

IN THE COURT OF CIVIL JUDGE(SR. DIVN.), BHUBANESWAR

Present : **Sri Sitikantha Samal**
Civil Judge(Sr. Divn.)
Bhubaneswar.

C.S No.362/2011

Nabalok Das (A) Class Contractor, aged about 34 years
S/o Sri Debaranjan Das,
Resident of Plot No. LB, Phase-II, Bhimatangi
Bhubaneswar-2, P.S-Air Field,Khurda.

..... Plaintiff

- Versus -

1. The Bhubaneswar Municipal Corporation
Bhubaneswar, Dist-Khurda, represented by
its Mayor.
2. The Commissioner,
Bhubaneswar Municipal Corporation,
Bhubaneswar, Dist-Khurda.
3. The Executive Engineer,
Bhubaneswar Municipal Corporation
Division No.II, Bhubaneswar, Khurda.

..... Defendants

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff : M/s S.Mishra & Associates

For the defendants : M/s D.Dey & Associates

DATE OF ARGUMENT : 20.08.2014

DATE OF FINDINGS : 04.09.2014

J U D G E M E N T

The plaintiff has filed the suit for declaration, realisation of an amount of Rs. 26,96,990/- and other consequential reliefs including cost.

2. The case of the plaintiff in brief is that the plaintiff is an A class

contractor who carries different contracts under the State Government, Municipal Corporations etc. Consequent upon the notice inviting tender T.N No. 15319 dt. 11.07.2007 and 1st Corrigendum T.C notice no. 16125 dt. 21.07.2007 published in the local newspaper “Sambad” by the Bhubaneswar Municipal Corporation (hereinafter referred to as BMC in short), the plaintiff submitted his tender for the work of “construction of Kalyan Mandap at Unit-VI, Bhubaneswar in Ward No.45” and thereby selected as the valid and lowest tenderer which was communicated to the plaintiff vide the BMC letter no. 3061 dt. 13.02.2008. The plaintiff entered into a contract agreement assigned as Agmt No. 301F2 of 2008-09 with the BMC through the deft.no.3 on 22.02.2008 for work value of Rs. 1,46,96,380.00. Work order was issued accordingly by the deft.no.3 vide his letter no. 3946 dt. 23.02.2008 commencing from 23.02.2008 and scheduled to be completed by 23.01.2009, a period of 11 months. Immediately the plaintiff took every possible steps in making arrangements for starting the construction work. But though the deft.no.3 issued the work order along with the certified copy of the agreement, but he has not issued any structural drawing. The plaintiff requested the defendants repeatedly to issue the structural drawing, but as they did not issue the same, the plaintiff had to execute the work as per the day to day instructions of the Asst. Engineer and J.E and completed the excavation of foundation. Though the plaintiff was prepared by stacking construction materials at the work site, but due to non availability of structural drawing, remained idle with his men and materials. Thereafter, the plaintiff by his letter dt. 29.05.2008 requested the deft.no.2 to change the date of commencement of the work i.e. 23.02.08 to some other date as the work could not be completed within the time schedule i.e. 22.01.09 due to non-supply of structural design by the defendants. The work again proceeded by the instruction of the defendants and again on 01.09.2008 without any

reason, the deft.no.3 orally instructed the plaintiff to stop the work until further order. Thereafter the plaintiff vide his letter dt. 30.10.2008 asking therein that whether the work will be executed or not and also requested the defendants to extend time. On 26.05.2009 vide letter dt. 13855, the deft.no.3 directed the plaintiff to complete the work and extended the time of completion up to 23.01.2010. It is the case of the plaintiff that as no action was taken by the defendants from 01.09.2008 to 26.05.2009, he could not proceed with his work and thereby sustained huge loss. On 11.06.2009, there was a contract management meeting in which the plaintiff placed his grievances and in that meeting considering the paucity of funds of BMC, the work was reduced to 2nd floor and the minutes of the said meeting was not issued to the plaintiff for his reference and record. But in accordance with that minutes of meeting, the plaintiff submitted a revised work programme vide his letter dt. 21.08.2009 . It is the further plea of the plaintiff that he vide his letter dt. 07.09.09 requested the deft.no.2 to take decision as to the resumption of the work of Kalyan Mandap and requested for extension of time till 31.03.2010. The deft.no.3 vide his letter no. 21191 dt. 07.09.2009 advised the plaintiff for extension of time and to slow down the progress of the work. Thereafter the plaintiff submitted a memorandum to deft.no.1 on 19.09.2009 to have a firm decision for resumption of the work with price escalation to complete the work by 31.05.2010. The plaintiff in pursuance to letter dt. 21191 dt. 07.09.09 issued by the defendants applied for extension of time vide his letter dt. 19.09.09 up to 31.05.2010 stating the reasons. But the defendants allowed time up to 31.03.2010 vide letter no. 29001 knowing very well that the work could not be completed by that date, but did not issue any order to resume the work and without the structural drawing as well as the details of the change in the scope of work for which the plaintiff was prevented to proceed with the work. With a better hope on 15.01.2010, the plaintiff applied for

