(2008) 10 AP CK 0002

Andhra Pradesh High Court

Case No: Appeal Suit No. 24 of 2002

State of Andhra Pradesh		APPELLANT
	Vs	
T.V. Krishna Reddy (died) Per LRs. T. Jayalakshmi and Others		RESPONDENT

Date of Decision: Oct. 14, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 20, 80, 80(1), 80(2)
- Contract Act, 1872 - Section 4, 6

Citation: (2009) 1 ALD 660 : (2009) 2 ALT 575 : (2008) 4 APLJ 66

Hon'ble Judges: V. Eswaraiah, J; G.V. Seethapathy, J

Bench: Division Bench

Advocate: Advocate General, for the Appellant; R. Ramachandra Reddy, for respondents 2 to 5, for the Respondent

Final Decision: Dismissed

Judgement

G.V. Seethapathy, J.

This appeal is directed against the judgment and decree dated 05.03.2001 in O.S. No. 141 of 1997 on the file of the I Additional District Judge, Nellore, wherein, the suit filed by the respondents 1 to 5 herein, for recovery of a sum of Rs. 13,59,420/- with interest at 24% per annum, was decreed in part for a sum of Rs. 6,31,724/- with future interest at 12% per annum from the date of the suit, till the date of decree and thereafter, at the rate of 6% per annum, till the date of realization.

2. The first respondent herein filed suit against the appellant-State in OS No. 149 of 1995 on the file of the Subordinate Judge, Nellore, which was later transferred to the District Court, Nellore and re-numbered as OS No. 141 of 1997, with the following averments: The Superintending Engineer, Irrigation Circle, Vijayawada invited tenders for the work of ''Construction of Double Lane Bridge at M 14/7 + 200 of K.W.Bank Canal'', at Vallabhapuram village, Emani Taluq, Guntur district in the year

1991. The plaintiff submitted his tenders, depositing Rs. 48,500/- by way of demand draft on 06.04.1991 towards security for due fulfillment of the contract. His tender, being lowest, was accepted by the Superintending Engineer and he entered into an agreement on 07.09.1991 at Vijayawada and paid Rs. 27,500/- towards earnest money deposit. As per the agreement, the plaintiff had to complete the work within 15 months from the date of handing over of the site. The site was handed over to the plaintiff on 22.09.1991. The plaintiff made all necessary arrangements to complete the work within the stipulated period, by investing large amounts for labour, machinery, equipment etc. The work consists of excavation of foundations for the piers, two abutments and retaining walls, filling foundations with sand, laying concrete for foundations of the piers, retaining walls, construction of superstructure of the piers, abutments on either side of the bridge etc. According to the plaintiff, there was water flow in the canal and the Department did not take steps to stop flow of water till the end of January 1992, in spite of representations dated 02.12.1991 and 18.01.1992 made by the plaintiff. Further, in view of the nature of the soil, the Field Officer reviewed the foundation designs and felt it necessary to obtain modified designs and drawings from the Chief Engineer, Central Designs Organization, Hyderabad (CDO). The flow of water in the canal stopped after January 1992 and the plaintiff could not commence the work, because the modified foundation designs and drawings for the proposed construction were not supplied to him in spite of requests. The plaintiff made representation to the Superintending Engineer, Irrigation Circle, Vijayawada on 22.12.1991, explaining the reasons for not commencing the work. He also repudiated the contract and demanded return of earnest money deposit (EMD) and Final Security Deposit (FSD) and also claiming damages for the breach of contract. The Executive Engineer determined the contract on 29.01.1993 under Rules 60(a) of A.P.S.S. Rules, purporting to forfeit the deposited amounts by his letter dated 29.01.2003, which is unjust and illegal. The plaintiff received the said communication at his residence at Venkatramapuram, Nellore. Because of the attitude of the Department, the plaintiff sustained loss to a tune of Rs. 3,82,000/-. He is also entitled for damages for loss of probable profit at 10% value of the work, which comes to Rs. 3,76,000/-. The plaintiff is also entitled for refund of the deposited amounts, besides interest at 24% per annum.

3. Subsequent to filing of the suit, the plaintiff died and his legal representatives were brought on record as plaintiffs 2 to 5, who are the respondents 2 to 5 herein.

