



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

COMMERCIAL APPEAL NO.09 OF 2019

1. Executive Director,
G.M.I.D.C. Sinchan Bhavan, Aurangabad.
2. Chief Engineer and Chief Administrator,
C.A.D.A. at Aurangabad.
3. Superintendent Engineer,
J.P.C at Aurangabad.
4. Executive Engineer,
Jalna irrigation Division, Jalna.

...Appellant.

(Original Respondent No.2,3,4,5)

VERSUS

1. M/s Gurunanak Industries,
Now G.N.I. Infrastructure Pvt. Ltd.
Through Khushbirsing Basantsing Bindra
Age 63 years, R/o 5/29 Kranti Chowk Aurangabad.
(Orig.Plaintiff)
2. The State of Maharashtra,
Through The Collector, Jalna.

...Respondents

.....
Advocate for Appellate : Mr. S. G. Bhalerao
Advocate for Respondent No.1 : Mr. A. P. Bhandari
AGP for Respondent No.2. : Mr. A. R. Kale
.....

**CORAM : ARUN R. PEDNEKER AND
VAISHALI PATIL-JADHAV, JJ.**

Date of Reserving the Judgment : 08/01/2026

Date of Pronouncing the Judgment : 17/01/2026

JUDGMENT : (Per ARUN R. PEDNEKER, J.)

1. The present Commercial Appeal is filed by the original defendants, who are aggrieved by and dissatisfied with the judgment and decree dated 09/08/2019, passed by the learned District Judge-1, Jalna, in Commercial Suit

No. 08 of 2019, whereby the suit for recovery of an amount of Rs.5,76,25,112/-, along with interest at the rate of 15% per annum from the date of filing of the suit till realisation is decreed.

2. Heard the learned Counsel Mr. S. G. Bhalerao for the appellants, the learned Counsel Mr. A. P. Bhandari for respondent No.1 and the learned AGP Mr. A. R. Kale for respondent No.2-State.

FACTS :

3. The case of the plaintiff, as pleaded in the plaint, in brief, is as follows :

The original defendants invited tenders for the construction work of "Nimna Dudhana Project - Earthen Dam, Chainages 580 to 2810 meters" situated in Jalna District. The plaintiff emerged as the lowest bidder and was awarded the contract by Defendant No.5 on 16/03/1995. The stipulated period for completion of the work was 24 calendar months, i.e. up to 15/03/1997.

4. The estimated cost of the work was Rs.2,09,92,740/-, whereas the accepted contract value was Rs.2,80,25,309/- . The plaintiff furnished an advance security deposit of Rs.2,80,253/- by way of bank guarantee as per the contractual conditions.

5. Although the contractual period was initially 24 months, extensions of time were granted from time to time, ultimately extending the period up to 30/06/2003. During execution, additional work relating to excavation and masonry dam from Chainage 2810 meters to 3040 meters was attached to the original work, and the time for completion was correspondingly extended.

6. It is the plaintiff's case that the site was not made available in its entirety within a reasonable time, owing to which further extensions became necessary. The plaintiff relies upon the Price Variation Clause (Clause No.56 at Page 80 of the Tender), which permits escalation or deduction in the contract price on account of variation in labour, material, and fuel costs during the operative period of the contract, as calculated in accordance with the prescribed formula.

7. The plaintiff asserts that the work was completed on 30/06/2013, and the final measurements were recorded and the last Running Account (R.A.) Bill was drawn on 12/04/2016. According to the plaintiff, excess quantities had to be executed due to erroneous and inadequate assumptions at the time of floating the tender.

8. Despite repeated requests since 2016, the defendants allegedly failed to release the balance amount. The total outstanding amount

payable under the tender terms was claimed to be Rs.10,02,91,108/-, whereas the defendants paid only Rs.4,26,65,996/- by cheque in the year 2016 . According to the plaintiff, the defendants failed to pay the correct escalation amount as per Clause 56, leaving a balance of Rs.5,76,25,112/-, which compelled the plaintiff to institute the suit. Thus Commercial Civil Suit was filed by the respondents (original plaintiffs) seeking recovery of compensation amounting to Rs.5,76,25,112/-, together with interest at the rate of 24% per annum from the last date of payment, i.e. 12/04/2016.

