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

% ***Reserved on: 07th May, 2026***

Pronounced on: 23rd July, 2026

\+ **<u>RFA 38/2025, CM APPL. 2596/2025</u>**

M/S VVS CONSTRUCTION PVT. LTD.

Through its Authorised Representative/ SPA Holder
Mr. Bhupender Singh Dhaka
Having its Office at:
Shop No.SF 16-D, 2nd Floor Niho Scotish Mall,
Ahinsha Khand-2, Indirapuram, Ghaziabad,
Uttar Pradesh-201014. .....Appellant

Through: Mr. Kirti Uppal, Sr. Advocate with Mr. Saurabh Kansal, Ms. Ashu Chaudhary and Mr. Akhil Dhaka, Advocates.

versus

1. **INDIAN YOUTH CENTRE TRUST**
Through its Chairman
A body corporate constituted under
Indian Trust Act
Having its Office at:
Circular Road, Chanakyapuri,
New Delhi-110021.

2. **MANAGING TRUSTEE**
Indian Youth Centre Trust
Having its office at:
Circular Road, Chanakyapuri,
New Delhi-110021.

3. **VISHWA YUVAK KENDRA**
Through its Director
A body corporate constituted under
Indian Trust Act
Having its Office at:

Circular Road, Chanakyapuri, New Delhi. .....Respondents

Through: Mr. Naveen Chawla, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Plaintiff / Appellant has preferred present Regular First Appeal under Section 96 of CPC against Judgment and Decree dated 28.11.2024, whereby learned ADJ has *decreed the Suit of the Appellant / Plaintiff for the sum of Rs.15,52,000/- along with Simple Interest @ 6% per annum from 11.11.2010 till realization.*

2. Appellant / Plaintiff filed ***Suit bearing CS No.59241/2016 for recovery of Rs.55,86,883/- (Rs.51,25,969/- as principal amount and Rs.4,60,914/- as interest @ 18% per annum*** from 15.06.2010 till filing of the Suit along with *pendente lite* and future interest) against the Defendants / Respondents.

3. Initially, the Suit was filed under Order XXXVII of CPC, but Leave to Defend Application filed by the Defendant was allowed, *vide* Order dated 16.09.2014, subject to deposit of the amount in the Court and thereafter, the matter was treated as Ordinary Civil Suit.

4. ***Facts in brief,*** as stated in the Plaint, were that Plaintiff had entered into an Article of Agreement / Contract dated 02.01.2007 with the Defendant for carrying out construction of new Dormitory Building at Chanakyapuri, New Delhi (*hereinafter referred to as 'said new building'*), which was to be constructed from basement till fourth floor. A Tender was floated for the said construction, in which Defendant No.1, a Trust with

Defendant No.2 / Managing Trustee and Defendant No.3 / Body constituted and working under Defendant No.1, submitted the Tender for the construction of the new building.

5. Plaintiff stated that one building existed prior to the construction of this new building, which was being run by the Trustees / Defendants, who were running hotel and restraints for foreign and Indian dignitaries from the old building and were renting out the same, to other companies and beneficially earning from the property.

6. Plaintiff stated that as per the *Clause 4 of the Contract dated 02.01.2007, work was to be completed within nine months*, which could not be completed on account of approvals / NOCs from NDMC / DUAC to be obtained by the Respondents. Approvals were obtained by the Chief Architect on 12.06.2008.

7. Plaintiff raised *R.A. Bills from time to time for the work carried out by it*, against which part payments were made by the Defendants. A Letter / *Show Cause Notice dated 13.11.2009 was issued by the Defendant No.3 to the Plaintiff*, for not completion of work till 31.10.2009. Plaintiff gave its Reply dated 21.11.2009, explaining the reasons of delay.