extension of time up to 30.09.2010 stating the aforesaid reasons.

It is the case of the plaintiff that as per the contract, monthly payment should have been made. But the defendants have only paid two numbers of capital R/A bills in piecemeal manner on the plea of paucity of funds with BMC. Due to the inaction and negligence of the defendants granting expansion of time, and due to non-consideration of price escalation, the plaintiff vide his letter dt. 19.05.2010 requested the deft.no.1 to close the contract without resorting to any penal action. But the deft.no.3 communicated the grant of extension of time up to 30.09.2010 vide his letter dt. 10916 dt. 10.06.2010 which was posted on 07.07.2010 with a gap of about one month without indicating the revised scope of work and price escalation clause in the contract agreement. But without considering the grievances of the plaintiff, the deft.no.3 requested him on 20.09.2010 to submit the reasons for delay for completion of the work ignoring the requests made by the plaintiff in his letter dt. 17.07.2010. The plaintiff given a compiled reply to the said letter of deft.no.3 dt. 20.09.2010 by his letter dt. 08.10.2010. As the defendants did not reply to his letter dt. 08.10.10, the plaintiff served a notice U/s.80 of the CPC through his advocates on 19.11.2010 explaining his grievances, the latches and negligence of the defendants and claiming the bills for the additional and extra items of work. As the defendants remained silent, the plaintiff has filed this suit claiming Rs. 26,96,990/- in toto towards the extra work he has executed, the return of EMD and ISD, the return of the security deposits from the R/A bills, the amount which has been withheld from the second R/A bill, for watch and wards, bore well along with profit @ 10% of the contract value and with a prayer to declare the cancellation order dt. 04.03.2011 by canceling the contract agreement dt. 22.02.2008 No. 301F2 of 2008-09 along with the work order dt. 23.02.2008 as illegal and inoperative along with cost.

- 3.** The defendants appeared and filed a joint written statement. In the W.S, the defendants denied all the allegations and assertions made in the plaint. The defendants have also taken the plea that the suit is not maintainable and there is no cause of action to file this suit. Though the defendants admitted the agreement for the work in question with the plaintiff, it is specifically pleaded that as per the agreement, the plaintiff has to start the work on 23.02.2008 and to complete the same on 23.01.2009. But the plaintiff has not commenced the work on 23.03.2008 as per the agreement and the defendants are not liable for the damages claimed by the plaintiff for his loss if occurred. It is the specific case of the defendants that at the time of issue of work order, vide order no. 3946 dt. 23.02.2008, the deft.no.3 has supplied all the required documents along with the structural drawing and the engineers have given the lay out in the work site. But with an ulterior motive and in order to claim escalation of price, the plaintiff without commencing the work from 23.02.2008 has insisted the defendants on several times to change of the date of the commencement to some other date and for extension of time. It is also the case of the defendants that the deft.no.3 on 01.09.2008 has not orally instructed the plaintiff to stop the work until further order. The materials collected and stacked at the site were exhausted then and there up to the construction of plinth level and so the question of watch and ward for the un-utilised materials does not arise at all. The defendants have also paid the running bill of Rs. 11,21,970/- as per the estimation to the plaintiff in installments. As the plaintiff did not complete the construction in time, the deft.no.3 vide his letter dt. 26.05.2009 requested the plaintiff to complete the work as soon as possible but the plaintiff again claimed additional amount towards watch and ward and also requested to extend the time till 23.01.2010. It is the specific case of the defendants that as the plaintiff could not complete the work within the stipulated period, there was a hue and