9. The suit is contested by the defendants / present appellants by filing a written statement. It is the case of the defendants that the department granted extensions of time solely with the intention of enabling completion of the tender work, as the progress of the work was not as expeditious as agreed.

10. It is stated that after issuance of the work order and upon completion of the work by the plaintiff, the defendants, after recording measurements, made payments to the plaintiff from time to time. The defendants tendered and paid all Running Account (R.A.) Bills. According to the defendants, the plaintiff has intentionally misinterpreted Clause 56 of the tender document.

11. It is further stated that there was a mutual agreement between the

parties and that, even as per Special Condition No. 4.41 of the tender (Tender Page No. 38), read with Clause 10 of the B-1 Form, payments of Running bills were to be made monthly, subject to availability of funds for the work under the contract. The defendants contend that from time to time they paid R.A. Bills after taking into consideration the price escalation amounts. The plaintiff never raised any objection from the 1st R.A. Bill till the 56th R.A. Bill and accepted the amounts after verification of all R.A. Bills.

12. It is further pleaded that the period under consideration for price variation under Clause 56 is from the date of commencement of the work, i.e., from the date of the work order to the first R.A. Bill, and that the calculation of price variation for this period is required to be on the basis of the average of indices for the said period. For the second and subsequent R.A. Bills, the period under consideration is from the date of payment of the first R.A. Bill to the second R.A. Bill, and similarly for the remaining R.A. Bills up to the final payment.

13. The defendants assert that from the 1st R.A. Bill to the 56th R.A. Bill (covering the period from the year 1994 to 2013), the contractor accepted all payments over a long period of nearly 20 years and has now, for the first time, raised a claim towards price variation without any right or justification.

14. It is further explained that "price variation" is intended to compensate the contractor in accordance with inflation in labour, material, and fuel prices prevailing in the market. The said clause operates both ways. If the variation in the Wholesale Price Index (New Series) or the price of High-Speed Diesel (H.S.D.) for Bombay is on the positive side, payment on account of price variation is to be allowed to the contractor; however, if it is on the negative side, the Government is entitled to recover the same from the contractor, and such amount is deductible from the contractor's bill for the respective period during which fluctuations occur.

15. According to the defendants, the scheme of Clause 56 clearly indicates that escalation is taken into consideration while processing and paying each R.A. Bill. The plaintiff accepted the payments up to the 56th R.A. Bill, and the present dispute has been raised only at the stage of the final bill i.e. 57th bill seeking recalculation of price variation for the last 20 years.

16. On the basis of the pleadings, the Commercial Court framed the following issues and recorded findings as under :

	<u>Issues</u>	<u>Findings</u>
1	Whether the plaintiff proves that defendants did not make full payment of work done and made only part payment ?	Yes.
2	Whether plaintiff proves his calculation of suit amount is as per Clause No.56 of the	Yes.

tender document?

- | | | |
|---|--|-----------------|
| 3 | Whether plaintiff proves its interpretation is correct and legal while referring to period under consideration for the calculation of the price escalation ? | Yes. |
| 4 | Whether plaintiff is entitled to recover an amount of Rs.5,76,25,112/- as per price escalation clause and as per work done ? | Yes. |
| 5 | Whether plaintiff is entitled for interest on suit amount or balance amount, if yes, at what rate ? | Yes, @ 15% p.a. |
| 6 | Whether plaintiff is entitled for 30 % additional amount of contract for breach of contract by defendants ? | No. |
| 7 | Whether plaintiff proves that it is entitled to 10 % additional amount of outstanding balance towards loss of overhead charges ? | No. |
| 8 | Whether the plaintiff is entitled for Rs.10 lacs towards cost of this litigation ? | No. |

The Commercial Court held that the defendants failed to make full payment in accordance with Clause 56 and decreed the suit accordingly. Present Commercial Appeal is filed challenging the Judgment and decree of the Commercial Court.