4. The appellant-defendant filed written statement contending in brief as follows: The plaintiff has taken possession of the site with a delay of 21/2 months and the flow of water in the canal was cut of from 31.01.1991, but the plaintiff did not take any steps either to collect the materials or commence the work and he was never informed of any modified designs with regard to laying the foundations and the plaintiff never made any representation to the department for supply of such modified designs and drawings. The plaintiff could have started and completed the

work as per the agreement, but he committed breach of contract. Therefore, the Executive Engineer determined the contract on 29.01.1993 under Rules 60(a) of the A.P.S.S. Rules purporting to forfeit the deposit amount after following the formalities. The plaintiff is therefore, not entitled for the suit amount.

5. On the strength of the pleadings, the trial Court framed the following issues and additional issue.

1. Whether the plaintiff could not complete the work within the stipulated time due to serious defaults committed by the department?

2. Whether this Court has got jurisdiction to entertain the suit?

3. Whether the suit claim is in time?

4. Whether the plaintiff is entitled to claim interest?

5. Whether the plaintiff is entitled to the suit amount?

6. To what relief?

Additional Issue:

1. Whether there was due compliance of the provisions of Section 80 CPC and on that ground the suit is not maintainable?

6. The third plaintiff was examined as PW.1 and Exs.A.1 to A.11 were marked their side. One B. Ratnajio Rao, Assistant Engineer was examined as DW.1 and Exs.B.1 to B.9 were marked on defendant''s side.

7. On consideration of the evidence on record, the trial Court held on issue No. 1 that the defendant committed breach of contract and the termination of the contract under Ex.A.6 was invalid; on issue No. 2 it was held that the Court at Nellore was having jurisdiction, as the letter Ex.A.6 of the defendant terminating the contract was received by the plaintiff at Nellore; on issue No. 3, it was held that the suit claim was in time; on issue No. 4, it was held that the plaintiff was entitled for interest at 12% per annum from the date of the suit, till the date of decree and thereafter at 6% per annum; on issue No. 5 the trial Court held that the plaintiff is entitled for Rs. 3,76,638/- being 10% of total cost of work in a sum of Rs. 37,66,382/-. The plaintiff was also held entitled for return of Rs. 48,500/- towards EMD and Rs. 27,500/- towards FSD, totalling Rs. 76,000/- and on additional issue, it was held that there was sufficient compliance with Section 80 CPC in serving the notice. Thus the suit was decreed for a sum of Rs. 6,31,724/- with future interest at 12% per annum from the date of suit, till the date of decree and further interest at 6% per annum from the date of decree, till realization on the amount of Rs. 3,76,638/-.

8. Aggrieved by the same, the defendant-State preferred the present appeal.

9. Arguments of the learned Special Government Pleader for the appellant-State and the learned Counsel for the respondents are heard. Records are perused.

10. Learned Special Government Pleader for the appellant-State would submit that the plaintiff committed breach of contract in not commencing the work at all, let alone completing the same, within the stipulated time and therefore, he is not entitled to claim any damages. He would further submit that the plaintiff, having not challenged the validity of Ex.A.6 notice of the termination of the contract, he is not entitled to claim damages by way of loss of profit or seek refund of earnest money deposit and security amount. It was further contended that there was no cause of action for the suit and the entire cause of action for the suit arose either at Vijayawada or in Guntur district and no part of cause of action arose within the jurisdiction of the Courts at Nellore and therefore, the trial Court had no jurisdiction to entertain the suit. The appellant would further contend that there was no proper service of notice u/s 80 CPC as contemplated therein, inasmuch as notice Ex.A.8 was issued to the District Collector, Guntur and no such notice was served on the District Collector, Nellore and the suit filed in the Court at Nellore is bad in law.

11. Learned Counsel for the respondents-plaintiffs on the other hand, would submit that the plaintiff has specifically pleaded that the defendant having committed breach of contract, the notice of termination of the contract issued under Ex.A.6 is unjust and illegal and it is not necessary to seek relief of declaration that the termination of the contract is illegal before seeking recovery of damages. He would further contend that Ex.A.6 notice terminating the contract was served on the first plaintiff at his residence at Nellore and it is only by receiving the said notice, the plaintiff came to know about the termination of the contract and as such, part of cause of action arose within the jurisdiction of the Courts at Nellore, where the termination of the contract by the defendant was communicated to the plaintiff and hence, the suit was maintainable before the trial Court. It was further contended by the learned Counsel for the respondents/plaintiffs that Section 80 CPC does not complete the issuance of notice to the concerned District Collector in whose district the suit is filed and notice Ex.A.8 u/s 80 CPC was issued only after cause of action for the suit arose and when the cause of action has arisen in different districts, it was open to the plaintiff to file the suit before a Court situated in any of those places, where the cause of action has arisen u/s 20 CPC and it was not necessary that a fresh notice was required to be issued u/s 80 CPC to the Collector of the district wherein the suit was actually filed.

