

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2965 of 2000****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

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Approved for Reporting	Yes	No
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STATE OF GUJARAT & ANR.
Versus
GAYATRI CONSTRUCTION CO.

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Appearance:
MS KRISHNA DESAI, ASST. GOVERNMENT PLEADER for the Appellant(s)
No. 1,2
PARAS K SUKHWANI(8284) for the Defendant(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK**

Date : 09/07/2025**ORAL JUDGMENT**

1. The present First Appeal is filed under Section 96 of the Civil Procedure Code, 1908 read with Section 41 of the CPC at the instance of the appellants - State Authorities being aggrieved and dissatisfied with the judgment and decree dated 17.02.2000 passed by the learned Civil Judge, Valsad (herein after referred to as "the trial court") in Special Civil Suit No. 159 of 1991, whereby, the learned Judge partly allowed the suit and directed the appellants to pay Rs.11,04,435/- to the

respondent herein with 15% interest from the date of the suit till realization of the decretal amount.

2. Brief facts leading to the present appeal are as under :-

2.1 The respondent was an engineer and Contractor and was registered with the Public works Department and also approved by various other department of the Government and carrying on his business of Contractor in the name of M/s. Gayatri Construction Co. It is the case of the appellant that the Executive Engineer, Navsari (R&B) division, Navsari, had invited tenders publicly on behalf of the Govt. of Gujarat, appellant herein for the work of constructing Regional Training Centre at Vansada and accordingly the respondent had filled the said tender and submitted to the concerned Department and as the respondent's tender was found competitive, the same was accepted by the appellant Department. That, the respondent had paid the initial security deposit amounting to Rs. 40,100/- and entered into a regular agreement, bearing no. B-2/14 of 1985-86 and as per the agreement, the work was required to be commenced as per work order issued to the respondent from 21.02.1986 which was required to be completed on or before 20.02.1988 and the said work was

required to be carried out to the tune of Rs. 21,39,340-35 ps. That, the present contract created mutual bilateral reciprocal contractual obligations, inasmuch as, certain reciprocal contractual obligations were required to be performed first by the department and on its performance, the respondent was required to perform his part of the contractual obligations and as per the Department failed to perform their part of the contractual obligations, the above said work could not be completed within its stipulated time period. That the respondent had stated the reasons for the non-completion of the said work within its stipulate time period are as under :

2.2 That, as per the terms and conditions of the contract, the appellant was required to give item-wise programme, but no item-wise programme ever furnished by the appellant for executing the work. That, as per the contract, the appellant was required to supply the detailed working drawing were made available to the respondent, thereby the appellant committed the fundamental breach of the terms and conditions of the contract. That, the appellant was required to give line out for executing the above said work immediately to the respondent, on issuance of the work order, but, the

appellant had not given the line out to the respondent and also, the required details of footing and columns were also not given and therefore, the work could not be proceeded and the line out was furnished to the respondent in the month of October, 1986 and thereafter also, the details of footings and columns and other working drawing were not provided which were requires to be provided alongwith work order, were not provided till the stipulated time period of the work was over. The respondent had further alleged that the appellant department did not make the payment of the extra work done and thus, due to non-payment of the work done also amounts to a breach of the terms and conditions of the contract. That, the work site was situated in the tank area and the tank area was filled with monsoon water and therefore, the work could not be executed. That, as per the Schedule- A the appellant was required to supply the cement for the work to be executed but, no cement was made available to the respondent by the appellant - department. That, due to appellant, the work which was required to be completed on or before 26.02.1988, could not be completed for which the respondent had sought for extension and the extension was granted up to 26.02.1989 and during the extended period also, the required designs were not

furnished and even there was crop up of extra items and also, due to non- availability of the cement, the work could not be executed, the payment of the work done was not made to the respondent. Thus, due to appellant - Department the work could not be done within the extended time period. That, on account of breaches committed by the appellant - Department the respondent did not seek for extension and hence, the contract in question by efflux of time and come to an end on 20.02.1989, thereby no contract was in existence after 20.02.1989 and hence, the termination of the contract by the Department vide a letter dated 29.03.1990, was illegal and unwarranted, the levy of penalty and forfeiture of security deposit was also unwarranted. In these circumstances, the respondent had claimed various claims as under :