17. The learned Counsel for the appellants submits that when the matter was argued before this Court, this Court, by order dated 24/02/2025, observed that the work executed by the plaintiff was completed on 30/06/2013, whereas the suit was instituted on 21/12/2017. It was *prima facie* observed that the suit would be governed by Article 18 of the First

Division of the Schedule to the Limitation Act, 1963, falling under the category of “a suit for the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.”

18. It was further observed that the plaint did not disclose as to how the suit was within the prescribed period of limitation, except stating that the last Running Account Bill was measured and drawn on 12/04/2016. The memorandum of appeal also contained a specific plea that the suit was barred by limitation.

19. In view thereof, this Court directed the Commercial Court, Jalna, to frame an issue on limitation and to decide the same in accordance with law, after granting both parties an opportunity to lead additional evidence. However, the parties were expressly restrained from amending their pleadings.

20. Pursuant to the said directions, the Commercial Court framed the issue on limitation and answered the same in favour of the plaintiff. Thereafter, the appellants filed Civil Application No.11305 of 2025, seeking permission to amend Commercial Appeal No.9 of 2019 so as to challenge the order dated 14/05/2025 passed by the District Judge, Jalna, in Commercial Suit No.8 of 2019, and to place the relevant supporting documents on record. The said application came to be allowed by this

Court by order dated 07/01/2026.

21. The appellants/original defendants have challenged the judgment of the Commercial Court primarily on two grounds. Firstly, it is contended that the suit is barred by limitation. The learned Counsel for the appellants submits that the contractual work was completed on 30/06/2013, and therefore, the period of limitation commenced from the date of completion of the work. Merely because the final payment under R.A. Bill No.57 was paid in the year 2016, the same cannot extend the period of limitation. It is urged that the suit instituted in 2017 is clearly barred, inasmuch as Article 18 of the Schedule to the Limitation Act, 1963, prescribes a period of three years for filing a suit for the price of work done, reckoned from the date of completion of the work.

22. On the issue of limitation, the learned Counsel for the appellants places reliance on the judgment of this Court at the Principal Seat in Arbitration Appeal No.6 of 2007 (State of Maharashtra v. Hindustan Construction Company Ltd. & Anr.), decided on 01/02/2013.

23. The learned Counsel for respondents submits that Section 19 of the Limitation Act squarely governs the issue in the present case. He contends that although the work was completed earlier, the final payment under R.A. Bill No.57 was made on 12/04/2016, and therefore, the period of limitation

commenced from the said date. On this premise, it is urged that the suit instituted in the year 2017 is well within the prescribed period of limitation.

24. It is submitted that the present suit is not merely for "work done", but for non-payment of the legally payable escalation amount, which could be finally determined only upon preparation and payment of the final Running Account Bill. Admittedly, the last R.A. Bill (No.57) was measured and payment was released on 12/04/2016, and only thereafter did the cause of action crystallise. The learned Counsel further submits that so long as the final bill was not prepared and paid, the account between the parties remained open and unsettled. The right to sue accrued only when the appellants refused to pay the correct escalation amount despite repeated demands made in the year 2016 and thereafter. The respondent further submits that the appellants' reliance on Article 18 of the Limitation Act, 1963 is misplaced. Even assuming Article 18 applies, the phrase "when the work is done" must be read in conjunction with the contractual obligation to finalise and pay the final bill, particularly where escalation is an integral part of the consideration.