12. In view of the above rival contentions, the points which arise for consideration are,

1. Whether the Courts at Nellore had jurisdiction to entertain the suit?

2. Whether there was compliance with Section 80 CPC?

3. Whether the plaintiffs are entitled for the amounts decreed by the trial Court?

13. Point No. 1: Ex.A.6 is the letter addressed by the Executive Engineer, Tenali, to the plaintiff on 29.01.1993, wherein, the plaintiff was informed that the contract was terminated and the EMD and FSD paid by him were forfeited. It is not disputed that the said letter was sent to the plaintiff''s address in Door No. 15-987, Venkatramapuram, Nellore and the same was received by the plaintiff at the same address. In paragraph 10 of the plaint, it is stated that the cause of action, inter-alia, arose at Nellore, where the termination letter dated 29.01.1993 was communicated to the plaintiff by registered post. It is true that the agreement was entered into at Vijayawada and work was to be executed in Guntur district and thus cause of action for the suit arose at those places as well. When once the plaintiff is able to establish that a part of cause of action did in fact arise at Nellore, the Courts at Nellore would certainly have jurisdiction to entertain the suit in view of Section 20[c] of CPC, which states that every suit shall be instituted in a Court within the local limits of whose jurisdiction, among other things, the cause of action wholly or in part, arises. The question which would then arise for consideration is whether the service of termination notice under Ex.A.6 at Nellore would give rise to the cause of action for the suit. The suit is filed for recovery of damages on account of breach of contract, which, according to the plaintiff, was committed by the defendant by unjust and illegal termination of the contract, though the defendant is at fault due to their failure to stop the flow of water in the canal to enable the plaintiff to commence the work and also the failure to furnish the revised drawings and designs pertaining to the foundation work. In the letter Ex.A.6 while blaming the plaintiff for not starting the work, it was informed that the agreement was determined duly forfeiting the EMD and FSD. It is only on account of determination of the contract by the defendant, which termination, according to the plaintiff, is unjust and illegal, the suit was filed for recovery of damages, alleging breach of contract on the part of the defendant. In the absence of termination of contract by the defendant, there was no occasion for the plaintiff to sue the defendant for damages. Termination of the contract is, therefore, an important mile stone and in fact, the foundation for claiming the amounts by the plaintiff.

14. In Arthur Butler & Co. v. District Board, Gaya AIR (34) 1947 Pat 134, the High Court of Patna, held as follows:

One of the important points in the present case is that the contract which was undoubtedly completed at Gaya is stated to have been cancelled or revoked at Muzaffarpur. There can be no doubt that revocation is part of the cause of action in a suit for breach of a contract and therefore the place where the contract was revoked may determine the forum for the trial of the present suit. Section 6, Contract Act, provides that a proposal is revoked by the communication of notice of revocation by the proposer to the other party. Section 4 of the Act provides that the communication of a revocation is complete as against the person to whom it is made, when it comes to his knowledge. The plaintiff''s case is that the revocation was made by a telegram, 15.10.1939 which was duly confirmed by the defendant by

his letter dated 16.10.1939. Under the law, the revocation was not complete until the telegram and the letter in question reached the plaintiff Company.

15. In T.R.S. Mani Vs. I.R.P. (Radio) Private Ltd., the Division Bench of Madras High Court held as follows:

The respondents are carrying on business at Calcutta. The letter terminating the appointment of the appellant was posted at Calcutta and was received by the appellant at Madras. There can be no doubt that the termination of the agency was effected at Madras. The appellant stated in paragraph 19 of his plaint that the cause of action for the suit arose partly at Madras, where the contract of employment was to be performed in part and where it was actually begun and where the defendants unlawfully terminated the same. There was no denial of these averments in the written statement which took objection to the jurisdiction of the lower court to entertain the suit. Paragraph 13 of the written statement only stated that as the suit as framed was one for accounts, it could be instituted only at the place where the account books were kept, that is, Calcutta. This, however, is not an accurate appreciation of the claim in the suit; the claim is based mainly on the illegal termination of the services, of the appellant. If it is conceded that the termination of the appellant''s services took effect at Madras, it would follow that a part of the cause of action at least arose within the jurisdiction of the Court at Madras. In that event, the lower court will have jurisdiction to entertain the suit.

