



2026:DHC:177-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 04th December 2025

Pronounced on: 12th January 2026

Uploaded on: 12th January 2026

+ **RFA(COMM) 677/2025**

**MUNICIPAL CORPORATION OF DELHI,
OFFICE AT:- DR. SPM CIVIC CENTRE,
4TH FLOOR, PT. JLN MARG,
P.S. KAMLA MARKET,
NEW DELHI-110002
THROUGH ITS COMMISSIONER
Email: commissioner@mcd.nic.in
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.....APPELLANT

Through: Mr. Tushar Sannu, Standing
Counsel for MCD with Ms. Rajbala
& Mr. Umesh Kumar, Advs. with
Mr. Sunil Kumar-AE, MCD in
person.

Versus

**M/S RAM NIWAS GOEL
OFFICE AT D-33, PRITHVI RAJ ROAD,
ADARSH NAGAR, DELHI-110033,
THROUGH ITS PARTNER
MR. KAMAL GOEL
S/O SH. RAM NIWAS GOEL
EMAIL: KAMALGOEL1982@GMAIL.COM**

.....RESPONDENT

Through: Mr. Avinash Trivedi & Mr. Rahul
Aggarwal, Advs.



CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

NITIN WASUDEO SAMBRE, J.

1. This is an appeal under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, 1908 ('*CPC*') along with Section 13 of the Commercial Courts Act, 2015. The appeal is against the judgment and decree dated 22nd February 2025, passed by the learned District Judge (Commercial Court)-03, Tis Hazari Courts, Central District, Delhi in CS (COMM) No.995/2022 titled "*M/s Ram Niwas Goel vs. Municipal Corporation of Delhi.*"

2. The appeal is preferred by the appellant/original defendant/judgment debtor questioning the judgment and decree on the grounds which are enumerated in the appeal.

3. The facts necessary for deciding the appeal are as under: -

4. The respondent, claiming to be a registered partnership firm who is in the business of construction and registered with the appellant and Government Department, had approached the Commercial Court referred *supra* alleging the recovery of the dues and the decree for injunction claiming the following reliefs: -

21. Thus aggrieved, plaintiff had prayed for :-

(a) a decree for recovery in sum of Rs.1,58,77,360/- alongwith interest @ 14% per annum w.e.f. 11.03.2022 till date of



judgment/decree and thereafter at the same rate on decretal amount and award of cost w.e.f. date of judgment/decree till the date of actual payment of the amount to the plaintiff, in favour of the plaintiff and against the defendants;

(a-1) a decree of declaration thereby declaring the letter/order bearing no.SE/KPZ/2022/D.105 dated 30.06.2022, D/98/EE (Pr.)/KPZ/2022-23 dated 04.07.2022, letter bearing ref. No. D/257/EE (PR.)/KPZ/2022-23 dated 15.12.2022 and show cause notice under revised instruction for inlistment/revalidation of contractor, 2016 bearing ref. No.D/6/EE/PR./KPZ/2022-23 dated 15.02.2023 passed by the defendant as null and void and/or;

(b) a decree of permanent injunction thereby restraining the defendant to enforce/implement the letters/orders bearing no.SE/KPZ/2022/D.105 dated 30.06.2022, D/98/EE (Pr.)/KPZ/2022-23 dated 04.07.2022, letter bearing ref. No.D/257/EE (PR.)/KPZ/2022-23 dated 15.12.2022 and show cause notice under revised instruction for inlistment/revalidation of contractor, 2016 bearing ref.No.D/6/EE/PR./KPZ/2022-23 dated 15.02.2023 against the plaintiff and/or

(b)(i) a decree of recovery of the amount, if any, recovered by the defendant department on the basis of letter/order bearing no.SE/KPZ/2022/D.105 dated 30.06.2022 or other clauses of contract from the payable amount of the plaintiff in other works during the pendency of the suit and/or (c) award of the cost of the suit in favour of the plaintiff and against the defendant

5. The relief referred above is based on the factual matrix that



appellant was intending to construct a school consisting of 20 classrooms, 2 nursery rooms, 1 computer room, 1 library room, 1 staff room, and 1 hall with other amenities in M.C. Pry. School, B-2 Block, Ashok Vihar. Accordingly, after successful tender process, the work came to be allotted in favour of respondent/original plaintiff *vide* work order dated 03rd January 2020, for a total contractual sum of Rs.4,02,20,253/-. The work was to be completed within a period of 12 months from the date of award of work i.e. by 02nd January 2021.

