



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 24th March, 2026
Pronounced on: 16th June, 2026*

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RFA 54/2022

NATIONAL POWER TRAINING INSTITUTE

Through its Principal Director
Northern Region, Badarpur, New Delhi.

.....Appellant

Through: Mr. Prashant Shukla and Ms. Ojasvi,
Advocates.

versus

SUNEHARI BAGH BUILDERS PVT. LTD.

Engineers & Contractors, 306, Sunehari Bagh Apartments,
Sector-13, Rohini, New Delhi.

....Respondents

Through: Mr. Bharat Bhushan Dharmani,
Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Present Regular First Appeal under Section 96 of the CPC, 1908, has been preferred on behalf of the Appellant / National Power Training Institute against ***Judgment and Decree dated 03.09.2021*** passed by learned ADJ-02, New Delhi, whereby Application filed by the Appellant/Defendant under Order XXXVII Rule 3(5) CPC, seeking Leave to Defend, was dismissed and the Suit was ***decreed for a sum of Rs.59,12,458/- along with pendente lite and future interest @ 6% per annum.***



2. The Plaintiff/Respondent had filed a Civil Suit bearing **CS No.11841/2016, under Order XXXVII CPC seeking Recovery of Rs.64,76,146/-, together with pendent lite and future interest.**
3. The Appellant/National Power Training Institute (NPTI) is an institute functioning under the Government of India. The Respondent/Sunehari Bagh Builders Pvt. Ltd. is a private construction company engaged in execution of civil works and infrastructure Projects.
4. **The facts, in brief,** are that the Defendant/Appellant floated *Tender No.7(1)/NPTI/NR/CIVIL/2010-11 dated 20.12.2010* for renovation of hostel rooms and associated facilities, at NPTI-NR, Badarpur.
5. The Plaintiff/Respondent participated in the tender process and was awarded the contract, for the tendered amount of Rs.61,72,140/-. A *formal Agreement dated 17.02.2011* was executed between the parties. *The stipulated date of commencement of work was 17.02.2011 and the duration of completion was twelve months, ending on 16.02.2012.*
6. **According to the Plaintiff/Respondent,** it commenced the renovation work and executed the contractual obligations in terms of the Agreement. It is asserted that measurements of the work executed, were *periodically recorded by the officials of NPTI, in the departmental Measurement Books, maintained in the ordinary course of business.*
7. The Plaintiff/Respondent relied upon *Measurement Book No.2,* which contained measurements recorded during, April 2011 pertaining to dismantling works, RCC works, plastering, wall tiling, GI pipe work, rain water pipes, waterproofing and other civil renovation items, in respect of various hostel rooms and toilet blocks. The measurements reflected in



Measurement Book No.2, formed the basis of the Second Running Account Bill dated 28.05.2011.

8. The Respondent claimed that the value of work recorded therein amounted to Rs.47,49,507/- and after adjustment of the secured advance and amounts already released under the *First Running Account Bill, a sum of Rs.31,86,587/- became payable.*

9. The Plaintiff/Respondent further relies upon *Measurement Book No.46*, wherein measurements were recorded in July, 2011 in respect of additional rooms and toilet blocks. These measurements were subsequently incorporated into *Measurement Book No.48* which contains the abstract of cost and valuation, prepared on the basis of quantities reflected in the earlier Measurement Books.

10. *The Plaintiff asserted that the Third Running Account Bill dated 01.08.2011 reflected a further payable amount of Rs.31,53,267/-.*

11. The Plaintiff also claimed that apart from the aforesaid amounts, a sum of Rs.1,36,292/- towards security deposit deducted from earlier payments, also was refundable.

12. *On the basis of the aforesaid documents, the Plaintiff/Respondent asserted that an aggregate amount of Rs.64,76,146/-, had become payable by the Appellant.*

13. The Plaintiff/Respondent referred to various communications dated 22.09.2011, 11.10.2011, 17.01.2012 and 28.06.2012 seeking release of the outstanding amount.

14. The Plaintiff/Respondent has also placed reliance upon the *Internal Working Committee Report dated 24.10.2011*, constituted by NPTI. According to the Plaintiff, the Committee undertook sample verification of



the measurements recorded in the departmental Measurement Books and found no material discrepancy therein. The Committee consequently recommended the release of payment in favour of the Plaintiff/Respondent-contractor.