cry among the people of Unit-6 for which the deft.no.2 conveyed a meeting on 11.06.2009 in presence of the plaintiff in which it was decided that the defendants will extend the time for completion of the second floor with a condition that the plaintiff will execute the work as per the estimated value approved on 12.08.2009, but the plaintiff with some ulterior motive did not progress the work. The defendants have also taken the plea that on the request of the plaintiff, the time was extended to different dates and finally up to 30.09.2010, but the plaintiff has not started the work and asking for extension of time repeatedly with a motive to claim the escalation price without further construction after the plinth level. The defendants also denied the claim of the plaintiff to get 10% of the profit from the un-finished work and due to non-completion of work, the reputation of the defendants has been hampered. It is the specific case of the defendants that the bills as per measurement has already been paid to the plaintiff and they are not liable to pay to the amount claimed under different heads as those claims are not in consonance with the agreement. With these pleas, the defendants pray to dismiss the suit.

4. On the basis of the aforesaid rival pleadings of the parties, the following issues have been framed for consideration.

ISSUES

- (i) Is the suit maintainable ?
- (ii) Whether there is any cause of action to file the suit ?
- (iii) Whether the plaintiff is entitled for a declaration of the cancellation order dt. 04.03.2011 by canceling the contract agreement dt. 22.02.2008 No. 301F2 of 2008-09 along with the work order dt. 23.02.2008 as illegal and inoperative ?
- (iv) Whether the plaintiff is entitled for a decree of Rs. 26,96,990/- against the defendants along with interest @ 18% per annum from the date of institution of this suit till the date of actual payment ?

- (v) Whether the plaintiff is entitled to the cost of the suit?
- (vi) To what other reliefs, the parties are entitled ?

5. In support of their case, the plaintiff has examined himself who is referred to as P.W.1 hereinafter. The plaintiff has exhibited various documents vide Ext.1 to 21/b in support of his case. On the other hand, the defendants have adduced one Saroj Kumar Mohapatra, Asst.Engineer of B.M.C has been examined as D.W.1 on their behalf. The defendants have exhibited various documents vide Ext.A to H in support of their plea. All the oral and documentary evidences adduced on behalf of the parties have been reflected in detail at the foot of this judgment.

FINDINGS

6. **Issue No. (iii) & (iv):-** Since these two issues are the crux of the suit, they are taken together for consideration. It is the admitted fact that in pursuance to the tender bearing T.N No. 15319 dt. 11.07.2007 and 1st corrigendum T.C Notice No. 16125 dt. 21.07.2007, the plaintiff submitted his tender for the work of construction of Kalyan Mandap at Unit-VI, Bhubaneswar and since the plaintiff was the lowest tenderer, his tender was accepted by the defendants and communicated vide letter No. 3061 dt. 13.02.2008 (Ext.1) and accordingly, both the parties entered into a contract agreement on 22.02.2008 vide Agreement No. 301F2 of 2008-09 (Ext.B) for the work value of Rs. 1,46,96,380/- and in pursuance to the said agreement, the deft.no.3 issued the work order vide his letter No. 3946 dt. 23.02.2008 (Ext.2/Ext.A). As per Ext.B & Ext.2, the work was to be reckoned on 23.02.2008 and schedule to be completed by 23.01.2009. Accordingly, the plaintiff arranged the men and required materials for the said construction work. The case of the plaintiff is that though work order was issued for the construction, but no structural drawing was handed over to him for the said construction. But the layout was given by the Asst. Engineer and J.E to the plaintiff. In spite of his several requests for the structural drawing, the plaintiff