16. In the present case also, communication of notice of termination under Ex.A.6 by the defendant to the plaintiff was effected at Nellore and it came to the knowledge of the plaintiff at Nellore where he received the said notice. The communication of notice of termination was, therefore, complete as against the plaintiff, only at Nellore. Thus, in terms of Section 6 and 4 of the Contract Act, the communication of notice of termination under Ex.A.6 was complete, only when the plaintiff came to know of it by receiving the said communication at Nellore.

17. In State of Orissa Vs. Goenka Investment and Mining Industries Pvt. Ltd. and Others, the Division Bench of Calcutta High Court held as follows:

It may be taken as well settled by now that revocation or termination is a part of the cause of action in a suit for breach of a contract and, therefore, the placed where the contract was so revoked or terminated may well determine the forum for trial of such a suit. Therefore, the pertinent question for our consideration in the present case is as to whether the termination of the agreement was effected at Calcutta or at Talcher.

18. In the above case, the plaintiff contended that the cause of action arose at No. 6, Alipore, Park Road, Calcutta, where a notice of termination was served upon the plaintiff at that place and therefore, the Subordinate Judge at Alipore, Calcutta had jurisdiction to entertain the suit. The defendant contended that the notice of termination of the agreement was served on the plaintiff through their Manager at

Talcher in the State of Orissa on April 17, 1975 and therefore, the Court at Calcutta had no jurisdiction to entertain the suit. It was found that two notices terminating the agreement were issued, and one was served on S.R. Chandra, Manager of the plaintiff at Talcher on April 17, 1975 and the other was served on the next day i.e., April 18, 1975 at the plaintiff''s registered place at Calcutta. The trial Court tried the question of jurisdiction as a preliminary issue and held that ''termination of agreement became complete and effective only when it was served on the plaintiff at their registered office at Calcutta on April 18, 1975''. The defendant preferred revision before the High Court. It was held by the High Court ''that S.R. Chandra, not being authorized by the plaintiff to receive such a notice of termination and his lack of authority being known to the defendant, service on him on April 17, 1975, could not and did not terminate the agreement so that the cause of action for the present suit did not arise on the service of such a notice but arose only on the service of the notice of termination on April 18, 1975 at Calcutta within the jurisdiction of the learned Subordinate Judge.''

19. In A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, , the Apex Court held that ''in cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie''.

20. In view of the principles laid down in the above decisions and in terms of Sections 4 and 6 of the Contract Act, a part of the cause of action in the present suit had certainly arisen at Nellore, where notice under Ex.A.6 communicating termination of the contract by the defendant was received by the plaintiff, thereby making the said communication of termination complete and effective. The suit filed before the Subordinate Judge''s Court at Nellore (which was later transferred to I Additional District Judge, Nellore), was certainly maintainable before the said Court, in view of Section 20[c] CPC, inasmuch as, a part of cause of action did arise at Nellore.

21. Point No. 2: The next contention raised by the learned Special Government Pleader appearing for the appellant is that the suit notice Ex.A-8 having been issued to the District Collector, Guntur and no such notice having been given to the District Collector, Nellore, the suit filed in the Court of Subordinate Judge, Nellore, is not maintainable. Ex.A-8 dated 31-03-1995 was a notice issued u/s 80 CPC and was addressed to the District Collector, Guntur, marking a copy thereof to the Superintending Engineer, Irrigation Circle, Vijayawada. In the said notice, the plaintiff has specifically stated that it was being issued u/s 80 CPC and he has put forward the nature and basis of various claims made by him. In para 8 of the said notice, the plaintiff has stated his address as Door No. 15/987, Venkataramapuram, Nellore. It is not disputed that before filing the suit in the Court of the Subordinate Judge, Nellore, no fresh notice u/s 80 CPC was issued to the District Collector, Nellore. The question that arises for consideration is whether the plaintiff is required to issue notice u/s 80 CPC to the Collector of the District where the suit is

actually filed. Section 80 CPC, insofar as it is relevant for the present context, is extracted below:

80 Notice - (1) Save as otherwise provided in Sub-section (2), no suit (shall be instituted against the Government (including the Government of the State of Jammu and Kashimir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been (delivered to, or left at the office of-