15. Since payment was not released, the *Plaintiff/Respondent* issued a *Notice under Section 80 CPC dated 31.05.2014, demanding payment of the outstanding amount together with interest. The Defendant/Appellant sent a reply dated 17.07.2014* disputing the Plaintiff's entitlement and raising objections regarding the measurements, valuation and amount claimed.

16. ***The Plaintiff thereafter, instituted the present suit under Order XXXVII CPC seeking Recovery of Rs.64,76,146/- together with pendente lite and future interest.***

17. Upon service of summons, the *Defendant/Appellant* entered an appearance and filed Application and ***sought Leave to Defend.***

18. ***The Defendant/Appellant in its Application for Leave to Defend*** alleged that while submitting the tender documents, the Plaintiff/Respondent had declared "NIL" against the column requiring disclosure of litigation/arbitration proceedings, during the preceding five years. According to NPTI, the *Plaintiff/Respondent* had been involved in arbitration proceedings relating to another construction project and the said non-disclosure constituted suppression of material information relevant to the tender process.

19. ***The principal defense raised by the Appellant*** was that the Suit was ***barred by limitation***, since the alleged cause of action arose in 2011, whereas the suit was instituted only on 15.10.2014.



20. The **second defence** raised by the Defendant/Appellant was that the *Suit itself was not maintainable under Order XXXVII CPC, since the claim arose out of disputed contractual obligations, disputed measurements, disputed Running Account Bills and disputed valuation of work, all of which required adjudication upon detailed evidence.*

21. The Defendant/Appellant further contended that the alleged *Running Account Bills* had not been produced, in the original form. It was asserted that no duly prepared bills containing the requisite statutory particulars were ever submitted in the manner alleged by the Plaintiff/Respondent. The Defendant/Appellant maintained that the Plaintiff/Respondent had failed to produce supporting records, including bill books, tax records and other contemporaneous documents, which would ordinarily accompany and substantiate such claims.

22. The Defendant/Appellant also asserted that the Plaintiff/Respondent had deliberately failed to place on record the complete Tender document, even though the rights and obligations of the parties emanated therefrom and were governed by the terms and conditions contained therein.

23. The Defendant/Appellant, also questioned the **legality of the release of an advance payment amounting to Rs.9,00,000/-**. According to the Appellant, *Clause 20 of the Tender conditions prohibited advance payment*. Nevertheless, an Application seeking advance payment was moved by the Plaintiff/Respondent on 25.03.2011, and an amount of Rs.9,00,000/- was released on 31.03.2011.

24. *The Defendant/Appellant asserted that the said advance payment was not disclosed in the plaint and constituted a material circumstance, requiring adjudication.*



25. The Defendant/Appellant further asserted that by *letter dated 07.04.2011*, the Plaintiff/Respondent sought enhancement of rates and that approval thereof, which was granted on the very same day, by *Shri Vijender Kumar, Deputy Director*, but he lacked authority to accord such approval.

26. Similar allegations were raised in respect of the approval of extra items. It was claimed that numerous extra items were approved without following the prescribed procedure and without approval of the competent authority.

27. The Appellant contended that these irregularities in the processing of measurements, valuation and approvals, rendered the entries recorded in the Measurement Books, were incapable of being treated as conclusive proof of liability.

28. The Defendant/Appellant further alleged collusion between the Plaintiff/Respondent and Shri Vijender Kumar, in the processing of measurements, bills, rate enhancement and extra item approvals.

29. The Defendant/Appellant also challenged the correctness of the measurements itself and asserted that the entries recorded in the Measurement Books, did not correspond with the actual work executed at site.

30. The Defendant/Appellant relied upon a *departmental Report titled “Gist of Discrepancies/Anomalies in respect of Hostel Renovation Work” prepared pursuant to Office Order dated 08.01.2015*. The said Report recorded that renovation work was found only in 22 rooms and that several quantities reflected in the Measurement Books, were not found at the Site. The Report recorded discrepancies relating to brick work, distempering



work, dismantled toilet blocks and duplicate claims under certain extra items.

