



2026:CHC-PB:37-DB

# IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION  
[CIRCUIT BENCH AT PORT BLAIR]

**PRESENT: THE HON'BLE JUSTICE DEBANGSU BASAK**

**AND**

**THE HON'BLE JUSTICE AJAY KUMAR GUPTA**

**FMAT(ARBAWARD)/4/2024**

THE UNION OF INDIA ... APPELLANT

VS.

M/S CSE CONSTRUCTION (INDIA)  
PVT LTD ... RESPONDENT

For the appellant : Mr. V.D.Sivabalan

For the Respondents : Mr. Tapan Kumar Das

Heard on : February 24, 2026

Delivered on : February 24, 2026

## **DEBANGSU BASAK, J.**

1. Appeal is at the behest of the Union of India and directed against the order dated February 22, 2024 passed by the District Judge, Port Blair in Other Suit No. 4 of 2020 rejecting the application under section 34 of the Arbitration and Conciliation Act, 1996, filed by the appellant.



2. Learned advocate appearing for the appellant submits that, both the Arbitral Tribunal as also the learned Single Judge, misconstrued and misapplied in terms of clause 8 of the contract. He submits that, in terms of clause 8, the completion certificate can only be issued upon the removal of the plant and machinery by the respondent. Since there was delay on the part of the respondent in removing the plant and machinery, completion certificate was not issued. The question of delay in payment of the final bill does not arise.

3. Both the Arbitral Tribunal as also the learned Single Judge, failed to appreciate that, since, there was no delay in the payment of the final bill, the award for grant of interest on the final bill cannot be sustained.

4. Learned advocate appearing for the appellant submits that, the learned Arbitral Tribunal as also the learned Single Judge erred in rejecting the counter claim made by the appellant. He submits that, the counter claim was based on the non-vacating of the site by the respondent after completion of the work. He submits that, in the facts and circumstances of the present case, there was delay in the contractor vacating the site and therefore, the completion certificate would not be issued. Consequently, the appellant is entitled to compensation



as claimed in the counter claim for the delay of the respondent in vacating the site in question.

5. Respondent is represented.

6. A contract was entered into between the parties on November 20, 2012, for the work of quarrying, crushing, manufacturing and supply of stone aggregate of various sizes, pulverized coarse and fine sand from the allotted quarry of APWD at Boorkshabad under Port Blair, Andaman and Nicobar Islands for a sum of Rs.7,54,71,000/-.

7. Quarry lease was entered into on November 07, 2012 between the Administration and the respondent herein. Administration permitted installation of crusher unit on December 27, 2012. Respondent commenced work on February 22, 2013. Respondent raised and submitted with the appellant valuable bills in respect of the work done, from time to time. Running account bills were paid by the appellant. Contract stipulated completion of work for one year. However, at the request of the respondent, time for completion of the contract was extended. Respondent was granted provisional extension upto October 31, 2016 by the letter dated August 23, 2016 issued by the appellant.



8. Respondent submitted a final bill for a sum of Rs.1,88,07,021.06 including extra item on October 25, 2017. Appellant did not release the same on the plea that, the respondent did not vacate the site and did not submit completion certificate.

9. Since disputes and differences arose between the parties, and since, the contract contained an arbitration clause, and since the parties failed to appoint an arbitrator, respondent approached the High Court for appointment of an arbitrator under section 11 of the Act of 1996 being AP No.11 of 2018. In such section 11 proceeding, an arbitrator was appointed who entered into the disputes.

10. In the arbitration proceeding a statement of claim was filed by the respondent. Essentially three claims were raised by the respondent as the claimant.

11. In the arbitration, the appellant, submitted a statement of defence with the counter claim. The counter claim was premised upon the delay in vacating the site by the respondent.

12. Arbitral tribunal, by the award dated July 30, 2020, rejected all claims of the respondent excepting, allowing the sum of Rs.1,30,01,105/- arising out of claim No.1. Counter claim made by the respondent was rejected.



13. Being aggrieved, appellant filed an application under section 34 of the Act of 1996 being Other Suit No. 4 of 2020 which was dismissed by the impugned order dated February 22, 2024.

14. Arbitral Tribunal, awarded claim no.1 on the ground of delay in release of payment of final bill. Defence of the appellant that there was delay on the part of the respondent in clearing the site and therefore no completion certificate could be issued, which ultimately resulted in the payment of the final bill was negated. Arbitral Tribunal gave reasons for negating such contention. Arbitral Tribunal noted that, the respondent was granted provisional extension till October 31, 2016 by the letter dated August 23, 2016 issued by the appellant. However, work was certified to be completed as on March 31, 2016, which was conveyed by the Superintending Engineer, on February 08, 2019.

15. Learned Tribunal found that, the decision to close the contract with effect from March 31, 2016 was taken much later than October 31, 2016 and that no action to finalize the bill was taken. Final bill for undisputed work was required to be prepared and paid within six months on completion of terms of contract. No notice for removal of plant and machinery was



issued to the claimant. It was only in the reply of dated February 16, 2018 to the claimant's letter raising various claims dated December 26, 2017 that the appellant raised the issue of removal of plant for the first time.

16. The findings returned by the arbitral tribunal on account of delay in payment of final bill, cannot be faulted. At the very least, it is a plausible view taken in the facts and circumstances of the present case.

17. Neither a section 34 court nor a court exercising jurisdiction under section 37 of the Act of 1996 is called upon to reappraise the evidence and substitute its findings with that of the views returned by the arbitral tribunal, when the view of the arbitral tribunal is not established to be perverse or suffering from patent illegality or against public policy.

18. In the facts and circumstances of the present case, the view taken by the Arbitral Tribunal cannot be termed to be perverse or vitiated with patent illegality or against public policy.

19. So far as counter claim is concerned, arbitral tribunal, on the parity of the same reasoning as the delay in payment of final bill noted that, the completion certificate was issued belatedly.



There was not contemporaneous letter requesting removal of machinery from the site.

20. Apart from the merits as discussed above on the issue of counter claim, Arbitral Tribunal also noted that the counter claim was barred by limitation and that such counter claim was not raised prior to the entering into reference by the Arbitral Tribunal. Arbitral tribunal noted that, arbitral proceedings commenced on August 18, 2018 and that the counter claim was not raised before June 17, 2019.

21. Again, the view taken by the Arbitral Tribunal on the issue of negating the counter claim made by the appellant, cannot be classified either as patent illegality or perverse or against public policy.

22. In view of the discussions above, we find no merit in the present appeal.

23. **FMAT(ARBAWARD)/4/2024** is dismissed without any order as to costs.

**(DEBANGSU BASAK, J.)**

24. I agree.

**(AJAY KUMAR GUPTA, J.)**