(a) xxxxxxxxxxxxxx

(b) xxxxxxxxxxxxxx

(bb) xxxxxxxxxxxxxx

(c) in the case of suit against (any other State Government), a Secretary to that Government or the Collector of the district, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) xxxxxxxxxxxxxxx

xxxxxxxxxxxxxxx

(3) xxxxxxxxxxxxxxx

(a) xxxxxxxxxxxxxxx

(b) xxxxxxxxxxxxxxx

Thus, in the case of a suit proposed to be filed against the State Government, the notice u/s 80 CPC is required to be issued to the Secretary to the Government or the Collector of the District and in the case of a Public Officer, delivered to him or left at his office. In the present case, the suit is filed against the State of A.P., represented by the District Collector, Guntur. Thus, if the suit is proposed to be filed against the State Government, it is suffice if the notice is issued to the Collector of the District.

22. Section 80 CPC contemplates that the notice shall state the cause of action, name and description and place and residence of the plaintiff and also the relief he claims. It is well settled that the object and purpose of issuing a notice u/s 80 CPC is to bring to the notice of the Government the nature of the claim and the relief proposed to be sought so that an effort can be made to resolve the dispute and settle the claim, if possible without driving the claimant to seek redressal through the Court of law and thereby avoid unnecessary litigation. After all, the State would be defending the claims made against it at the cost of public money and time. Wherever possible, the State, as a responsible and responsive instrumentality, shall make every endeavour to settle the claims of the citizens made against it without driving the parties to the Court, charging the public exchequer with unnecessary

expenditure. The claim made by a claimant in the form of notice u/s 80 CPC furnishing all necessary and relevant details of the claim affords an opportunity to the State to settle the said claim at the pre-litigation stage itself.

23. The notice under Ex.A-8 was accordingly issued to the Collector, Guntur, in which district the work was to be done and the office of the Executive Engineer concerned was situate. Admittedly, the claim of the plaintiff was not settled and the Executive Engineer K.W. Division, Tenali gave a reply notice Ex.A-10 disputing the plaintiff''s claim. The plaintiff had, thus, no option but to file the suit for recovery of the amount, which according to him is due. When it came to the question of filing the suit, the plaintiff had every option to file the same in any of the places where the cause of action has arisen, in whole or in part u/s 20(c) CPC. As stated supra, part of the cause of action did arise at Nellore where the notice Ex.A-6 terminating the contract became complete and effective with the service of the same on the plaintiff at his address at Nellore, which address was furnished in the notice u/s 80 CPC also. There is no requirement u/s 80 CPC that the suit has to be filed in the same district to whose Collector notice u/s 80 CPC was earlier issued. The territorial jurisdiction for the Court to entertain the suit is prescribed in terms of Section 20(c) CPC, but not in Section 80 CPC. It is open to the plaintiff to file the suit at any place where part of cause of action has arisen u/s 20 CPC, notwithstanding the fact that notice u/s 80 CPC was issued to the Collector of a different district. The provisions u/s 80 CPC and Section 20 CPC operate in different fields, without there being any overlapping. The pre-requisite of issuing a notice u/s 80 CPC has a definite and avowed objective and the said notice is issued only after the cause of action for filing the suit has arisen and with a view to see that the claim is settled without rushing to a Court for redressal. When the claim is not settled, it is open to the plaintiff to file the suit in any Court within whose jurisdiction even a part of cause of action has arisen u/s 20 CPC.

24. In State of Kerala Vs. K. Bhaskaran, it was held as under:

For purposes of this revision, it is not necessary to enter into the controversy whether the giving of the notice u/s 80 CPC forms part of the cause of action within the meaning of Section 20 CPC. It is not discretionary with the party to give the notice u/s 80 CPC to any Collector. Clause (c) of Section 80 CPC makes it clear that the prescribed notice shall, in the case of a suit against the State Government, be delivered to or left at the office of the Secretary to the Government or the office of the Secretary to the Government or the Collector of the district. The word ''the'' has significance of its own and "collector of the district" cannot be any Collector of the numerous districts of the State of Uttar Pradesh. The "district" shall mean the district where the cause of action or a part of the cause of action had arisen. The notice u/s 80 CPC, must, therefore, be given to the Collector of the district where the cause of action in whole or in part had accrued. In the circumstances, it shall be the cause of action prior to the giving of the notice which shall be the determining

factor, and not the Collector to which the plaintiff decided to deliver the notice u/s 80 CPC.