31. The Defendant/Appellant further relied upon a *subsequent Committee Report dated 27.01.2015*, wherein it was recorded that hidden and dismantled items could not be measured, approved rate documents were unavailable, and quality assessment could not be undertaken. Nevertheless, the Committee assessed the value of work at Rs.12,28,627.14/-.

32. The Defendant/Appellant further asserted that the Committee valuation of Rs.12,28,627.14/- demonstrated that the Plaintiff/Respondent had already received amounts substantially exceeding the value of work actually executed. According to the Appellant, payment of Rs.21,26,608/- had already been released, and therefore, no further amount remained payable.

33. Prior to adjudication of the leave to defend Application, the ***Appellant filed an Application under Order VII Rule 11 CPC seeking rejection of the plaint, on the ground of limitation.***

34. ***The Application was dismissed by the learned Single Judge of this Court on 07.08.2015. Subsequently, in FAO(OS) No.595/2015, the Division Bench observed that the limitation involved mixed questions of law and fact, requiring proper examination.***

35. ***The matter thereafter, went to the Supreme Court by way of SLP(C) No.26359/2016. The Supreme Court clarified that neither the orders passed in the earlier proceedings nor the dismissal of the SLP, would stand in the way of the Application seeking leave to defend, being considered independently on its own merits.***



36. The leave to defend Application thereafter, was decided by the learned ADJ, vide order dated 03.09.2021. The learned ADJ relied principally upon Measurement Book Nos.2, 46 and 48 and the Internal Working Committee Report dated 24.10.2011. It was observed that Measurement Book No.48 reflected work executed worth Rs.66,68,147/- and material brought at site worth Rs.12,44,627/-, aggregating to Rs.79,02,775/-. After adjustment of payments already released, amounting to Rs.21,26,608/- and addition of the security deposit of Rs.1,36,292/-, the learned **Trial Court concluded that a sum of Rs.59,12,458/- remained payable to the Respondent.**

37. The learned ADJ further held that the *Internal Working Committee Report dated 24.10.2011* supported the correctness of the measurements recorded in the Measurement Books and that the defence raised by NPTI, did not disclose any substantial triable issue.

38. It was also observed that the *Internal Working Committee*, upon conducting sample verification of the measurements recorded in the Measurement Books, found the same to be in order and had recommended release of payment in favour of the Plaintiff/Respondent-contractor.

39. The learned ADJ accepted that the liability of the Appellant stood established from its own records. Reliance was placed upon *Measurement Book No.48*, wherein the value of work executed was reflected as Rs.66,68,147/- and the value of material brought to the site was reflected as Rs.12,44,627/-, aggregating to Rs.79,02,775/-. After adjustment of payments already released and addition of the security deposit, the learned ADJ concluded that a *sum of Rs.59,12,458/-* remained payable to the Respondent.



40. Consequently, the Application for leave to defend was dismissed and the Suit was decreed for Rs.59,12,458/- along with pendent lite and future interest @ 6% per annum.

41. Aggrieved, the Appellant/Defendant has filed the present Appeal.

42. The grounds of challenge are that the learned ADJ failed to apply the settled principles governing grant of leave to defend under Order XXXVII Rule 3(5) CPC and proceeded to reject the defence, without examining whether the material placed on record disclosed bona fide and substantial triable issues requiring adjudication.

43. The learned ADJ erred in treating the Measurement Book Nos.2, 46 and 48 and the Internal Working Committee's Report dated 24.10.2011, as conclusive proof of liability while ignoring the subsequent departmental records relied upon by the Appellant, including the *Discrepancy Report* prepared pursuant to Office Order dated 08.01.2015 and the Committee's Report dated 27.01.2015, which questioned the correctness of the measurements, valuation and extent of work allegedly executed by the Respondent.

44. It was also not appreciated that the Appellant had raised substantial disputes regarding the actual work executed at site, the correctness of the measurements recorded in the Measurement Books, the valuation of such work, and the quantum of amount allegedly payable; all of which required adjudication upon evidence and could not be conclusively determined in summary proceedings.

45. The Appellant has also assailed the impugned Judgment on the ground that triable issues were raised regarding the legality of enhancement of rates, approval of extra items, release of advance payment and the



authority of the officers who allegedly processed and sanctioned such approvals, which constituted bona fide triable issues, warranting grant of leave to defend.