8. Thereafter, Plaintiff sent a Letter dated 19.03.2010 to Sh. Anil Dixit, the Architect of the Defendants to clear the Bills, but he did not receive any response from him. A reminder Letter dated 02.04.2010 was issued to the Building Committee of the Defendants mentioning that labourers of the Plaintiff were sitting idle due to non-clearance of the issues, as no reply was received from the Defendants.

9. Plaintiff also sent a Letter dated 20.04.2010 seeking advance of Rs.30,00,000/- against the running Bill No.135 and also sought

Rs.9,00,000/- as damages/ penalty, for the delay on the part of the Defendants.

10. *Defendant No.3 vide* Letter dated 03.05.2010 asked the Plaintiff to be present in the premises on 08.05.2010. A supplementary Contract was executed on 08.05.2010, wherein it was agreed that a sum of Rs.40,00,000/- would be paid towards pending Bill of Rs.62,23,000/-, duly certified by the Architect. After this payment, security deposit of 10% and TDS will be deducted.

11. The Plaintiff claimed that *he completed the entire work and raised a Final Bill No.140 dated 15.06.2010 for Rs.5,13,87,908/-*. This Bill was verified by Architect, Anil Associates for a sum of Rs.5,12,59,694/- as the full and final payment, which was also accepted by the Plaintiff.

12. The Plaintiff further asserted that a sum of Rs.51,25,969/- as security/retention amount being 10% of the total bills amount, is lying with the Defendants. The due date for release of security amount is 15.06.2010.

13. The Plaintiff had requested through Letter dated 17.08.2010 to the defendants to return the entire 100% security amount and was ready to furnish Bank Guarantee in respect of 50% of the security amount.

14. The Plaintiff claimed that despite his request and Reminder Letter dated 17.09.2010, the Defendants failed to release any amount or to give reply to his Letter or release any amount. The Plaintiffs then again send Reminder Letter dated 26.10.2010, since he had to make initial payment to the labour and shopkeepers from whom the material had been purchased.

15. Ultimately, the Plaintiff sent a Legal Notice dated 11.11.2010 for realization of the amount, but to no avail. Thereafter, the Plaintiff sent a Fax dated 02.12.2010 to the Defendant No.1 to sort out the matter out of the court, but again no response was received from the Defendants. ***Left with no option, the Plaintiff had filed a Suit for Recovery of Rs.55,86,883/- along with pendente lite and future interest @ 18% per annum.***

16. The ***Defendants in their Written Statement***, denied the averments made in the Plaint. It was claimed that true facts and circumstances have not been divulged by the Plaintiff in an endeavour to mislead the Court.

17. Admittedly, the Plaintiff entered into a Contract with Defendant No.3 on 02.01.2007, for the construction of new Kendra Building. It was stipulated in the Agreement that during the progress of the work, the Contractor at the sole discretion of Kendra Authorized Representative, may receive interim payment up to *the maximum of 92% proportionate to the work performed, after it was inspected and approved by the Representative.* The adjustments of the interim payment and retention money was to be made. It was further agreed that the payment of Final Bill would be made after adjusting the interim Bill and retention money for a period of 12 months, to safeguard any defects arising out of the faulty workmanship.

18. The Defendants claimed that on 17.06.2008, after evading from carrying out construction work in terms of Contract dated 02.01.2007 i.e. after more than a year, the Plaintiff sought revision of Contract value on the ground of passage of time and cost escalation. The Meeting was held between the Defendant Trust, the Plaintiff as well as the Architect of the Defendant No.3 on 21.06.2008 wherein the request of the Plaintiff was considered and the Contract value was escalated by 35% of the original rates. However, it was agreed that no further escalation would be granted to the Plaintiff on any account. The Plaintiff, therefore, cannot claim anything beyond 35% as the escalation cost.