In the above case, on facts, it was found that no part of cause of action had accrued within the jurisdiction of the Courts at Varansasi and consequently giving of the notice to Collector of Varanasi could not give jurisdiction to the Varanasi Courts to entertain the suit in terms of Section 20 CPC. In the present case, a part of cause of action had, in fact, arisen at Nellore, with the service of notice of termination of contract which event was prior to issuance of notice u/s 80 CPC. The said notice which was issued to the Collector, Guntur in which district also part of cause of action had arisen is perfectly in order. Mere service of notice u/s 80 CPC does not give rise to cause of action and the said notice is issued only after the cause of action had arisen. Issuance of notice u/s 80 CPC to the Collector, Guntur in whose district part of cause of action had arisen and subsequent filing of the suit before the Courts at Nellore wherein also part of cause of action had arisen in terms of Section 20 CPC, are both equally valid.

25. Section 80 CPC contemplates issuance of notice against the Secretary to the Government or the Collector of the District. The disjunctive ''or'' occurring in the clause indicates that notice can be issued either to the Secretary to the Government or to the Collector of the District. A notice issued to the Secretary to the Government would, therefore, be sufficient compliance with Section 80 CPC. In the event of issuing such a notice to the Secretary to the Government, the question of issuing a separate notice to the Collector of any District or Districts where the cause of action in whole or in part has arisen, may not arise. It follows that the notice u/s 80 CPC has no relevance or bearing on the question of territorial jurisdiction for filing the suit. In fact, a suit, to obtain urgent or immediate relief against the Government, can be filed with the leave of the Court in terms of Sub-section (2) without serving any notice as required by Sub-section (1) of Section 80 CPC. The plaintiff''s exercise of option to file the suit in any of the Courts within whose jurisdiction a part of cause of action has arisen has, therefore, nothing to do with the requirement of issuing a notice u/s 80 CPC before filing the suit. The contention of the learned Special Government Pleader for the appellant/State that the suit is bad in law for not issuing the notice u/s 80 CPC to the Collector, Nellore, is, therefore, untenable.

26. Point No. 3: The next contention raised by the appellant is that in the absence of challenge to the validity of the termination order, the suit for damages, based on the alleged breach of contract, is not maintainable. A perusal of the plaint would disclose that specific allegations have been made to the effect that the breach of contract was on the part of the appellant/defendant and the termination of the contract was unjust and illegal. According to the plaintiff, the work could not be commenced and completed on account of failure of the department to stop water supply into the canal after handing over the site and also due to its failure to supply modified designs and drawings of the structure even until the time stipulated for

completion of the work. In para 10 it is also averred that the cause of action for the suit arose inter alia when the Executive Engineer terminated the contract. The plaintiff has claimed damages in a sum of Rs. 3,76,000/- being 10% of the contract value towards loss of profit and refund of EMD of Rs. 48,500/- and FSD of Rs. 27,500/- and in a sum of Rs. 3,82,000/- towards loss incurred due to non-realization of advance and payment of idle charges to tools and plant and interest at 24% p.a., from 29-01- 1993, the date of termination of the contract till 14-09-1995, the date of filing of the suit in a sum of Rs. 5,25,420/-, totalling Rs. 13,59,420/-. The above claim is based only on the alleged breach of contract by the appellant/ defendant. In view of the specific plea raised in the plaint that the termination was unjust and illegal and the breach of contract was on the part of the appellant/defendant, seeking a separate relief by way of declaration that the termination order is illegal, is not necessary. There has been sufficient challenge to the termination order in the plaint and the whole claim of the plaintiff is based only on such challenge.