46. It is further contended that the learned ADJ failed to adequately consider the Appellant's objection regarding *the maintainability of the Suit* under Order XXXVII CPC, particularly in view of the disputed contractual claims, disputed measurements and disputed valuation forming the basis of the suit claim.

47. The reliance is placed on the case of Mechelec Engineers & Manufacturers vs. Basic Equipment Corporation, (1976) 4 SCC 687, to contend that where the defendant discloses a substantial defence or raises bona fide triable issues requiring adjudication, leave to defend ought to be ordinarily granted and refusal thereof, is justified only where the defence is frivolous, illusory or practically moonshine.

48. Further, reliance was placed upon Raj Duggal vs. Ramesh Kumar Bansal, 1991 Supp (1) SCC 191, wherein it was held that while considering an Application for leave to defend, the Court is required to determine whether the defence raises a real issue and not a sham one.

49. It was submitted that if the facts pleaded by the defendant, if ultimately established, would constitute a plausible defence, leave to defend cannot be denied.

50. Reliance was also placed upon IDBI Trusteeship Services Ltd. vs. Hubtown Ltd., (2017) 1 SCC 568, to contend that where triable issues indicating a fair, bona fide or reasonable defence arise, unconditional leave to defend should ordinarily follow and refusal of leave remains confined to cases where the defence is frivolous, vexatious or wholly untenable.



51. The Appellant has additionally challenged the impugned Judgment on the ground that ***the plea of limitation raised by it*** disclosed a bona fide and arguable issue requiring examination after evidence, especially in view of the observations made in the earlier proceedings that the question of limitation involved mixed questions of law and fact.

52. It was, therefore, contended that the defence raised by the Appellant could not be characterised as sham, illusory or moonshine and that the learned Trial Court erred in refusing leave to defend and decreeing the Suit in Summary Proceedings, despite the existence of substantial and bona fide triable issues.

Submissions heard and record perused.

53. Admittedly, the Work was awarded to the Plaintiff and a *formal Agreement dated 17.02.2011* was executed between the parties. The stipulated date of commencement of work was 17.02.2011 and the duration of completion was twelve months, ending on 16.02.2012. The Work was executed and the plaintiff claimed an outstanding amount of Rs.64,76,146/-, which according to him, was payable by the Appellant/Defendant.

54. The principal foundation of the Respondent's claim rests upon *Measurement Book Nos.2, 46 and 48* and the *Internal Working Committee Report dated 24.10.2011*. The Respondent has consistently asserted that the measurements recorded in the said Measurement Books, formed the basis of the *Second and Third Running Account Bills*. The *Internal Working Committee*, after sample verification, found the measurements to be in order and recommended release of payment.

55. There can be no dispute that the *Measurement Books* relied upon by the Respondent are official departmental records maintained by the



Appellant. Equally, the *Internal Working Committee Report dated 24.10.2011* records that sample measurements checked by the Committee were found to be in order. These documents undoubtedly lend support to the Respondent's claim and cannot be lightly disregarded.

56. However, the defence raised by the Appellant is not confined to a bare denial of liability. The Appellant has asserted that the Plaintiff's case is founded upon *Running Account Bills* and measurements recorded in Measurement Books, which are disputed and require evidence, to establish their authenticity and correctness.

57. The Appellant has further disputed the legality of release of advance payment amounting to Rs.9,00,000/-; challenges the enhancement of rates and approval of extra items; and also disputed the authority of *Shri Vijender Kumar, Deputy Director*, who allegedly processed such approvals. Furthermore, the Report dated 24.10.2011 of the Committee recorded that the internal quality measurements could not be done and *recommended release of only 70% of the amounts of the Bills raised*.

58. Shri Vijender Kumar, Deputy Director, on account of his acts, was transferred immediately vide Letter dated 03.11.2011. Serious issues had been raised, not only on his competence, but also on the verification of the Bills done by him. It was also pointed out that the revised rates had been approved by him on 07.04.2011, i.e. barely after 1.5 month of awarding work, which again reflected a question on the genuineness of his acts.

59. The Appellant has placed reliance upon subsequent departmental records, which directly question the correctness of the measurements and valuation, forming the basis of the Suit.