19. The Defendants asserted that in the interim inter-se disputes between the Trustees of Defendant No.1 Trust, erupted. The dispute related to appointment of three new Trustees in the Board of Trustees of Defendant No.1 Trust. Consequently, the management of Defendant No.1 Trust got divided into the *Questioned Board of Trustees*, and the *Proper Board of Trustees.*

20. The Questioned Board of Trustees held a Meeting on 19.09.2009, which was boycotted by the Proper Board of Trustees. The Plaintiff took undue advantage of the inter-se disputes, which ultimately resulted in the present proceedings.

21. The Plaintiff had filed *Suit CS(OS) No.193 of 2010 before this Court*, challenging the appointment of the Questioned Board of Trustees in the Defendant No.1 Trust. Despite the challenge being pending, the *Questioned Board of Trustees* held a meeting on 08.05.2010, which was boycotted by the *Proper Board of Trustees.* Despite vehement opposition by the *Proper Board of Trustees*, the *Questioned Board of Trustees* unilaterally and arbitrarily approved further payments to the Plaintiff.

22. The *Suit No.193/2010 was decreed in favour of Proper Board of Trustees and the appointment of the Questioned Board of Trustees was set aside, vide Judgment dated 26.07.2010*. It was claimed that the decisions and proceedings taken by the *Questioned Board of Trustees* amounted to acts done without any authority and not in accordance with law.

23. The Defendants further stated that the Architect of Defendant No.3, *approved the Final Bill raised by the Plaintiff, on 09.08.2010.* The Architect, however, abused his position and verified and recommended the payment against various Running Bills, without any due authority. The

Architect furthered the vested interest in exploitation carried out by the Plaintiff. On the recommendation of the Architect, the Trust was in turmoil on account of *inter-se* disputes between the Trustees, but went on making the payments. The *Questioned Board of Trustees* thus, directly and indirectly aided and abetted the unlawful gain made by the Plaintiff, on account of overbilling. *The last installment of payment was made to the Plaintiff on 18.08.2010.*

24. In the meanwhile, or about August 2010, *the independent Technical Valuer was appointed by the Defendant No.1 Trust* for the purposes of verification of the genuineness of the bills raised by the Plaintiff from time to time and also to determine the authenticity of escalation claimed by the Plaintiff. It was borne out that even as per the quantities claimed by the Plaintiff in the running bills and final bills, the total cost of construction of 13,666 Sq. ft. on the prevailing market rate of Rs.1748.05 per Sq ft. would amount to Rs.238.88 lacs.

25. *On 06.10.2010, a Statutory Auditor* was appointed for the purposes of enquiring into the authenticity of the payments made by the Trust. A *Preliminary Report was submitted by the Statutory Auditor on 15.01.2011*. It was explained that an excess payment of approx. Rs.200/- lacs in excess of the total contract amount, had been paid to the Plaintiff. The total bills raised by the Plaintiff were @ Rs.3750/- per sq. foot, as cost of construction. A judicial notice may be taken that the rate of construction of a new hostel which is not a seven-star Hotel, was overly excessive.

26. Upon inspection of the records and the Books of Account, the Auditor observed that the original construction cost was Rs.193.77 lacs for construction 13,666 sq. ft covered area, with an average cost of construction

@ Rs.1418 per Sq. ft. The amounts claimed by the Plaintiff from the Defendants from time to time, related to non tendered items for which the quantities and rates had never been agreed in writing, between the parties. There was no basis for raising the Running and Final Bill amounting to Rs.512.60 lacs.

27. The *independent Auditor submitted the Final Report on 31.03.2011 reiterating the excess payments made to the Plaintiff.* The Committee headed by Retired former Judge of this Court, had also been appointed for ascertaining the rampant misappropriation and loot of the Plaintiff, but on account of the pendency of the present Suit, the Committee held that the further investigations would be done only after the outcome of the instant Suit.

28. The Defendants thus, claimed that no money is payable to the Plaintiff and that the Suit was liable to be dismissed.

29. The ***Plaintiff in the Replication*** reaffirmed the assertions made in the Plaint and denied the contentions made in the Written Statement.