had to execute the work as per the day to day instruction of the aforesaid engineers. Without going to unnecessary details regarding the communications in between the plaintiff and the defendants, it is pertinent to mention here that as the work could not progress properly so as to complete the same within the stipulated period as per the Ext.B on several occasions, the plaintiff through letters requested for extension of time. It is the case of the plaintiff that on 01.09.2008, the deft.no.3 instructed him orally to stop the work and the plaintiff vide his letter dt. 30.10.2008 requested the deft.no.2 to execute the work and for extension of time and the said letter is admitted in evidence as Ext.2. The deft.no.3 vide his letter no. 13855 dt. 26.05.2009 (Ext.C) requested the plaintiff to complete the work failing which it will be presumed that the plaintiff has no interests to complete the work as the plaintiff has stopped the construction work. In response to that letter, the plaintiff vide Ext.5 replied that as he has not got any instruction till 25.05.2009 to start the work, he has got no mistake in stopping the work and prayed for extension of time for completion of the work. Ultimately one Contract Management Meeting was held on 11.06.2009 in which the plaintiff was present and in that meeting it was decided to reduce the construction and the plaintiff was allowed to construct up to the second floor and accordingly, on 21.08.2009, the plaintiff submitted the revised work programme. The deft.no.3 vide Ext.9/Ext.D on dt. 07.09.2009 asked the plaintiff to apply for extension of time and vide Ext.10, the plaintiff submitted a memorandum for price escalation and extension till 31.05.2010. The defendants allowed the extension of time on 29.12.2009 up to 31.03.2010 and vide Ext.16 the defendants also allowed the further extension of time till 30.09.2010. It may be mentioned here that in spite of the letters and the counter letters of both the parties, the work could not progress and ultimately the plaintiff on 19.05.2010 wrote a letter for determination of the contract, which is admitted in evidence as Ext. 15 and in letter dt.08.10.2010 explaining

his grievances, requested for finalisation of accounts without extra financial burdens treating the contract as dead contract and the said letter is admitted in evidence as Ext.18. As the defendants did not take any step for finalisation of accounts, as per the case of the plaintiff, the plaintiff served a notice U/s.80 of CPC vide notice dt. 19.11.2010 explaining his grievances and claiming Rs. 58,61,053/- which is admitted evidence as Ext.19. But the defendants without considering the claim of the plaintiff terminated the contract as the plaintiff could not progress with the work vide their letter dt. 04.03.2011 and the said termination letter is admitted in evidence as Ext.G. The plea of the plaintiff from the very beginning that he has not been provided with the structural drawing for which he could not proceed with the work. But the defendants have taken the specific plea that the said structural drawing was provided to the plaintiff along with the work order. On perusal of the communications made by the plaintiff to the defendants on various occasions specially in requesting for time, it is found that except the Ext.3, in no other letter, he has demanded for the said structural drawing. Very interestingly the said structural drawing has not been produced and proved in the Court. Similarly, when the work was reduced by the decision of the Contract Management Meeting hold on 11.06.2009, there is no material to show that no such structural drawing for the changed scope of construction has been provided to the plaintiff. On the other hand, from the letter dt. 07.09.2009 (Ext.9) issued by the deft.no.3 to the plaintiff, it is found that the deft.no.3 has informed the decision of the High Level to slow the progress of Kalyan Mandap. The Ext.16 i.e the letter no. 10916 dt. 10.06.2010 issued by the deft.no.3 to the plaintiff intimating the extension of time up to 30.09.2010. The plaintiff in his pleadings so also evidence has stated that the said letter dt. 10.06.2010 was despatched through post only on 07.07.2010. This plea so also evidence is not denied by the defendants which shows the laches and negligence from the side of the

defendants. So without going to unnecessary details of the allegations and counter allegations of both the parties, it can be simply held that the work could not proceed and completed due to the latches and negligence of both the parties. The plaintiff vide his letter dt. 19.05.2010 which is admitted in Ext. 15 while submitting his grievances requested the defendants to take a liberal view in appreciating the determination of the contract and the closure of the same without any penal course of action. As the plaintiff could not proceed with the construction work within the stipulated period of time even though it has been extended up to 30.09.2010 and ultimately claimed the money which he entitled to get from the defendants treating the contract as dead contract vide his letter dt. 08.10.2010 (Ext.18) and ultimately, the contract was terminated by the defendants vide order dt. 04.03.2011(Ext.G). When the plaintiff voluntarily treated the contract as a dead contract and ultimately the defendants terminated the said contract vide Ext.G, it can not be said that the cancellation order dt. 04.03.2011 canceling the contract agreement dt. 22.02.2008 bearing No. 301F2 of 2008-09 along with the work order dt. 23.02.2008 as illegal and inoperative.