6. The respondent, alleging that the site was handed over to him post the Delhi Election of 2020 i.e. sometime in first week of March 2020, started construction activity by carrying out demolition of the existing building. Since, immediately within 10 days of the commencement of the activity of the demolition lockdown was declared by the Central Government, it is the case of the respondent that he was compelled to discontinue the work and as such, he approached the appellant with the prayer for:-

- a. Reckoning of the time for commencement of construction to be from the date of handing-over site which is in March first week of 2020.*
- b. The adjustment of the period of lockdown declared by the Central Government in view of the COVID-19 pandemic.*

7. Since the scope of work viz. construction of the primary school was affected by the hindrances, the respondent claimed to have requested the appellant to remove the trees.

8. The extension, as prayed, was granted to the respondent till 30th June



2021 *vide* communication dated 09th March 2021 and accordingly, the respondent was duty bound to complete the construction by the said date.

9. The respondent, alleging that neither the trees which were affecting the development/construction activities were removed nor that the first or second running bill was paid, exchanged various communications with the appellant. The same had prompted the respondent to send a legal notice seeking not only extension of the contract but also the payment of running bill and removal of hindrances such as trees etc.

10. It was the case of the respondent that though the first running bill was approved, there was failure to release the amount and that being so, he had approached the learned Commercial Court with the relief claimed above.

11. After the suit summons were served, the plaint came to be amended by the respondent wherein he had reduced the amount of recovery. The respondent alleged that the appellant/original defendant issued a Show Cause Notice ('SCN'), pursuant to the clause 3 of the agreement of development, *vide* notice dated 12th May 2022, which was replied to by the respondent on 24th May 2022. It was the case of the respondent/plaintiff before the learned Commercial Court that a levy was imposed under clause 2 of the General Conditions of Contract ('GCC') for an amount of Rs.40,22,025/- *vide* communication dated 30th June 2022.

12. According to the respondent, a final measurement was directed to be carried out on 18th July 2022. The appellant accordingly *vide* communication dated 24th November 2022 had approved the following



actions against the respondent: -

- a. closure of contract,
- b. forfeit of earnest money, security deposit and performance guarantee as per contract clause 3(a) & (b),
- c. recall of tender for balance work at risk and cost of respondent (4) recommendation of disciplinary action against the Respondent
- d. Debarring the respondent from participating in the tender process.

13. The suit claim was contested by the appellant/defendant alleging suppression and that the suit was not maintainable. It was claimed that the work order dated 03rd January 2020, particularly clause 4, and clause 7 and 9 of the GCC is not adhered to. The appellant alleged that there is non-compliance of clause no. 17 and 45 of the GCC and as such, the respondent/plaintiff is not entitled for refund of the security amount.

14. Apart from denial of claim for interest, the appellant had come out with the case of intentional delay by the respondent in execution of the work and also abandonment of the work in question. According to the appellant, not only the trees as were requested by the respondent were removed, but that it was for the respondent/plaintiff to execute and complete the work within the time period as granted, which he has failed to complete.

15. It was the case of the appellant that for unreasonable and non-existent causes the respondent had sought extension of time. Even on merits, the appellant contested the claim. Accordingly, the learned Commercial Court had framed the issues which reads thus:-