27. The question which then arises for consideration is as to who among the parties was at fault and committed breach of contract. It is not disputed that the agreement was signed on 07-09-1991 and the respondent/plaintiff took possession of the site within 15 days thereof on 22-09-1991. According to the plaintiff, he could not commence the work because the flow of water in the canal was not stopped, in spite of his representations dated 02-12-1991 and 18-01-1992 addressed to the Executive Engineer. It is also not disputed that on 15-11-1991 the Director, A.P. Engineering Research Laboratories (APERL) submitted report of the results of the soil testing to the Executive Engineer suggesting modification of the designs and drawings. In the letter-Ex.A-2 dated 02-12-1991, the first plaintiff complained to the Executive Engineer about the non-stoppage of water flow informing that there is no scope of starting the work when the canal was flowing full. The plaintiff even reserved his right to claim compensation for the delay caused by the department in not stopping the water flow. In Ex.A-2, the plaintiff also informed the Executive Engineer that having regard to the nature of the soil which is black cotton soil up to depth of 50 feet, the structural re-designing was required, based on the test results. On 16-12-1991, the Executive Engineer addressed a letter to the Superintending Engineer based on the report of the APERL dated 15-11-1991 and the letter Ex.A-2 of the plaintiff requesting the latter to obtain revised drawings from the CDO and make them available before 31-12-1991. On 18-12-1991, the Superintending Engineer addressed a letter to the Chief Engineer requesting him to refer the matter to the Chief Engineer, CDO and obtain revised drawings and communicate the same before the closure of canals on 31-12-1991. Though a copy of the said letter was addressed to the Executive Engineer, the same was not communicated to the plaintiff. On 28-12-1991, the Chief Engineer in turn referred the matter to the Chief Engineer, CDO. On 18-01-1992, the first plaintiff addressed a letter Ex. A-3 to the Executive Engineer complaining about the full flow of water which prevented the commencement of work and also about not making available the results of the

APERL and non-furnishing of the revised drawings. On 31-01-1992, the Chief Engineer, CDO addressed a letter to the Chief Engineer seeking some clarifications regarding the revised drawings and designs. Admittedly, the revised drawings and designs were not furnished to the plaintiff at any time. But, however, the Executive Engineer addressed a letter Ex.B-2 dated 3-3-1992 to the first plaintiff complaining that he has not completed the work as required though the supply of water was cut off on 31-12-1991 and informed the plaintiff that any changes with regard to drawings and designs will be intimated in advance. As seen from Ex.B-8 dated 7-3-1992, the Chief Engineer addressed a letter to the Chief Engineer, CDO, forwarding the clarifications as furnished by the Superintending Engineer in connection with modification of designs and drawings. The plaintiff addressed a letter Ex.A-4 dated 6-10-1992 complaining about the default and breach on the part of the defendant which resulted in prevention of the work, causing serious loss. On 24-10-1992, the Chief Engineer, CDO addressed Ex.B-9-letter to the Superintending Engineer communicating the approved designs and drawings and requesting the Superintending Engineer to satisfy himself about the suitability of the said drawings with the field conditions with a direction to report back for review and redesigning, if there is any variation. Admittedly, the said drawings were not communicated to the plaintiff, but the Executive Engineer by his letter Ex.B-3 dated 9-12-1992 persisted in complaining that the plaintiff has not done any work and did not collect any material and warned that if the material is not collected within seven days, the contract will be determined. On 22-12-1992, the plaintiff addressed a letter Ex.A-5 to the Superintending Engineer complaining that the Executive Engineer''s direction to collect the material is only a ruse to escape from the responsibilities of serious breach of contract committed by the department and held that the Government is liable for the breach of contract.

28. It is not disputed that the period of contract expired on 21-12-1992. Surprisingly, even without the plaintiff seeking extension of time, the Executive Engineer by his letter Ex.B-4 dated 08-01-1993 granted unilateral extension of time up to 30-01-1993 while levying the fine of Rs. 200/- alleging default on the part of plaintiff. Even then, the revised drawings and designs were not communicated to the plaintiff. The plaintiff is stated to have addressed a letter on 18-01-1993 which is referred as Item No. 3 in Ex.B-5 alleging that the action proposed in Ex.B-4 by the Executive Engineer is illegal and sought return of EMD and FSD. Thereafter on 29-01-1993, the Executive Engineer by his proceedings Ex.B-5 (same as Ex.A-6) determined the contract. Thereafter, the plaintiff got issued Ex.A-8 u/s 80 CPC and on the repudiation of liability under Ex.A-10, the plaintiff filed the suit.

29. Thus, it can be seen from the above that the agreement period expired by 21-02-1992 and the Executive Engineer extended the time limit unilaterally up to 30-01-1993, but the revised designs and drawings were never communicated to the plaintiff at any point of time, though they were said to have been approved on 24-10-1992. In the absence of the revised designs and drawings, it is not