30. The ***Issues on the pleadings were framed on 29.11.2018***, as under:

> *(i) Whether the Plaintiff is entitled to recovery of Rs.55,86,883/- as prayed for? OPP*
>
> *(ii) Whether the plaintiff is entitled to interest on above amount, if yes then at what rate and for what period? OPP*
>
> *(iii) Whether the plaintiff has received and defendant has paid excess money, in excess of the contractual value? OPD*
>
> *(iv) Whether the plaintiff had abandoned the work site? OPD*

(v) Relief.

31. The Plaintiff in support of its case, examined ***PW1 Sh. Bhupender Singh Dhaka*** who led his evidence by way of Affidavit Ex.PW1/A. He also relied on documents Ex.PW1/1 to Ex.PW1/18.

32. The Defendants examined *DW1 Sh. Abhishek Chaudhary* who also tendered his evidence by way of Affidavit Ex.DW1/A. He proved the documents Ex.DW1/1 to Ex.DW1/11, in his defence.

33. The ***learned District Judge*** on appreciation of the evidence, held that the Article of Agreement Ex.PW1/4 dated 02.01.2007, was admitted between the parties. As per the terms and conditions of this Agreement, 92% amount was to be released, while 8% was to be retained. 50% thereof was to be retained *as retention money*, post completion of the Project. The initial Contract was for Rs.1.94 Crores, about which was no dispute. The first enhancement of the rates @ 35% was granted within 9 months of the calendar month of entering into the Agreement. There was no supplementary Agreement executed between the parties at any time and the initial Contract was kept alive. It was further held that the evidence reflected that the Contract was completed by the Plaintiff and not abandoned in between.

34. The Plaintiff had asserted that non-tendered items, the amount of which was stated to be 140 lacs, were included which was documented in the Minutes of Meeting dated 08.05.2010. The Plaintiff had deposed that the Tender was at item rate and not the fixed Tender amount. It was, therefore, held that it was incumbent upon PW1, to have proved the item rate as duly approved by Defendant No.1 Trust.

35. There were inter-se disputes amongst the Trustees of the Board. In the circumstances to contend that all the Trustees were aware about the enhancement or mutation of the tendering, into the sort of item rate contract, was held to be not acceptable. *It was held that the Defendants had taken a specific defense that some of the Trustees had connived with the Plaintiff and that the documentation agreeing to escalation or to enhanced rates or for payments for non-tendered items, and was not binding upon the Defendants.*

36. In regard to the Defendants's claim that excessive payment had been made as the amount of Rs.268 lakhs had been doubled by the Defendant No.1, whereby the final Bill became of Rs.5.13 Crore, ***it was held*** that even if there is excessive payment made to the Plaintiff, *since there is no counter-claim, the Defendants cannot be allowed any refund*.

37. However, it was observed that the initial value of the Contract was Rs.1.94 Crores, out of which Rs.15.52 i.e. 8% was the security amount. ***Hence, the Plaintiff was held entitled to part recovery of Rs.15.52 lakhs along with Simple Interest @ 6% per annum*** *(out of claimed amount of Rs. Rs.55,86,883/-)* from the date of issuance of Legal Notice dated 11.11.2010 till the date of realization

38. Aggrieved, by the denial of the part claim by the impugned Judgment, the ***present First Regular Appeal*** has been preferred, by the Plaintiff/Appellant.

39. The ***grounds of challenge*** are that the Appellant had completed the entire work of building well within time and there was not a single Complaint against him, in regard to the quality of work. A few of the last payments had been granted by the incumbent Trustee of the Respondents.

Though, this Court in *CS(OS) 193/2010* challenging the validity of some of the Members of the Trust was declared invalid, *vide* Judgment dated 26.07.2010 but even thereafter, the last payment was made on 19.08.2010 of Rs.4,08,000/- and on 20.08.2010 of Rs.22,956/- in favour of the Appellant which clearly reflects that the collusion between the alleged trustees was just a concocted story by the respondents.