- 1) Whether the plaint has been signed and verified and suit has been instituted by a duly authorized person? (OPD)
- 2) Whether the plaintiff is not entitled to suit amount for want of submitting final bills for payment? (OPD)
- 3) Whether the plaintiff is not entitled to refund of security deposit/earnest money for want of compliance with Clauses 17 & 45 of GCC? (OPD)
- 4) Whether plaintiff is entitled to decree of recovery of Rs.1,58,77,360/- against the defendant, as prayed for? (OPP)
- 5) Whether the plaintiff is entitled to decree of declaration thereby declaring the letters/order bearing no.SE/KPZ/2022/D.105 dated 30.06.2022, D/98/EE (Pr.)/KPZ/2022-23 dated 04.07.2022, letter bearing ref.No.D/257/EE(PR.)/KPZ/2022-23 dated 15.12.2022 and show cause notice under revised instruction for inlistment/revalidation of contractor, 2016 bearing ref.No. D/6/EE/PR./KPZ/2022-23 dated 15.02.2023 passed by defendant are null and void? (OPP)
- 6) Whether the plaintiff is entitled to decree of permanent injunction thereby restraining the defendant to enforce/implement the letters/order bearing no.SE/KPZ/2022/D.105 dated 30.06.2022 and D/98/EE(Pr.)/KPZ/2022-23 dated 04.07.2022, letter bearing ref.No.D/257/EE(PR.)/KPZ/2022-23 dated 15.12.2022 and show cause notice under revised instruction for inlistment/revalidation of contractor, 2016 bearing ref.No. D/6/EE/PR./KPZ/ 2022-23 dated 15.02.2023 against the plaintiff? (OPP)
- 7) Whether the plaintiff is entitled to decree of recovery of amount, if any, recovered by the defendant department on the basis of letter/order bearing no.SE/KPZ/2022/D.105 dated 30.06.2022 or other clauses of contract from the payable amount of the plaintiff in other works during the pendency of the suit? (OPP)
- 8) Whether plaintiff is entitled for interest. If yes, at what rate and for which period? (OPP)
- 9) Relief.

16. The respondent/plaintiff in support of the claim had relied on the following documents: -



S.No.	Details of documents	Exhibit
1.	Form A containing name of the present partners	Ex.PW-1/1
2.	Form B issued by the Registrar of Partnership Firms disclosing the number and registration date of this partnership firm as ROF/North/55 of 2017 dated 18.01.2017	Ex.PW1/2
3.	Photocopy of work order No.EE(Pr)/KPZ/SYS/2019-20/14 dated 03.01.2020 for a sum of Rs.4,02,20,253/-	Ex.PW1/3
4.	Received copy of letter dated 13.03.2020 issued by plaintiff	Ex.PW1/4
5.	Letter of plaintiff dated 31.07.2020 along with office memo dated 13.05.2020	Ex.PW1/5
6.	Letter of plaintiff dated 21.09.2020	Ex.PW1/6
7.	Photocopies of 2 letters of defendant both dated 09.03.2021	Ex.PW1/7 & Ex.PW1/8
8.	Photocopy of letter of plaintiff dated 16.06.2021	Ex.PW1/9
9.	Show Cause Notice dated 15.06.2021	Ex.PW1/10
10.	Reply of plaintiff dated 22.06.2021 qua said show cause notice	Ex.PW1/11
11.	Received copy of Legal notice dated 25.08.2021	Ex.PW1/12
12.	Original postal receipts	Ex.PW1/13 & Ex.PW1/14 respectively
13.	Print-out of email dated 25.08.2021	Ex.PW1/15
14.	Photocopy of Ist RA Bill	Ex.PW1/16
15.	Non-starter Report dated 31.01.2022	Ex.PW1/17
16.	Structural drawing provided to the plaintiff with work order	Ex.PW1/18
17.	Print-out of 11 colour photographs showing existing trees within the constructed column and plinth	Mark "A" to Mark "K".