25. Secondly, the learned Counsel for the appellants submits that the Commercial Court has erroneously interpreted Clause 56 of the tender document relating to price escalation. According to the appellants, escalation amounts were computed and included in each Running Account

Bill from R.A. Bill No.1 to R.A. Bill No.56 for the period between 1995 and 2013, and the final escalation amount was also adjusted in the final bill. The plaintiff accepted all the R.A. Bills without demur. Having accepted the payments over the entire contractual period, it is not open to the plaintiff to recompute price escalation by taking an average from the date of commencement of the contract till the final date of payment and thereby claim an additional amount of Rs.5,76,25,112/-, which is contrary to the contractual stipulations.

26. As regards the payment and computation of escalation, it is submitted that there is no dispute concerning the correctness of the individual Running Account Bills. According to the appellants/ defendants, price escalation under Clause 56 is required to be computed with reference to the cost of work done during the relevant period of each bill and, at the minimum, contemporaneously at the time of payment of each Running Account Bill. This, it is submitted, is the contractual scheme contemplated under the tender, and the same has been followed throughout. The final decretal amount, therefore, could not have been arrived at by recomputing escalation for the entire contractual period at the end of the work.

POINTS FOR DETERMINATION :

27. Having considered the rival submissions, the following points arise for determination :

(1) Whether the suit filed by the respondent / plaintiff is within the stipulated period of limitation ?

Ans :Yes.

(2) Whether the appellants / defendants have paid the amount towards “price escalation” in the the respective R. A. Bills No. 1st to 57th accordance with Clause 56 of the Agreement ?

Ans :Yes.

DISCUSSION & REASONS :

POINT NO. 1 :

28. In paragraph No.13 of the plaint, the plaintiff has stated that the work was executed and completed on 30/06/2013. It is further stated that the last Running Account (R.A.) Bill was measured and drawn on 12/04/2016, and that the plaintiff requested the defendants to release the balance payment in the year 2016. According to the plaintiff, the total balance amount payable under the contract was Rs.10,02,91,108/-, out of which Defendant No.5 paid only Rs.4,26,65,996/- by cheque, thereby failing to pay the price escalation amount in accordance with the tender conditions.

29. It is further pleaded that on 29/05/2017, the plaintiff addressed a letter to Defendant No.5 calling upon it to release the final bill amount.

However, Defendant No.5 replied by denying liability and refused to act in accordance with the tender terms. Consequently, the plaintiff issued a statutory notice dated 05/08/2017 under Section 80 of the Code of Civil Procedure, 1908, and thereafter instituted the suit on 21/12/2017.

30. In the written statement, the defendants have contended, particularly in paragraph No.11, that there was no subsisting demand from the plaintiff, as Running Account Bills were settled from time to time after taking into account the applicable price escalation. It is their case that the plaintiff never raised any objection from the 1st R.A. Bill till the 56th R.A. Bill and accepted all payments after due verification. The defendants denied that the amount of Rs.4,26,65,996/- was a part payment and asserted that the same constituted full and final settlement. It is further contended that the plaintiff did not accept the payment under protest.

31. The defendants have also relied upon Clause 56 of the tender document, contending that the “period under consideration” for calculating price variation is bill-specific. According to them, for the first R.A. Bill, the period under consideration is from the date of commencement of work till the first R.A. Bill, and for the second and subsequent R.A. Bills, it is from the payment of the preceding R.A. Bill to the next R.A. Bill, and so on, up to the final payment. It is submitted that from R.A. Bill No.1 to R.A. Bill No.57

(covering the period from 1994 to 2013), the contractor accepted all payments over a span of nearly 20 years, and has now, belatedly, raised a claim for additional price escalation without any contractual or legal basis.

32. Thus, the core issue that arises for consideration on the question of limitation is the starting point of limitation.

33. Clause 10 of the contract provides that bills are to be submitted monthly or on or before the date fixed by the Engineer-in-Charge. If the contractor fails to submit the bill within the stipulated time, the Engineer-in-Charge is empowered to measure the work and prepare the bill. The bills are required to be in printed form.

34. In the present case, R.A. Bills No.1st to 56th were raised by the plaintiff in accordance with the contract, and price escalation was granted in each bill by applying the prescribed formula. These bills pertained to specific periods during which the work was executed and price escalation was computed and adjusted accordingly.

