: Can you identify the said invoice from the documents I have produced in the case records?

Ans: They are annexure 5/1, 5/2 and 6/1 and they have been marked as Ex.P.6 and 7.

Q: Is it correct to say that the said invoices were raised by the plaintiff but they were not acknowledged by the defendant?

Ans: Yes.

Q: Is it true to say that since the defendant was unaware of Ex.P.6 and 7 it did not acknowledge the same?

Ans: Not correct.

Q: By what mode did you inform the defendant of Ex.P.6 and 7 invoices i.e. Annexure 5/1 and 2 and 6/1?

Ans: They were personally handed over to the defendant.

It is false to suggest that I have not personally handed over the said invoices to the defendant.

Q: Who delivered the said invoices and where and when?

Ans: I personally handed over the invoices at the project site probably on 10th April 2017.

Q: In spite of you personally serving the said invoices as claimed, why have you not obtained acknowledgment for serving the same?

Ans: Because of the trust I reposed in the defendant, I did not obtain acknowledgment for having served the invoices.

It is false to suggest that I have not served the said invoices on the defendant. It is false to suggest that no representative of the defendant was present on the project site during the month of April 2017.

Q: Is it correct to say that the construction of the project which includes construction of factor and godown was to be completed in all respect by 30th of June 2016?

Ans: Not correct.

Q: Point No. 8 of agreement marked at Ex.D.1 specifically provides that the work should be completed in all respect by 30th June 2016?

Ans: This is regarding Concan Engineering Consultancy and because of delay in getting the loan sanctioned by the defendant the execution of the project has taken its own time.

Q: How is the loan aspect of the defendant affected your construction capacity to complete before 30th June 2016?

Ans: There is no completion date for the construction agreement.

Q: How much was the total cost of the project?

Ans: The agreed project cost was Rs. 1,30,00,000/- (One crore thirty lakh).

Q: Out of Rs. 1,30,00,000/- how much was to be spent for procuring material and how much for labour?

Ans: It has to be worked out based on the bill of quantities.

Q: Whether the bill of quantities along with the rates were supplied to the defendant?

Ans: It is part of the agreement.

Q: From the agreement can you show furnishing of the bill of quantities along with rates to the defendant?

Ans: In annexure 1 and 2 of Ex.P. 1 contract agreement the same is furnished.

Q: As per annexure 1 of the agreement that is factory building (quantity and rates) how much of these schedule was used for construction purpose?

Ans: Rs. 19,79,759/-.

Q: As per annexure 2 godown building how much quantity was used for construction of godown?

Ans: The total amount is Rs. 35,77,560.20/-.

Q: The amount of construction cost identified by you is the cost of material and labour supplies only?

Ans: Yes.

Q: Whether the entire cost of labour and material provided and procured by you was paid by the defendant to the suppliers or vendors?

Ans: No, the plaintiff company has paid the outstanding due to the suppliers and labour contractor.

Q: Do you have the receipts of such payments?

Ans: Yes they may be in the office.

Q: Is it correct to say you have not placed the said receipts before the Court?

Ans: Since they were not relevant I have not placed.

Q: Is it correct to say that in the absence of producing the said receipts I am claiming the said amounts from the defendant?

Ans: I do not agree.

Q: Have you sent those receipts to the defendant at the time of sending legal notice dated 26.08.2019?

Ans: The receipts were already with the defendant.

It is false to suggest that I am falsely stating that the receipts were already with the defendant.

Q: As per the agreement between the plaintiff and the defendant, it was agreed that the defendant shall pay to the vendors of the material used for the construction and so also the payments should be made to the labour contractor then why was the need for you to pay the same?

Ans: Since the order for the materials was placed by the plaintiff and since the payment was not made by the defendant the plaintiff had to make the payment to the suppliers and labour contractors.

Q: Did you intimate the defendant about the payments and if yes by what mode?

Ans: The defendant is aware of the same since the suppliers and labour contractor stopped following up for the payments with the defendant.

Q: Do you say that the vendors and the labour suppliers knew the defendant?

Ans: Since the materials were supplied to the project site and the work was carried out at the project site the suppliers and labour contractors were knowing the defendant.

Q: According to the contract were you under legal obligation to pay the outstanding dues to the vendors of the construction materials and the labour contractors?

Ans: Since the defendant declared that he is not having the funds then the plaintiff had to make the payment whether the same is in the contract or not.

Q: Whether the defendant has intimated in writing to the plaintiff that it has no funds to pay the vendors and labour contractors?

Ans: No, it was verbal.

It is false to suggest that the defendant did not verbally intimate the plaintiff that it has no funds to pay the said amount.

Q: When was the first time the plaintiff paid the outstanding dues either to the vendors of the construction material or to labour contractors?

Ans: I do not remember.

Further cross-examination is deferred.

(Typed to my dictation in the open court)

R.O.I. & A.C.

District & Sessions Judge,
Uttara Kannada, Karwar.