18.	Letter of defendant dated 28.03.2022 along with its envelope	Ex.PW1/19 & Ex.PW1/20
19.	Show cause notice under clause 3 of GCC dated 12.05.2022	Ex.PW1/21
20.	Reply of plaintiff dated 24.05.2022 qua said show cause notice	Ex.PW1/22
21.	Original postal receipt and acknowledgment	Ex.PW1/23 & Ex.PW1/24
22.	Original letter dated 30.06.2022	Ex.PW1/25
23.	Letter dated 04.07.2022	Ex.PW1/26
24.	Extract of Section 29 of CPWD Works Manual, 2014	Ex.PW1/27
25.	Letter of defendant dated 15.12.2022	Ex.PW1/28
26.	Show Cause Notice dated 15.02.2023	Ex.PW1/29
27.	Reply of plaintiff qua said show cause notice	Ex.PW1/30
28.	Legal notice dated 25.09.2023	Ex.PW1/31
29.	Certificate under Section 65 B of the Indian Evidence Act	Ex.PW1/32

17. Whereas the appellant/defendant had relied on the following documents:-

S.No.	Details of documents	Exhibit
1.	Photocopy of General Condition of Contract	Ex.DW-1/1
2.	Photocopy of Architectural Drawings	Ex.DW-1/2
3.	Photocopy of letter dated 10.12.2020 from Forest Department	Ex.DW-1/3
4.	Photocopy of letter dated 09.03.2021	Ex.DW-1/4 (already exhibited as Ex.PW1/8)
5.	Photocopy of letter dated 07.06.2021	Ex.DW-1/5
6.	Photocopy of letter dated 15.06.2021	Ex.DW-1/6 (already exhibited as Ex.PW1/10)



7.	Photocopy of letter dated 12.04.2022	Ex.DW-1/7
8.	Photocopy of letter dated 12.05.2022	Ex.DW-1/8 (already exhibited as Ex.PW1/21)
9.	Photocopy of relevant pages of Hindrance Book	Ex.DW-1/9

18. The respondent/plaintiff had examined Sh. *Kamal Goel*, its partner/son, as PW-1 and had relied not only on the documents referred to above but also on the affidavit of examination-in-chief at Ex.PW-1/A.

19. Similarly, the defendant had examined Sh. *Gulshan Kumar Nim*, Jr. Engineer (Proj.), Keshav Puram Zone, MCD as DW-I and had relied upon affidavit of examination-in-chief at Ex.DW-1/A.

20. The learned Commercial Court, having regard to the respective pleadings and the analysis of the evidence of the parties based on the respective evidence brought on record, decreed the suit as under:-

“118. In view of the findings on foregoing issues, the present suit is decreed as under :-

(a) A decree of recovery of Rs.1,01,83,222/- (Rupees One Crore One Lakh Eighty Three Thousand Two Hundred Twenty Two only) is passed in favour of the plaintiff and against the defendant, with simple interest @ 8% per annum on the said amount w.e.f. 29.07.2021 till realization of the decretal amount.

(b) A decree of declaration is passed in favour of the plaintiff and against the defendant thereby declaring the letters/order bearing no. SE/KPZ/2022/D.105 dated 30.06.2022, D/98/EE (Pr.)/KPZ/ 2022-23 dated 04.07.2022, letter bearing ref.No.D/257/EE(PR.)/KPZ/2022-23 dated 15.12.2022 and show cause notice under revised instruction for inlistment/revalidation of contractor, 2016 bearing ref.No. D/6/EE/PR./KPZ/2022-23 dated 15.02.2023 passed by defendant, as null and void.



(c) A decree of the Permanent injunction is passed in favour of the plaintiff and against the defendant thereby restraining the defendant from enforcing/implementing the letters/order bearing no. SE/KPZ/2022/D.105 dated 30.06.2022, D/98/EE (Pr.)/KPZ/ 2022-23 dated 04.07.2022, letter bearing ref.No.D/257/EE(PR.)/KPZ/2022-23 dated 15.12.2022 and show cause notice under revised instruction for inlistment/revalidation of contractor, 2016 bearing ref.No. D/6/EE/PR./KPZ/2022-23 dated 15.02.2023 against the plaintiff.

*Parties are left to bear their respective costs.
Decree sheet be prepared accordingly.
File be consigned to record room after due compliance.”*

21. Feeling aggrieved, the appellant/defendant has preferred this appeal.

22. The learned counsel for the appellant/original defendant/judgment debtor, while questioning the impugned judgment dated 22nd February 2025, has urged that clause 10 and 37 of the GCC are not adhered to by the respondent in its true letter and spirit. According to the counsel for the appellant, the condition of contract cannot be re-written or interpreted to the detriment of the appellant by the learned Commercial Court.