35. The defendants' witness, Surekha Bhimrao Korke, has stated that the defendant issued a letter dated 30/01/2013 calling upon the contractor to

remain present on 06/02/2013 at 09.00 a.m. for taking final measurements of the work done. However, neither the contractor nor his representative remained present on the said date. It is pertinent to note that this assertion does not find place in the pleadings.

36. It is further stated by the said witness that another letter dated 27/05/2013 was issued by the defendants calling upon the contractor to remain present for accepting and acknowledging the final bill of the work done. According to her, the contractor did not come forward to accept the final bill. Consequently, on 01/07/2013, a letter was issued to Defendant No.4 informing that the final measurement was carried out and that the final bill, including the cost of price escalation, was prepared. It is stated that although the contractor was informed, he did not respond for acceptance of the final bill.

37. However, all the aforesaid facts were not pleaded in the written statement, and evidence has been led on facts which are not part of the pleadings. The said witness has, however, admitted that on 12/04/2016 the final bill was paid and that the Letter of Credit (LOC) was received by their office on 17/06/2016.

38. In the present case, the final bill was required to be settled after completion of joint measurement of the work done. The same was

admittedly not settled on the alleged date of completion of work. There is no specific pleading that the final bill stood settled on 30/06/2013. Bill No.57 was paid on 12/04/2016, and there is no separate communication indicating denial of any specific part of the said bill.

39. A running account bill, by its very nature, involves interim payments made at specified intervals, depending upon the progress of the contract works. A “running account” is account between parties having a series of transactions, which remains open and is usually subject to settlement at stated intervals. Such running account bills are only provisional in nature and do not result in the final settlement of rights and liabilities between the parties. There is no clause in the tender document to treat R. A. Bills as final to the extent of work covered in the R.A. Bill. However, there is also no clause to treat the payments made under R. A. Bills as advance till the final bill. In absence of the above clauses we treat the R. A. Bills as interim payment and the final settlement takes place only upon acceptance of the final bill.

40. Article 18 of the Schedule to the Limitation Act, 1963 would apply only where the amount payable is known and becomes payable on completion of work. However, in the present case, although the physical work may have been completed on 30/06/2013, the measurement of the work and the escalated price was yet to be computed. The final bill was

required to be prepared after joint measurement and after working out the escalation under the contractual clause. Therefore, limitation would commence only upon denial or partial payment of the final bill which occurred on 12/04/2016. The suit is filed on 21/12/2017 and is within three years of payment of partial final bill and is thus within limitation and would be covered under Article 55, of the Limitation Act.

POINT NO. 2 :

41. Coming to the next issue of price Escalation Claimed, namely, whether the plaintiff is entitled to claim an amount of Rs.5,76,25,112/- towards price escalation cost. For this purpose Clause 56 of tender document provides for price variation clause.

42. Clause 56 of the tender document reads as under :

"Clause - 56 : PRICE VARIATION CLAUSE

I. **If during the operative period of the contract** as defined in condition (I) below, there shall be any variation in the consumer Price Index (new series) for IndusCommercial workers for Nanded Centre as per the Labour Gazette published by Commissioner of Labour, Government of Maharashtra and / or in the wholesale price index for all commodities prepared by the office of Economic Advisor, Ministry of Industry, Government of India, as compared to the respective figure therefore, on the date 30 days before the last date prescribed for receipt of tender and / or in the prices of petrol/ oil and lubricant, then subjects to the other conditions mentioned below, price adjustment on account of (I) Labour Component (ii) Material component and (iii) POL components, which respectively are 68%, 27% and 6%and of the total cost of work put to tender calculated as per the formula hereinafter appearing, shall be made. (Total of all these three components will be 100)

(A) Formula for labour component :

$$VI = 0.85 \quad | \quad \begin{array}{l} \text{P-Cost of Schedule 'A' I} \\ \text{materials used} \end{array} \quad | \quad X \quad | \quad \begin{array}{l} K1 \\ --- \times \\ 100 \end{array} \quad \begin{array}{l} C1-CO \\ ----- \\ CO \end{array}$$

Where,

VI = Amount of price variation in Rupees to be allowed.