2.3 The respondent had stated that they had executed the work to the tune of Rs. 15,04,802/- and the same executed under the supervision of the appellant, the payment of Rs. 13,00,000/- was made to the respondent, therefore on account of work done not paid, the respondent was entitled for a sum of Rs. 2,04,802/- from the appellant. The respondent had stated that the work was required to be completed within its

stipulated time period and lastly up to 20.02.1989, but due to appellant, such as, non-payment, clear site, etc, the work in question could not be completed and also, the time limit for execution of the work was not extended by the appellant, no contract was extended bilaterally by both the parties, and thereby, the department had no right to deduct a sum of Rs.2500/- towards time limit deposit and was required to be refunded back to the respondent. The respondent had stated that as per the contract, the respondent had paid initial security deposit of Rs. 40,100/- in form of Bank guarantee and subsequently converted into FDR, and the remaining sum of Rs. 43,101/- was recovered in cash from R.A. Bills but, after the appellant had resorted to illegal and unwarranted action, the appellant was to pay a total sum of Rs. 84,167/- towards security deposit and said sum was forfeited on 29.03.1990 and hence, the said amount being for the performance of the contract and as the appellant had committed delays. hindrances, thereby the performance of the contract could not be completed by the respondent, due to appellant and hence, the sum of Rs. 84,167/- of FDR and in cash recovered were required to be refunded back to the respondent. The respondent had stated that as per the contract the respondent

was required to execute the work within stipulated time period but, due to appellant he could not execute the work, the work was required to be executed in the prolonged period and in executing the work in prolonged period, the respondent had to incur 40% expenditure on account of rise in price of labour, material and petroleum and the work executed in prolonged period was amounting to Rs. 7,47,681/-. Thus, on account of rise the respondent was entitled for a sum of Rs. 2,99,072/- from the appellant. The respondent had stated that as per the contract, the respondent was required to execute the work to the tune of Rs. 21,39,340/- but, due to appellant, the respondent could not execute the work to the fullest extent and thereby, not executing the work to the tune of Rs. 7,83,465/-, the respondent suffered his expected profit which the respondent had calculated at 15% at the time of tendering and hence, on account of non execution of the work, to the said tune, the respondent was entitled by way of compensation, a sum of Rs. 1,17,519/- from the appellant. The respondent had further stated that as per the contract the item no.21. the respondent was required to carry out the slab work for 15 cm thick, but, during execution of the work, the appellant had reduced down the thickness of the slab to 10

cm. Thus, on account of the said reason, the rate quoted by the respondent, did not remain effective, inasmuch as, the rates of the said item were based on Cu.Mtr. basis and considering the thickness of the slab, form work etc. the rates were quoted but, if the thickness was reduced than the said quoted rates did not remain effective and hence, the respondent was entitled for extra rate of Rs.350/- per CM for 101.33 CM of work executed i.e. a sum of Rs. 35,465/- which was to be paid for item No. 21. Similarly, Rs. 360/- per CM for the quantities to the tune of 89.39 CM which was amounting to Rs. 32,180/-. Thus, the respondent was entitled for a sum of Rs. 67,645/- from the appellant. The respondent had stated that the respondent had executed the work of beam and slab and as per ISI, beam measurement were to be considered right upto the top of the slab, but the appellant had not considered beam measurements upto the top of the slab, but had considered upto the bottom of the slabs and thereby, recording of the measurement, was not in consonant with the I.S.I. standard, the respondent was entitled for difference in rate of slab, beam, items. Thus, the respondent was entitled for Rs. 11,400/- from the appellant. The respondent had stated that his materials such as CGI Sheets, tools, plants, flooring tiles,