7. So far as the claim of the plaintiff in this suit is concerned, in toto the plaintiff has claimed Rs. 26,96,990/-. So far this claim is concerned, in addition to his specific pleading and evidence, the plaintiff relied upon the Ext.21/a. The Ext.21/a is nothing but a proposal for settlement given by the defendants to the plaintiff which has not been accepted by the plaintiff. The learned counsel for the defendants submitted that the said Ext.21/a can not be taken into consideration while deciding this case on merit as it was just a proposal for amicable settlement of the claim. This Court finds much force in the aforesaid submission of the learned counsel for the defendants, but it can be used for co-lateral purposes while deciding the claim of the plaintiff in consonance with the pleadings of the defendants in their

W.S.

- (i) The plaintiff claims Rs.18,376.80 towards the additional quantity of Rs. 96.72 cum of excavation of foundation trench in laterite rock under agreement item no.2 @ Rs. 190/- per cum. From the W.S of the defendants, it is found that the said additional work has not been denied and even the D.W.1 has not denied the said additional work. On the other hand, the plaintiff has stated that the same has been measured and found place in the MB No. 3049 at page-3.
- (ii) The plaintiff further claims additional quantity of Rs. 27.78 cum of RCC executed by him excess than the agreed Rs. 213.77 cum of RCC at the agreed rate of of Rs. 3680/- per cum amounting to Rs. 1,02,230/- which is also measured and found place in MB No. 3069 at page-37.

There is no pleading or evidence from the side of the defendants that such additional works as stated above in item no.(i) & (ii) executed are unnecessary and without the express or implied consent of the defendants or their field engineers. That being so since the plaintiff has claimed as per the agreed rate without any price escalation, the Court is of the view that the plaintiff is entitled to get the aforesaid amounts.

- (iii) The plaintiff claims Rs. 1,00, 427.49 paise which has been withhold from the second R/A bill and reflected at page-45 of the M.B No. 3049 which is to be refunded to him.
- (iv) The plaintiff also claims Rs. 1,06,022/- from the first R/A bill and Rs. 53,670/- from the second R/A in toto Rs. 1,59,892/- which has been deducted as security deposits &
- (v) The plaintiff claims a sum of Rs. 2,83,000/- which has been deposited by him as EMD and ISD at the time of submission of tender and execution of agreements respectively.

There is no pleading or evidence from the side of the defendants that the plaintiff is not entitled to the refund of the aforesaid amounts as stated in item no.(iii), (iv) & (v). Rather the pleading of the defendants shows that the plaintiff is entitled to get the aforesaid amounts and

accordingly, the plaintiff is entitled to such amount on refund by the defendants.

- (vi) The plaintiff claims a sum of Rs. 1,00,427/- towards the execution of 674 cum of sand filling which have been measured as per agreement Rs. 149/- per cum out of 850 cum which has been withheld by the defendants and claimed another Rs. 26,224/- for the rest 176 cum of sand filling out of that agreed 850 cum which has been executed by him but not measured and exists at the site also. Since these claim have not been denied by the defendants in any manner, the plaintiff is also entitled for the aforesaid amounts. The plaintiff also claims for another 1000 cum of sand filling for site development i.e filling in the construction area with sand amounting to Rs. 1,49,000/-. The defendants have not denied the said work in their pleading so also in their evidence. On perusal of the agreement i.e. Ext.2, it is found that the parties have agreed 846.9 cum of the said work. But it is the specific case of the plaintiff that he proceeded with the work as per the day to day instruction given by the Field Engineers. But when the defendants have not denied the execution of such additional quantity of 1000 cum of work as stated above, it is to be presumed that the plaintiff has executed such work with the consent of the defendants or their field engineers and accordingly, the plaintiff is also entitled for the said claimed amount.