40. The Respondents had specifically admitted that the security amount of the Plaintiff was still lying with them, which is evident from the Order dated 16.09.2014 by this Court in the Civil Suit (which was pending before this Court). The learned District Judge has failed to consider that on account of a delay of one and half year approximately, on the part of Respondents in getting necessary approvals/NOC from NDMC/ DUAC, the construction site remained with the Defendants/Respondents. Thereafter, the Respondent agreed and approved the work with an escalation of 35% of the amount of the contract value, which amounted to Rs.268 lakhs. It has not been considered that supplementary Contract/ Letter dated 08.05.2010 had been issued, in favour of the Plaintiff by the Defendants. It had also not been considered that the Defendants had made complete payment to the Appellant and had retained only retention money.

41. It has been wrongly observed that the *Building Committee was not Competent Authority to allow escalation in price,* whereas the Building Committee comprising of Mr. Suresh Ambekar, Director, Mr. Viresh Pratap Chaudhary and Mr. Rajat Narain, had approved the first escalation on account of their fault. The same Committee approved the Final Bill No.140 for Rs.5.12 Crores.

42. Moreover, all the documents including written statement, contract/ Article of Agreement dated 02.01.2007, Minutes of Meeting dated 21.06.2008 and the Supplementary Contract/ Letter dated 08.05.2010 had been signed by the three Members of the Building Committee. The Defendants in the Meeting dated 08.05.2010, had admitted that at the particular time, the Plaintiff had already completed the work to the tune of Rs.497.54 lakhs, but the Bill of Rs.62.23 lakhs, duly certified by the Architect, were still not paid by the Defendants. *In the light of the admissions, the Defendants were left with no option, except to release the illegally withheld security amount.*

43. The *learned District Judge* has also failed to consider that the Defendant had agreed and paid Rs.4.61 Crores. After the Final Bill No.140 was approved, the total amount had been paid by the Defendants for the work done by the Appellant, except the retention amount. The Defendants are mischievously taking shelter of the alleged change in the Board of Trustees.

44. The learned District Judge has decreed the Suit partly for 8% of the Retention money, which establishes that the retention money had been retained by the Defendants.

45. The Defendant cannot challenge the escalation on the basis of which the work had been duly completed to the satisfaction of the Defendants and the payments had been released, after due verification. The retention money @ 10% had been retained by the Defendants, as is mentioned in supplementary contract/ letter dated 08.05.2010. This aspect had not been considered by the learned District Judge, in the impugned Judgment.

46. The Plaintiff in its Reply dated 21.11.2009 to the Show Cause Notice, had clearly defined the extra work undertaken at the site to which No Objection had been taken by the Defendants, which clearly proves that they were aware of the extra work beyond the Tender, had been done by the Plaintiff. The subsequent Letter dated 08.05.2010 must be treated as the part of initial Contract dated 02.01.2007.

47. Furthermore, the Defendant No.3 has failed to appreciate that no Order was passed by the Building Committee, in Suit CS(OS) 193/2010. The Defendants have used inter-se dispute amongst the Trustees of Defendant No.1, as a tool to illegally withhold the security amount of the Plaintiff. No action has been taken against the members of Questioned Board/ Building Committee and some of the members are still continuing as proper Board members.

48. It has not been appreciated that the Defendants had every option to cause stoppage of the construction work at the site, till the settlement of the *inter se* disputes, in case the work was being carried out by the Plaintiff without proper authority, but no such option was ever exercised since the work of the Plaintiff was excellent and to the satisfaction of the Defendants. The concocted story has been fabricated by the Defendants about the non-tendered items and the enhanced rates, without there being any evidence to prove the defence of the Defendants.