etc. were lying on the site, the value of which was Rs. 50,000/- and the appellant had taken over the possession so, the respondent was also entitled for the same. The respondent had stated that as per the item nos. 6,7,8 the respondent was required to execute the work of the sectional areas of the columns shown therein, but, due to the change in design of the column, sectional area reduced and therefore, the entire quoting of the rates had changed, and therefore, a revised rate of Rs.1000/- for item No.6, Rs. 1200/- for item no.7 and Rs.1300/- for item no.8 was required to be paid for the quantities of the work executed and hence, the respondent was entitled for extra amount of Rs. 28,380/- from the appellant. The respondent had further stated that the respondent was required to execute the work amounting to Rs. 21,39,340/- as per the contract within the stipulated time period but, due to appellant, he could not execute the work and at the time of tendering, for which the respondent had considered 15% towards overhead and overstay expenditure and accordingly respondent had made his establishment etc. and purchased machineries, tools, plants etc, therefore, the respondent was incurring overhead and overstay expenditure amounting to Rs. 13,370/- per month and the said work was

not completed within its stipulated period the respondent was required to incur the said overhead expenditure upto 21.02.1989. Thus, there was prolongation of overhead and overstay expenditure for a period of 12 months. Therefore, the respondent was entitled for Rs. 1,60,440/-. The respondent had stated that as per the contract the respondent was required to execute item no. 9, 13, 14, 15, 16, 17 as contemplated therein, but, the respondent was instructed to carry out the said items will all materials, etc. but in fact, and as per the items, the respondent was not required to provide the same and hence the respondent was entitled for brick, sand and cement for the said work executed in the said items and hence, the respondent was entitled for a sum of Rs. 3,30,417/-. The respondent had stated that the item no. 86, 90, 91 did not provide for material like cement and sand but, the appellant called upon the respondent to use the said material and respondent had executed the work of the said items, therefore, the respondent was entitled for the cost of sand, cement amounting to Rs. 59,233/-. In these circumstances, the respondent had filed the suit to recover Rs. 15,42,976/- from the appellant - Department with interest and costs of the suit, whereby, the learned Judge partly allowed the suit and

directed the appellants to pay Rs.11,04,435/- to the respondent herein with 15% interest from the date of the suit till realization of the decretal amount.

3. Being aggrieved and dissatisfied with the impugned judgment and award dated 17.02.2000 passed by the learned Civil Judge, Valsad in Special Civil Suit No. 159 of 1991, the appellants – State Authorities have preferred this appeal.

4. Heard learned Assistant Government Pleader Ms. Krishna Desai, appearing for the appellants – State Authorities and learned advocate Mr. Paras Sukhwani, appearing for the respondent – Company.

5. Learned AGP Ms. Desai has submitted that the impugned judgment and award passed by the trial court is contrary to the provisions of law, facts and evidence available on record of the case. She has submitted that the trial court has committed a serious and grave error while passing the impugned judgment and award. She has further submitted that the respondent has failed to prove that he is entitled for any additional amount over and above the amount mentioned in the contract and he

is also not entitled for any additional amount for price rise and thus, the trial court has committed a serious error while allowing the suit of the respondent and thus, the impugned judgment and award is required to be quashed and set aside and the present appeal is required to be allowed.

6. Per contra, learned advocate Mr. Paras Sukhwani, appearing for the respondent – Company, has submitted that there was no any breach of any of the terms and conditions mentioned on the contract, infact, it was provided in the agreement that if there is any price rise during the contractual work in progress, the respondent shall be entitled to get the difference of price rise and thus, the trial court after considering all the relevant facts and material produced before it has rightly passed the impugned judgment and award in favour of the respondent. He has further submitted that the rate of interest awarded by the trial court is a commercial rate of interest which was prevailing at that relevant point of time and no interference is required to be called for so far as the rate of interest is concerned.