23. As such, according to him, the judgment impugned is not sustainable and is liable to be quashed and set-aside.

24. According to him, as per clause 7 of the GCC, the liability to pay/honour the bill depends on the submission of the bill by the contractor (respondent in the present case) in a prescribed format on its own letter head duly accompanied by the measurement book, the certification by the engineer-in-charge, and the various particulars such as GST Registration,



invoice number and tax computation etc. As there is failure on the part of the respondent in complying with the aforesaid conditions in its strict sense, the learned Commercial Court has failed to appreciate and interpret the evidence in favour of the respondent and has thereby committed an error in decreeing the suit.

25. According to the learned counsel for the appellant, if the GCC prescribed a procedure to be adopted in the matter of payment of running bill, the procedure contemplated thereunder must be complied with and the same cannot be substituted to the benefit and convenience of the respondent, which fact has been ignored by the learned Commercial Court. Furthermore, it is contended that as there is no valid bill tendered by the respondent, there is no enforceability of the debt and as such, the decree in itself is not sustainable.

26. According to the learned counsel for the appellant, even the entries in the measurement book were not certified and that being so, the learned Commercial Court committed an error in decreeing the suit. It is the contention of the appellant that, clause 9 of the Notice Inviting Tender (*'NIT'*), prescribes in specific terms that there is a deemed presumption as regards the party/tenderer having full knowledge of the site, whether it is inspected by him or not, and as such, no claim as regards the impediment, if any, can be entertained. In such an eventuality, it is urged that the existence of trees cannot be a ground for non-completion of the work within stipulated period and the learned Commercial Court ought to have dismissed the suit of the respondent.



27. It is claimed that the respondent has tried to draw undue benefits of his own wrongs and that being so, this appeal is liable to be allowed, and the suit decreed be dismissed.

28. The learned counsel for the appellant has submitted that the law laid down by this Court in RFA (COMM) 520/2025, titled as “***M/S R.K. Goel Abhey Kumar Jain Vs. Municipal Corporation of Delhi***” decided on 11th September 2025 and the judgment of the Apex Court in the matter of ***Government of Maharashtra Vs. Borse Brother Engineers & Contractors Pvt. Ltd.*** ((2021) 6 SCC 460) is not applicable to the facts of the present case as the factual matrix cannot be equated.

29. The learned counsel for the appellant would urge that the *notings* in the departmental file cannot be termed to be the ones having effect of approval in the law as regards the running bill, as such *notings* are expression of the view point of the officer and are meant for internal use, and that being so, the learned Commercial Court has committed an error in the matter of the appreciation of the evidence.

30. The counsel for the appellant has drawn support from the judgment of the Apex Court in the matter of ***M/S Sethi Auto Service Station & Anr. Vs. Delhi Development Authority & Ors.*** [(2009) 1 SCC 180].

31. Further, so as to claim that GCC are binding on all the parties and the contract is governed by GCC, the learned counsel for the appellant has drawn support from the judgment of the Apex Court in the matter of ***North Delhi Municipal Corporation Vs. Sanjeev Kumar*** (2018 SCC Online Delhi 8053),



32. To further substantiate its claim with regards the requirement of the parties to conduct themselves in accordance with the GCC, the appellant has also sought support from the judgment of the Apex Court in the matter of ***Venkataraman Krishnamurthy and Another vs. Lodha Crown Buildmart Pvt. Ltd.*** [(2024) 4 SCC 230].

33. As against above, the learned counsel for the respondent would support the decree and according to him, the learned Commercial Court has appreciated the relevant evidence in the backdrop of the rival pleadings and has rightly so concluded that the suit is liable to be decreed.

34. According to him, the evidence, particularly the cross-examination of DW-1 *Gulshan Kumar Nim*, in categorical terms, substantiates the claim of respondent and such evidence is correctly appreciated by the learned Commercial Court. Respondent further contends that the interest is rightly granted by the learned Commercial Court in light of consideration of not only the terms of the contract but also in consideration regarding the failure of the appellant to pay the bills.