- (vii) The plaintiff claims Rs. 70,000/- for construction of two numbers of storage tanks as per the instruction of the deft.no.3 as well as the field engineers under BOQ Item No. 37. Since the execution of said work has not been denied by the defendants, the plaintiff is also entitled for the said amount from the defendants.

- (viii) The plaintiff claims Rs. 35,000/- for the construction of out house for storage of cement etc. and since the outhouse has not been fully utilized for the entire agreed work though it is not found place in the work order, but the defendants are liable for the same. But the

construction of out house has not been mentioned in the work order and the special conditions of the agreement executed by the plaintiff and the deft.no.3 shows that as per clause-14, it is the responsibility of the contractor for storage of stock materials collected for utilisation. That being so, the plaintiff is not entitled to such amount claimed by him for the construction of out house.

- (ix) The plaintiff claims Rs. 2,21,000/- for construction of RCC columns remaining exposed M.S. Steel rods from plinth level up to GF roof with rings which has not been measured for a quantity of 6.5 metric Ton @ Rs 34,000/-. The learned counsel for the defendants submitted that the plaintiff is not entitled to get such amount as only the rods embodied by concrete are only to be measured and payment also made to that effect only. Since the plaintiff has not encased the exposed steel by concrete, he is not entitled to get such amount. At this juncture, the learned counsel for the plaintiff submitted that since the steel rods with rings are to be extended up to the G.F roof level while preparing the plinth of the construction, the same is to be measured and the defendants are liable for the payment towards the same. Since the steel rods with rings of the columns are required to be extended up to the G.F roof even if it has not been embodied with concrete and since the plaintiff has executed the said work which is not denied by the defendants, the plaintiff is entitled for the amount claimed under this head.
- (x) The plaintiff also claims Rs. 1,50,000/- for the 10 numbers of RCC columns on the super structure of the building up to a height of 4 fits as per the specification and instruction of the defendants. The defendants in their pleadings so also in their evidence though denied the said claim of the plaintiff as he is not entitled on the ground of his negligence in construction of the Kalyan Mandap but have not specifically denied the execution of such work for which the plaintiff claimed Rs. 1,50,000/-. Since the plaintiff has executed the same, he is entitled to the said

amount.

- (xi) The plaintiff claims Rs. 2,10,000/- towards the charges for watch and ward and exhibited the Ext. 20 series which has been paid by the plaintiff on that score. As per clause-14 of the special conditions of agreement, it is the responsibility of the contractor for the storage of stock materials. Since as per the agreement, it is the responsibility of the plaintiff, he is not entitled for the expenses incurred by him towards the watch and ward of the materials on site.
- (xii) The plaintiff claims Rs. 11,71,840/- towards the profit over the unfinished work @ rate of 10% of the contract value. The learned counsel for the plaintiff relied upon a decision reported in AIR 1984 SC 1783 M/s A.T Brij Paulsingh Vrs. State of Gujrat wherein their Lordships have been pleased to decide the contractor is entitled to claim damages on the basis of expected profit on balance of works contract where the party entrusting the work commits the breach of the contract. The learned counsel for the defendants urged that the plaintiff is not entitled for the expected profit as claimed by him as the defendants have not breached the contract rather the plaintiff himself has breached the contract in not completing the work within the stipulated period and even within the extended period and specially when the plaintiff himself treated the contract as a dead contract. As discussed and held above, in this case both the parties are negligent and have latches in their parts so as to proceed with the construction within the stipulated period of time. When both the parties are responsible for the determination of the contract, in the considered view of this Court, it can not be said that the defendants who entrusted the work to the plaintiff have breached the contract. That being so with great respect to the Hon'ble High Court of Orissa, it is found that the decision relied supra is not applicable to the case in hand and the plaintiff is not entitled for the expected profit as claimed by him.

It may be stated here that vide Ext.,21, a proposal for

settlement given by the defendants to the plaintiffs for a sum of Rs. 12,07,572.00. As per the above discussion and decisions, the plaintiff is entitled to a sum of Rs. 13,80,577/- in toto from the defendants.