49. It is further submitted that the *Report of Technical Valuer* is undated and does not specify on which date the Valuer was appointed. Further, the basis of calculation is not mentioned, as well as the items have not been valued/ verified by the Valuer. Moreover, no one was called from the Plaintiff's side, to assist the Valuer. The date on which the alleged valuation was carried out by the Valuer, was not made known to the Plaintiff. It is thus, evident that he did nothing but just acted on the dictates of the Defendants. *Moreover, these Auditors never stepped into the witness box to prove their Reports.*

50. An observation was made by the learned District Judge that the GST Bills, were not filed by the Appellant. However, from the year 2007 till 2010, no GST was applicable, as the same came into force in the year 2017. It is, therefore, submitted that the impugned Judgment be modified and **the Suit of the Plaintiff for the entire amount of Rs.55,86,883/- along with interest @ 18% be decreed in favor of the Plaintiff.**

51. ***The Appellant in the written submissions, reaffirmed the assertions made in the Appeal.***

52. The ***Respondents/Defendants in their written submissions, also reaffirmed their defence***, as had been raised during the trial before the learned Civil Court. It is submitted that the learned District Judge has rightly granted the Retention amount of 8% of the Contract dated 02.01.2007, to which the Plaintiff was entitled. There is no merit in the present Appeal, which is liable to be dismissed.

Submissions heard and record perused.

53. The Plaintiff, by way of the Suit, sought ***recovery of Rs.55,86,883/,*** claiming it to be *the retention money retained* by the Defendants while clearing the *Final Bill of the Plaintiff on 15.06.2010,* in the sum of Rs.5,12,59,694/-, that was accepted by the Plaintiff.

54. The admitted facts are that a Tender was floated in 2006 by the Defendants/Respondents, for the construction of a new Dormitory building at Chankya Puri, New Delhi. The Tender was awarded to the Appellant/ Plaintiff on 02.01.2007, pursuant to which the *Contract/ Article of Agreement dated 02.01.2007 Ex. PW1/4* was entered between the parties.

55. As per *Clause 4 of the Article of Agreement*, the work was to be completed within nine months. The work, however, could not commence till July, 2008, as the necessary approvals/ NOCs from NDMC / DUAC, could not be obtained. *Consequently, there was a delay of one and a half year approx. in the commencement of work.*

56. The Plaintiff made a request, and the Respondent revised the Contract value on 21.06.2008 and the price was admittedly escalated by 35%, by the Defendants. The original Tender value was Rs.193.77 lakhs, which according to the Plaintiff, after the escalation by 35%, ***became Rs.268 lakhs, as was noted in the Letter dated 21.06.2008, Mark 'B'***.

57. The claim of the Plaintiff was that subsequently, the additional work beyond that specified in the Tender, was also awarded to the Plaintiff *and **the total value of the Tender became Rs.513 lakhs***, as was indicated in the Meeting dated 08.05.2010 held by the Building Committee. The Plaintiff thus, claimed *that it was entitled to the Retention money of 10% of the total cost of the Tender, which had been retained by the Defendants.*

58. In order to understand the contention of the Plaintiff/Appellant, it would be pertinent to refer to ***Clause 10 of the Article of Agreement* dated 02.01.2007 *Ex.PW1/4, which reads as under:***

> *"10.* ***Payment; for work done****: During the progress of the work, the Contractor, at the sole discretion of the Kendra's* authorized representative may receive interim payment upto a maximum of 92% proportionate to the amount of work performed*, after such work has been*

> *inspected and approved by such representative. Payments of the final bill will be made after adjusting the interim payments,* ***and retention money as follows will be deducted and retained for a period of twelve months*** *to safeguard against defects arising out of faulty workmanship/materials/provided by the Contractor and against any other claims against the contractor from any other reason whatsoever.*
>
> *(a)* ***Payment for each of the running bill of the Contractors shall be limited to 92% of the value and works certified.***
>
> *(b) At the end of the Contracted works,* ***50% retained value as above will be converted to Retention money, for a period not less than twelve months."***

59. It thus, emerges that payment was to be made against each running Bill, to the extent of 92% of each running Bill, while 8% of all the Bills was to be retained. At the time of final payment, out of the total retained amount of 8% from each Bill, 4% was to be returned, ***while 4% of the total retained money was to be converted to retention money, to be refunded after twelve months*** of completion of work, in case there were no complaints.