35. According to the learned counsel for the respondent, not only through written statement but also through the evidence, it was brought on record that the appellant had in fact agreed to remove the trees which they have failed to remove and as such, there is failure on the part of the appellant in adhering to the terms of the contract which led to its delayed execution.

36. The counsel for respondent as such sought dismissal of the appeal.

37. We have appreciated the rival claims.



38. The suit of the respondent was for recovery of the amount which is based on the contention of the work order dated 03rd January 2020, the period of completion provided thereunder which is of 12 months, delay in handing over of the site-in-question, the commencement of the demolition work and the lockdown declared by the Government of India on 23rd March 2020.

39. Having regard to the issues framed, we are of the view that the learned Commercial Court rightly shifted the burden to prove the case on the plaintiff. It is borne out of the record that Sh. *Kamal Goel* i.e. PW-1, who has signed and verified the plaint, is a partner of the plaintiff firm as reflected from Form A issued by the registrar of firms. In the said capacity viz. the partner of the firm so also power of attorney holder, he has entered into the witness-box and is competent to depose.

40. Some of the admitted facts which are borne out of the record are:

- a) The plaintiff was awarded the work order dated 03rd January 2020 for a sum of Rs.4,02,20,253/- in response to the tender notice for construction of 20 classrooms, 2 nursery rooms, 1 computer rooms and 1 library room and 1 staff room and 1 hall etc.
- b) The said construction was to be carried out after demolition of the existing structure of Municipal Council Primary School, B-2 Block, Ashok Vihar.

41. In support of the defendant's case i.e. present appellant, DW-1 Sh. *Gulshan Kumar Nim*, Junior Engineer (Project), Keshavpuram Zone has entered into the witness box.



42. PW-1 in his cross-examination has admitted that date of completion of the work was 02nd January 2021 as per the agreement and he got to know about the hindrances of trees at the site after verifying from the layout plan. He has admitted that but for the trees there was no other hindrance and according to him the work could not be completed because of:-

- a) The site being handed-over late in point of time because of MCD Election.
- b) In view of the restriction imposed after the COVID-19.
- c) The inspection of the site post layout plan reflected existence of trees removal of which was necessary.

43. Though extension for about three times was given to the plaintiff/respondent to complete, he was unable to complete the work because of the non-removal of hindrances. He has deposed that out of the two running bills, one was already approved whereas second was under consideration.

44. It is also brought on record through the evidence of PW-1 that he has completed the demolition at the site in March 2020, and he has received the architectural drawings and layout plan sometime in May/June 2020.

45. Though the site was not cleared in all respects i.e. in the sense that hindrances were not removed, it is established from the evidence of respective parties that respondent/plaintiff was permitted to start not only the demolition of the existing structure but also that of the construction activity in available area.



46. A provisional extension was granted to the plaintiff *vide* PW-1/8 upto 30th June 2021. The document Ex.PW1/9 dated 16th June 2021 reflects the persuasion on the part of the plaintiff to the defendant to not only clear the running bill but also to remove the hindrances. A request was also made therein to verify his second running bill.

47. As such, the evidence of the plaintiff establishes that he always had an intention to execute the work and he could successfully execute the work partly but for the balance work which could not be executed for the want of cooperation on part of the appellant/defendant in the matter of removal of trees.

48. As against above, the DW-1 in his cross-examination has admitted that he has not placed on record his authorization to depose on behalf of the appellant/defendant. He has admitted that the request for extension was received and extension was granted to the plaintiff/respondent. He has also admitted that at the relevant time, the registers as were required to be maintained *viz.* site order book, hindrance register, cement register, steel register and measurement book were not provided along with the work order.

49. As far as the GCC or the work order is concerned, the fact remains that no specific time is provided therein for removal of the hindrances *viz.* the existing trees. It has come in the evidence of the DW-1 that the plaintiff has executed the work of erecting columns and plinth beam upto first floor height from grid 1 to 23 and the running bill Ex.PW1/16 reflects the maximum measurement of the work done.