60. Appellants have placed on record various Letter since 2012 till January, 2015, indicating that there were serious concerns about the quality of the work and the quantity of times used and the same were being verified by the Internal Committee and various Letters have been written to the Plaintiff in respect of the Notice.

61. The *Discrepancy Report* titled “*Gist of Discrepancies/Anomalies in respect of Hostel Renovation Work*”, was prepared pursuant to *Office Order dated 08.01.2015*, wherein it was recorded that renovation work was found only in 22 rooms. It further noted that certain quantities reflected in the Measurement Books, were not found at site. The Report also referred to discrepancies relating to brickwork, distempering work, dismantled toilet blocks and duplicate claims under certain extra items.

62. Equally significant is the subsequent *Committee Report dated 27.01.2015*. The Committee recorded that hidden and dismantled items could not be physically measured, approved rates were unavailable, and quality assessment could not be undertaken. Despite these limitations, the Committee furnished a valuation statement and assessed the value of work at Rs.12,28,627.14/-.

63. This valuation stands in stark contrast to the valuation forming the basis of the Respondent's claim. While the Respondent seeks recovery based on records reflecting work and material valued at more than Rs.79,00,000/-, the subsequent Committee Report reflects a valuation of approximately Rs.12,28,000/-.

64. To determine whether the measurements reflected in the Measurement Books correctly, represent the work executed at site or whether the subsequent Departmental Reports furnish a more accurate



assessment thereof, necessarily fall within the domain of trial. The existence of competing departmental records raises bona fide disputes, thus, giving rise to triable issues, requiring adjudication after evidence.

65. The learned Trial Court discussed the Measurement Books and the Internal Working Committee Report, in detail. However, the impugned Judgment does not adequately address the effect of the subsequent Discrepancy Report and the subsequent Committee Report, relied upon by the Appellant.

66. Whether the observations recorded in the *Discrepancy Report* are ultimately correct or not; is not a question which can be conclusively determined at this stage. Nevertheless, the Report is a departmental document and directly questions the correctness of the measurements and valuation relied upon by the Respondent.

67. *Another aspect which cannot be overlooked is the Plea of Limitation.* The Appellant has consistently maintained that the alleged cause of action arose in the year 2011, whereas the Suit came to be instituted only on 15.10.2014. *Significantly, the issue was raised before the learned Single Judge; thereafter, before the Division Bench and ultimately before the Supreme Court in the Application under Order VII Rule 11 CPC.*

68. The Division Bench specifically observed that the *question of limitation involved mixed questions of law and fact* requiring proper examination. The Supreme Court further clarified that neither the earlier proceedings nor the dismissal of the Special Leave Petition would stand in the way of the Application seeking leave to defend, being considered independently on its own merits.



69. The Bills pertain to 2011, while the Suit has been filed on 15.10.2014. When did the cause of action arose in the light of disputed Bills and measurements, are mixed question of fact and law, requiring evidence.

70. Viewed cumulatively, the defence raised by the Appellant cannot be dismissed as a mere denial or a sham attempt, to evade liability. The material placed on record discloses substantial and bona fide disputes concerning the correctness of the measurements recorded in the Measurement Books, the extent of work actually executed, the valuation of such work, the legality of enhancement of rates, the approval of extra items, and the authority of the officers who allegedly processed and sanctioned such approvals. In addition, thereto, the Appellant has raised objections regarding the maintainability of the Suit under Order XXXVII CPC as well as the plea of limitation, *which necessarily require evidence for adjudication.*

71. In these circumstances, it cannot be concluded that the plea of limitation is sham, illusory or devoid of substance. *The material placed on record discloses bona fide and substantial triable issues, warranting the grant of leave to defend.*

72. *Consequently, the Judgment and Decree dated 03.09.2021, is set aside.*

73. ***Application under Order XXXVII Rule 3(5) CPC, filed by the Appellant, is allowed and Appellant is granted Leave to Defend.***

74. Written Statement filed by the Appellant be taken on record.

75. The matter is remanded to the learned Trial Court for adjudication in accordance with law, after affording both parties adequate opportunity to lead evidence.



76. Parties shall appear before the learned ADJ, South-East, Saket Courts, New Delhi, **on 09.07.2026.**

77. Accordingly, **the Appeal is allowed.** The pending Applications, if any, are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 16, 2026/R