understandable how the department expected the plaintiff to commence and complete the work when the revised designs and drawings have a bearing even over the excavation of foundations for the piers. Even if the revised designs and drawings were communicated to the plaintiff, he was hardly left with two month''s time before the expiry of the period of contract and the work would not have been completed at all within such a short span of two months. The unilateral extension of time by the department for over a month is obviously not intended to facilitate the plaintiff to commence and complete the work, but only to facilitate the authorities to determine the contract. D.W.1, the then Assistant Engineer, admitted in the cross-examination that because of water in the canal, it was not possible to carry out the excavation work till December 1991 and it was only on 31-12-1991 the flow was cut off. D.W.1 also admitted that as per Ex.B-3, the Executive Engineer wrote to the Superintending Engineer to approach the Chief Engineer, CDO to prepare new designs and the Chief Engineer in turn addressed a letter to the Chief Engineer, CDO. D.W.1 further admitted that the contractor had to do the work as per the designs approved on 24-10-1992, but there is no document to show that the same was communicated to the contractor directing him to carry out the work as per the new designs. According to D.W.1, the contractor could have carried out the work of excavation and construction as per the old designs because the new designs were not communicated to him. When the test reports of the soil showed that the modification of the designs was necessary and when the department has initiated action to get the designs and drawings modified by the Chief Engineer, CDO, there was absolutely no meaning in insisting on the plaintiff to commence and complete the work as per old designs. When the old designs were found not suitable, given the soil condition, insistence of the department that the plaintiff shall carry out the work as per the old designs, would only result in colossal loss and wastage of public money. When the new designs were under preparation, there was no meaning in proceeding with the work as per the old designs. When the plaintiff has rightly awaited the new designs to be communicated to him, the department''s failure to furnish the approved new designs to the plaintiff and further claiming that the plaintiff could have proceeded as per the old designs, betrays utter lack of sensitivity towards public exchequer. Having committed the breach of contract by not stopping the water in the canal in time to enable the plaintiff to commence the work and by not furnishing the revised designs and drawings, the department has chosen to unilaterally extend the period of contract only to terminate the same, which conduct on the part of the State is highly unjustifiable. On proper appreciation of the evidence on record, the trial Court has rightly held that the breach of contract was on the part of the defendant and the termination of contract under Ex.A-6 was invalid and, therefore, the plaintiff is entitled to claim damages.

30. Regarding the quantum of damages, the trial Court has rejected the claim for Rs. 3,50,000/- towards payment of advances to metal suppliers and transporters and labour contractors and no appeal or cross-objections is filed by the plaintiff

regarding the same. So also, the claim for freight charges i.e., Rs. 20,000/- for concrete mixers and Rs. 12,000/- for vibrators were also rightly rejected by the trial Court. The trial Court granted a decree for a sum of Rs. 3,76,000/- being 10% of the contract value towards loss of profit, following the decision of the Apex Court in Dwaraka Das Vs. State of Madhya Pradesh and Another, and State of Kerala Vs. K. Bhaskaran, and also a notification issued by the Government of India, Ministry of Irrigation and Power wherein the Government of India directed the departments to make allowance at 10% towards overheads of contractors and also another 10% towards profit.

31. The learned Special Government Pleader for appellant/ State would contend that the plaintiff has not spent any amount and has not done any work and has not even collected the material and, therefore, his claim for loss of profit is unsustainable, in the absence of any evidence of actually incurring any such loss. The loss of profit which the plaintiff claims is the profit which he would have naturally earned in the normal course had the contract been gone through and is not towards any actual loss sustained by way of investment or expenditure. In view of the finding that the department was at fault and the breach of contract was on their part, the plaintiff could not commence and complete the work as per the contract. He is, therefore, certainly entitled to claim damages towards loss of profit which he would have in all probability earned had the contract not been illegally terminated by the department. The estimate of such profit at 10% is just and reasonable. As the termination of the contract by the department is found to be illegal, the question of forfeiture of EMD or FSD does not arise and the plaintiff would be entitled for refund of the said amount of Rs. 76,000/- which was rightly allowed by the trial Court. Though the plaintiff claimed interest @ 24% per annum, the trial Court rightly granted the same @ 18% per annum which comes to Rs. 1,79,086/- from the date of termination i.e., 29-01-1993 till the date of filing of the suit and subsequent interest @ 12% per annum from the date of suit i.e., 20-09-1995 till the date of decree and future interest @ 6% per annum till realization on the principal amount of Rs. 3,76,638/- and thus granted a decree for a total sum of Rs. 6,31,724/- with subsequent and future interest at the rates stated supra.

32. The findings of the trial Court on various issues based on proper appreciation of the material available on record and the judgment and decree passed by the trial Court do not call for any interference by this Court.

33. In the result, the appeal is dismissed. No order as to costs.