50. The said witness has further admitted that 05 trees existing were removed on 10th December 2020, and has sought to establish the said from documents which were produced on the record of the learned Commercial Court at page 57 of the documents filed by the defendants along with the written statement. When confronted, he has clarified that the said documents viz. removal of 05 trees, only speaks of the permission granted by forest department for removal of trees, however, subsequent thereto, the record was sent to the Horticulture Department of MCD for removal of trees and that hence he was not aware as to the date on which the trees were actually removed.

51. He has further admitted that even after removal of 05 trees, 02 more trees were existing on the site i.e. after the second running bill was submitted.

52. If we look into the documents which are in the form of intra-departmental communications between the appellant and the Forest Department and the Horticulture Department, it is apparent that the appellant was under obligation to remove the trees and there is inordinate delay on the part of the appellant in moving the appropriate proceedings with Forest Department and Horticulture Department for removal of the trees.

53. The appellant themselves created the situation wherein impediments arose due to their failure to remove the trees which affected the smooth execution of the contract. In such an eventuality and for failure to remove the trees for which the appellant was duty-bound to take action,



it is not open for the appellant to blame the respondent for not executing the entire contract within the stipulated time.

54. In the case in hand, it appears that the first running bill was approved in October 2020 whereas second bill in January 2021 was under the process of verification.

55. Hindrance register Ex.DW-1/9 placed on record rather establishes that the site was not available to the respondent from 03 January 2020 to 22nd February 2020 and thereafter from 22nd March 2020 till June 2020.

56. The hindrance register, if verified, does not speak of any further entries which fact justifies the case of the respondent/plaintiff that there was complete failure on the part of the appellant in the matter of clearing hindrances by removing of trees.

57. Rather it is established from the record that 05 trees were removed after the lapse of the period of completion i.e. 02nd January 2021 whereas 02 trees were still existing in the work area.

58. As far as the first running bill is concerned viz. Ex.PW-1/16, same bears the signatures of the partner of the plaintiff. The said bill was duly processed and passed by the appellant and merely because the bill is not on the letter head that by itself will not vitiate the first running bill.

59. It is not the case of the appellant that the running bill was false or that of the work itself was not executed. Rather the process and the *notings* reflects that the work was executed and then only the running bill was processed. Similarly, the second running bill was also submitted however same appears to have not processed and such bill is not part of the record



of the learned Commercial Court so also of this Court.

60. In the aforesaid background, the learned Commercial Court, in our opinion, was justified in recording the findings that not only the hindrances were not cleared by the appellant within the work period but also that there is failure to maintain the hindrance register.

61. It is by virtue of conduct of the officials of the appellant; the delay was caused in the matter to provide clear site to the respondent for execution of the work. As per the first running bill, the respondent in fact executed the work and the said bill was duly processed by the appellant.

62. Though by drawing support from the judgment of the Apex Court in the matter of ***M/S Sethi Auto Service Station (supra)*** it is sought to be canvassed by the counsel for the appellant that the *notings* in the department file do not have the sanction of law and such *notings* are only the view point of the officer and are meant for the internal use and consideration of any other official of the department so as to aid in the final decision making process, we are equally required to be sensitive to the evidence of DW-1 in the present case wherein he has admitted about not only the submission of running bill but also the further processing of the same.

63. In such an eventuality, once it is certified that the appellant has endorsed the execution of the work as per the first running bill, the submission made by the counsel for the appellant to the said effect cannot be granted.

64. Rather, we are of the opinion that the learned Commercial Court has



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in detail analyzed the evidence in the backdrop of rival pleadings and recorded a finding in favour of the respondent decreeing the suit which in law, is an appropriate and possible view.

65. That being so, in our opinion, the appeal lacks merits and is liable to be dismissed and is accordingly dismissed.

66. Pending applications, if any, stand disposed of.

67. Judgment be uploaded on the website of this Court.

**NITIN WASUDEO SAMBRE
(JUDGE)**

**ANISH DAYAL
(JUDGE)**

JANUARY12, 2026/sky/ss