6.1 Learned advocate Mr. Sukhwani has referred and relied

upon the decision of this Court in the identical facts rendered in case of ***District Panchayat Bhavnagar & Others vs. Babubhai Jivrajbhai Patel in First Appeal No.1020 of 2001*** decided on 05.02.2024 and urged that the Court may consider the ration laid down in the aforesaid decision and dismiss the present appeal and confirm the impugned judgment and award passed by the trial court.

7. However, learned AGP has objected so far as the rate of interest is concerned and submitted that since it was a contractual agreement executed by and between the parties, commercial rate of interest cannot be awarded and the trial court has committed a serious error in awarding interest at the rate of 15%.

8. I have heard the learned advocates appearing for the respective parties and perused the material placed on record. I have also perused the impugned judgment and award passed by the trial court, the issues framed by the trail court in para-3 and answered in para-4. On perusal of the Record & Proceedings and on examining the same, it appears that the claim of the respondent relates to the price hike as well as

extra work carried out by the respondent and after considering all these aspects, the trial court has rightly awarded the amount for the respondent was entitled to. I have also considered the submissions canvassed by both the sides and after going through the records, it appears that the controversy raised in the present appeal is very narrow in compass. The respondent was allocated the work by executing an agreement for contract between the respondent and the Executive Engineer, Navsari (R & B) Division, Navsari and as per the terms and conditions of the said agreement, the respondent had completed the work within the period stipulated in the agreement and therefore, the respondent had raised following claims before the trial court :

Description	Remarks
Work done not paid	Rs.2,04,802/-
Time limit deposit	Rs.2,500/-
Safety deposit	Rs.40,100/-
Loss of profit	Rs.7,83,465/-
Material left at site	Rs.50,000/-
Material used	Rs.3,30,417/- +
	Rs.59,233/-
Interest	15%

8.1 Thus, the trial court after considering the evidence on record and after considering all the relevant material placed before it, has allowed the suit and awarded the amount in favour of the respondent. I have also gone through all the

relevant material and the evidence placed on record and I am of the opinion that the appellants have failed to discharge the burden of proof, except the bare averments in the written statement, the appellants could not produce any evidence before the trial court and the respondent had shown his prima facie case that he was entitled for the amount prayed for in the suit and thus, the trial court has rightly passed the impugned judgment and award in favour of the respondent. I have also gone through the decision of the Co-ordinate Bench of this Court referred and relied upon by learned advocate Mr. Sukhwani and on perusal of the same, I am of the opinion that while awarding interest @ 15%, there was no evidence or material led by the respondent before the trial court with regard to the entitlement of interest @ 15% and there is no sufficient reason assigned by the trial court while awarding interest @ 15%. It is required to be noted herein that when there is no stipulation with regard to awarding interest at a particular rate, in absence of that, it cannot be said that it is to be awarded at the commercial rate and it is a discretion on the part of the learned Judge but, discretion cannot be shown unless and until there is any cogent and material reason assigned at the time of awarding any interest and therefore, I

am of the opinion that the rate of interest awarded by the trial court is on very higher side and thus, considering the same, the rate of interest as awarded by the trial court is required to be reduced to 9%, for which, learned AGP has raised objection and submitted that 6% interest may be awarded, however, considering the rate of interest prevailing at that relevant point of time, this Court deems it fit to award interest @ 9%, which is just and proper.

9. In the result, the appeal is partly allowed. The judgment and decree passed by the judgment and decree dated 17.02.2000 passed by the learned Civil Judge, Valsad in Special Civil Suit No. 159 of 1991 is confirmed except the interest part. The respondent is entitled to the interest @ 9% p.a. upon the amount awarded by the trial court from the date of suit till realisation. Interim Relief, if any, stands vacated forthwith. No order as to costs.

10. Record and proceedings, if any, be sent back to the concerned Court forthwith.

(HEMANT M. PRACHCHHAK,J)

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