P = **Cost of work done during the period under consideration**

K1 = Percentage of Labour Component as indicated above.

CO = Basic consumer price index for Nanded center ascertained as above on the date 30 days preceding the last date prescribed for receipt of tender.

C1 = Average Consumer Price Index for Nanded Centre ascertained as above during the **period under consideration**.

(B) Formula for materials component :

$$V2 = 0.85 \quad | \quad \begin{array}{l} \text{P-Cost of Schedule} \\ \text{'A' materials used} \end{array} \quad | \quad X \quad | \quad \begin{array}{l} K2 \\ --- \times \\ 100 \end{array} \quad \begin{array}{l} |1-10 \\ |0 \end{array}$$

Where,

V2 = Amount of Price variation in rupees to be allowed.

P = **Cost of work done during the period under consideration**

K2 = Percentage of material component as indicated above.

| 0 = Basic wholesale Price index ascertained as above on the date 30 days preceding the last date prescribed for receipt of tender.

| 1 = Average wholesale price Index ascertained as above during the period under consideration.

(C) Formula for petrol, oil and lubricant component :

$$V3 = 0.85 \quad | \quad \begin{array}{l} \text{P-Cost of Schedule} \\ \text{'A' material used} \end{array} \quad | \quad X \quad | \quad \begin{array}{l} K3 \\ --- \times \\ 100 \end{array} \quad \begin{array}{l} PI-PO \\ ----- \\ PO \end{array}$$

Where,

V3 = Amount of price variation in Rupees to be allowed.
P = Cost of work done during the period under consideration.
K3 = Percentage of petrol, oil and lubricant component,
PI = Average price of H.S.D. for Bombay during the period under consideration.

II. Conditions referred to in Paragraph - I

- i) **The operative period of the contract shall mean the period commencing from the date of the work order issued to the contractor and ending on the date when the time allowed for the work specified in the Memorandum under Tender for work expires, taking into consideration the extension of time,** if any, for completion of the work granted by Engineer in charge under the relevant clause of the conditions of contract in cases other than those where such extension is necessitated on account of default of the contractor the decision of the Engineer-in-charge as regards the Operative period of the contract shall be final and binding on the contractor. Where compensation for liquidated damages is levied on the contractor on account of delay in completion or inadequate progress under the relevant contract provisions. The escalation amount for the balance work from the date of levy of such compensation shall be worked out by paging the indices C1 I-1 and P-1 to levels corresponding to the date from which such compensation is levied.
- ii) This price variation clause shall be applicable to all contracts in B1, B2 and C forms but shall not apply for piece works.
- iii) Price variation shall be calculated, in accordance with the formula mentioned above, separately for labour, material and POL components.

iv) **The price variation under this clause shall not be payable for the extra items required to be executed during completion of the work and also on the excess quantities payable under the provisions of clause 38 / 37 of the contract from B1 / B2 respectively. Since the rates payable for the extra items or the extra quantities under clause 38 / 37 are to be fixed as per the current RSR or as mutually agreed, to yearly revision till completion of such work.** In other words, when the completion/ execution of extra item as well as extra quantities under clause 38 / 37 of the contract from B1/ B2 extends beyond the operative date of the then R.S.R., the rates payable for the same beyond that date shall be revised with reference to the next current R.S.R. prevalent at that time on year to year basis or revised in accordance with mutual agreement thereon, as provided for in the contract, whichever is less.

v) **This clause is operative both ways**, i.e. if the price variation in the said wholesale price index for all commodities, consumer price index (New series) or price of HSD for Bombay is on the plus side, payment on account of the price variation shall be allowed to the contractor and if it is on the negative side, the Government shall be entitled to recover the same from the contractor and the amount shall be deductible from the Contractor's bill for the respective period in which there are fluctuations."