60. Therefore, the only important aspect was, **what was the amount of total bills and what amount i.e. 4% was retained, to which the plaintiff was entitled.**

61. It would be pertinent to also refer to the ***Minutes of the Meeting dated 08.05.2010 of the Building Committee Ex. PW 1/11,*** wherein while indicating that the work awarded was for Rs.268 lakhs, but the cost had increased to **Rs.513 lakhs**. It was noted that the cost of the quantities not mentioned in the tender and the rates analyzed by the architect in respect of non-tender items amounted to Rs. 140 lakhs. It was further recorded in the Mintues that "*The present position according to the contractor and the*

Architect is that the contractor ***had completed the work to the tune of Rs.497.54 lakh****s but his bills of Rs.62.23 lakhs, duly certified by the Architect, have still not been paid by the Kendra****. Of the payment already made to the Contractor, a sum of Rs.34.45 lakhs have been retained by the Kendra as Security Deposit.”***

62. It was further noted in the Meeting that the internal Auditors appointed by the Defendant, had verified the bills paid to the contractor on the basis of quantities and rates mentioned in those bills. Certain rates pertained to items specified in the tender document, while others pertained to non-tender items. The Internal Auditors also checked all those bills and corrected minor errors. The Internal Auditors were also prepared to engage a qualified building Engineer, to verify the measurements of the work undertaken by the contractor and *to opine about the reasonableness of the rates of the additional items not indicated in the Tender and specified by the contractor in his bills.*

63. It was further noted that the Contractor had stopped the work on account of non-payment of bills, which was causing substantial loss to the Plaintiff. Accordingly, it was noted that, if the pending bills were cleared, the Contractor will be able to complete the building within 15 days in all respects and hand over the possession· to the Kendra / Defendant. According to the estimates given by the contractor now, as also affirmed by the Architect, a sum of not exceeding Rs.13,00,000/- to Rs.15,00,000/- would further be required for completing the entire civil works of the building.

64. In order to resolve the situation, various covenants were agreed, in which the most important was Clauses 5A, 5B and 5F, which read as under:

*"**(5)** ....*

*(a) The contractor will be paid for the time **being a sum of Rs.40.00 lakhs towards his pending bills of Rs.62.23 lakhs** as certified by Architect. From this payment, **security deposit of 10% and TDS will be deducted.***

(b) The contractor will recommence the finishing work w.e.f. 09.05.2010 and give the building complete in all respects for the civil work to the satisfaction to the Architect within 23 days.

(c) ……

(d) ……

(e) ……

(f) The contractor will be paid the balance payment due to him within 2 months after submission of the final bill and after verification and deductions, if any. The verification will be by an independent agency regarding reasonableness of the rates for the items not included in the Tender & additional quantities. The contractor will be paid on that basis and the contractor will not be entitled to any extra amount over and above the rates already claimed by him."

65. It was also noted in the Minutes that the meeting had been attended by Sh. Bhupender Singh for M/s V. V. S. Construction Pvt. Ltd., the Plaintiff, who had signed the Note in token of this acceptance and returned a copy of the same to the Director.

66. From these Minutes, it emerges that **cost of total Project work was of Rs.5,13,87,908/-** and that in respect of the Running Bill for the sum of

Rs.62.23 lakhs, *it was agreed that 10% would be retained as security money and TDS, would also be deducted.*

67. While the Defendants had asserted that these Minutes of the Building Committee had not been approved, however, the record shows that the Minutes of the Meeting dated 08.05.2010, were confirmed by the Defendants on 09.06.2010 *vide* Minutes of Meeting of the Defendants *Mark D*. Therefore, to claim that the Minutes had not been confirmed, is not correct.