Lastly the plaintiff claims the aforesaid amount with interest @ 18% per annum but no material is placed before this Court as to the claimed rate of interest in commercial transaction. In absence of such positive material, the plaintiff is entitled to the interest on the aforesaid amount of Rs. 13,80,577/- @ 9% per annum which is prevailing rate of interest for fixed deposits from the date of institution of the suit till the date of realisation. Accordingly, these issues are answered.

8. **Issue No.(i), (ii), (v) & (vi)** :- As discussed and held in the foregoing issues, the suit is held to be maintainable and there is cause of action to file the suit. Since the plaintiff has been allowed to get the interest on the decretal amount and considering the facts and circumstances of the case as discussed in issue nos.(iii) & (iv), he is not entitled for the cost of the suit and for any other relief.

Hence, it is ordered :

ORDER

The suit be and the same is hereby decreed in part on contest against the defendants, under the circumstances without cost. It is hereby declared that the plaintiff is entitled for a sum of Rs. 13,80,577/- from the defendants along with interest @ 9% per annum from the date of institution of the suit till the actual realisation and the defendants are directed to pay the same within 2 months failing which the plaintiff is at liberty to realise the same through the process of the Court.

Advocate's fees be assessed at the contested scale.

Civil Judge(Sr.Divn.)
Bhubaneswar.

The judgment is typed to my dictation by the Stenographer attached to this Court directly on the Computer provided under e-court project, corrected and pronounced by me in the open court today i.e. the 4th day of September August, 2014 under my seal and signature below.

Civil Judge(Sr.Divn.)
Bhubaneswar.

List of witnesses examined for the plaintiff:

P.W.1 Nabalok Das

List of witnesses examined from the side of defendants:

D.W.1 Saroj Kumar Mohapatra

List of documents exhibited on behalf of the plaintiff:

Ext.1 Letter No. 3061 dt. 13.02.2008

Ext.2 Work Order under Letter No. 3946 dt. 23.02.2008

Ext.3 Letter dt. 29.05.09 addressed to the deft.no.1.

Ext.4 Letter dt. 30.10.08 of plaintiff

Ext.5 Letter dt. 26.05.09 of plaintiff

Ext.6 Lewtter No. 15200 dt. 10.06.09

Ext.7 Letter dt. 21.08.09

Ext.8 Letter dt. 07.09.09 to deft.no.2

Ext.9 Letter No. 21191 dt. 07.09.09

Ext.10 memo dt. 19.09.09

Ext.10/a to Postal acknowledgment

Ext.10/b

Ext.11 Letter dt. 19.09.09 to Ex Engineer, BMC, Dvn.1.

Ext.11/a Postal acknowledgment

Ext.12 Letter No. 29001 dt. 29.12.09

Ext.13 Letter dt. 15.01.10

Ext.14 Letter dt. 15.01.10 to deft.no.3

Ext.15 Letter dt. 19.05.10 to deft.no.1

Ext.15 Letter dt. 19.05.10 to deft.no.1

Ext.15/a to Postal receipts

Ext.15/b

Ext.16 Letter No. 10916 dt. 10.06.10

Ext.17 Letter dt. 17.07.10 of plaintiff

Ext.18 Letter dt. 08.10.10 of plaintiff to deft.no.3

Ext.18/a to Postal A.Ds

Ext.18/c

Ext.19 Office copy of pleader's notice

Ext.19/a to Postal receipts

Ext.19/c

Ext.20 to

Ext.20/ee Money receipts.

Ext.21 Letter No. 24711 dt. 27.11.12

Ext.21/a Abstract of payment of the work contract

Ext.21/b Column 7 of Ext.21/a.

List of documents exhibited on behalf of the defendants:

Ext.A Office copy of work order no. 3946 dt.23.02.08

Ext.B Original F-2 agreement bearing no. 301 dt.23.02.08

Ext.C Office copy of reply letter no. 13855 dt.26.05.09

Ext.D Office copy of letter o. 21191 dt. 07.09.09

Ext.E Office copy of letter no. 29001 dt. 29.12.09

Ext.F Office copy of letter no. 17875 dt. 20.09.10

Ext.G Office copy of letter no. 5710 dt. 07.03.11

Ext.H Original site register for the work

Ext.H/1 Signature of D.W.1 on Ext.H.

Civil Judge(Sr.Divn.)
Bhubaneswar.