43. We find that Clause 56 provides distinct formulas for computation of price variation under the labour component, material component, and petrol, oil and lubricant (POL) component. Clause 56(II)(i) defines the operative period of the contract to mean the period commencing from the date of issuance of the work order to the contractor and ending on the date when the time allowed for completion of the work, as specified in the

memorandum under the tender, expires, after taking into consideration any extension of time granted by the Engineer-in-Charge under the relevant contractual provisions, save and except extensions necessitated on account of default of the contractor. The decision of the Engineer-in-Charge as regards the operative period of the contract is declared to be final and binding on the contractor.

44. The operative period of the contract and the period under consideration for calculation of price variation are two distinct concepts. The operative period refers to the entire duration of the work, commencing from the date of issuance of the work order and ending with the completion of the work, while period under consideration relates to the period covered in the respective running bills.

45. The plaintiff's case is that escalation has to be worked out by taking an average for the entire contract period. However, we find it difficult to accept this submission. The formulas prescribed under Clause 56 for labour, material and POL components specifically refer to the "cost of work done during the period under consideration". The period under consideration would naturally mean the period for which the R. A. Bill is submitted. R. A. Bill includes the price variation for the period covered in the R. A. Bill. The contractor is paid the R. A. Bill taking into consideration

the escalation in prices at the relevant time for the work done.

46. If the interpretation suggested by the plaintiff is accepted, the entire escalation for nearly 20 years would have to be recomputed afresh by treating the entire contract period as a single unit, i.e. from the date of issuance of the work order till completion of the work, and thereafter applying the prescribed formula for price escalation. Such an interpretation is contrary to the scheme and purport of the contract. At every stage of work undertaken, Running Account Bill is prepared and escalation price is included in each Running Bill. The purpose of price escalation clause is to protect the parties to the contract from market price variations of the Labour, material and Oil components and not to make windfall profit.

47. This conclusion is further reinforced by Clause II(iv) of the price variation clause, which specifically provides that price variation shall not be payable for extra items or excess quantities executed under Clauses 38 and 37 of the contract. In such cases, rates are to be fixed as per the current Schedule of Rates (RSR) or as mutually agreed, with yearly revision. Once prices are revised under Clauses 38 or 37, escalation under Clause 56 is not separately applicable, as the revision already accounts for the increase in cost.

48. Thus, wherever revision of rates has already been made due to

permissible variation exceeding 25%, escalation is not again applied. However, where there is no such revision, escalation is to be worked out Running Bill-wise for the period covered by the respective Running bills.

49. The argument that the entire operative period of the contract should be taken as one unit and that escalation should be averaged over the entire period is not supported by the language of Clause 56. The formulas clearly mandate computation of escalation with reference to the period for which each bill is raised.

50. In the present case, price escalation was granted and paid in each R.A. Bills No.1 to 56. Even in R.A. Bill No.57, escalation for the relevant period was computed and paid by the defendants. There is no error pointed out in each individual R.A. Bill towards escalation price. The prices of labour, material and oil as on the last date of work i.e. 20 years after commencement of work cannot be the basis for calculation of price escalation for the whole tender work. Escalation is worked out at each R.A. Bill period. The plaintiff has, therefore, erroneously interpreted Clause 56 of the agreement, while submitting his final Bill.

CONCLUSION :

51. In view of the above discussion, we find that no case is made out for grant of Rs.5,76,25,112/- towards escalation cost. Consequently, the

judgment and decree dated 09/08/2019 passed by the learned District Judge-1, Jalna, in Commercial Suit No. 08 of 2019, deserves to be set aside and is accordingly set aside.

52. The present Commercial Appeal filed by the original defendants is allowed with costs. Decree be drawn up accordingly.

(VAISHALI PATIL-JADHAV, J.)

(ARUN R. PEDNEKER, J.)

vj gawade/-.