68. From the aforesaid discussion, it emerges that the total value of the work done by the Plaintiff was for *Rs.5,13,87,908/-*. It has also emerged that the Defendant had been deducting 8% from the Running Bills and was retained, in terms of the Contract. It further emerges that the entire amount was to be returned at the time of final payment against the final Bill, except that 50% of total retained money, i.e. 4%, of the total Bill was to be kept, for a period of 12 months.

69. Principally, in terms of Articles of Agreement, it was agreed that 4% of total amount was to be kept as retention money, on which there is no dispute. The Plaintiff has claimed that a sum of **Rs.41,00,776/-** had been retained as the Retention money, to which it is entitled. **The sole question for determination is whether the Plaintiff has been able to prove the exact amount of Retention money, as claimed by him.**

70. After completion of the work, Plaintiff had written Letter dated 10.06.2010, content of which is as under:

> *"Sub: **<u>Final Bill No.140 in respect of new dormitory building</u>***
>
> *We are submitting the bill amounting to Rs.5,13,87,908/- with the request to release the payment as follows:*

> *(1) Release Security payment of 50% as per agreement.*
>
> *(2) Deduction of: Advance up to date Rs.________*
>
> *(3) Release of balance security 50% against bank guarantee from us, and issue the Proforma guarantee of the same."*

71. Similar reminders were sent by the Plaintiff for return of the security amount. Pertinently, as is evident from the Letters, no figures *per se* of the amount to which he was entitled, was stated in any of the reminder Letters.

72. The Plaintiff had merely relied on the *Article of Agreement dated 02.01.2007 Ex. PW1/4*, for basing his claim for recovery of the Retention money. However, there is not a single document on record to show or prove what amount, had been retained by the Defendant. Rather, it is admitted by the Plaintiff himself that from the entire Final Bill amount, he had been paid Rs.51,25,969/-.

73. *It is significant to refer to the Legal Notice dated 11.11.2010* ***Ex.PW1/17*** given by the Plaintiff to the Defendants, prior to the institution of the Suit. In the Legal Notice, while explaining the award of Tender and its delay on account of construction and the escalation cost of 35% permitted *vide* Letter dated 08.05.2010, *it was indicated that the Work mentioned in the Contract was completed to the satisfaction of the Defendants.*The *Running Bills* were raised from time to time, against which part payments were received. It was further stated that the ***Final Bill No.140 dated 15.06.2010 Ex. PW1/12 for Rs.5,13,87,908/-*** *was raised,* which was verified through Anil Associates Architect, for ***Rs.5,12,59,694/-, which was accepted by the Plaintiff.***

74. Paragraph 7 and 8 of the Legal Notice dated *11.11.2010* are relevant, which are reproduced as under:

> *"7. That a sum of* ***Rs 51,25,969/-(Fifty one lakhs , twenty-five thousand nine hundred and sixty nine) only of my client was/is lying with you as security/retention amount/balance bill amount being 10% of the total bills amount,*** *as per clause 10 of the article of agreement dt. 02/01/2007 my client was entitled to receive 92% of the bills amounts and out of the retained money i.e. 8%* ***you can retain*** *half of the retained money i.e. only 4% of bills amount as retention money. The due date for releasing the said amount was 15/06/2010.*
> *8. That accordingly my client M/S VVS Construction Pvt. Ltd. request you through* ***a letter to release the above-mentioned security amount i.e. Rs. 51,25,969/- (Rs. 10,25,193/- as balance bill amount and Rs. 41,00,776/- as security/retained money)****"*

75. The Appellant has asserted in this Legal Notice that the retention money was Rs.41,00,776/-. However, he has not explained the basis on which the said amount is claimed to have been retained by the Respondent. Even if it is accepted that the Final Bill was for ***Rs.5,13,87,908/- and the Plaintiff had accepted Rs.5,12,59,694/- as verified by the Architects***, it only talks about the payment made against the Final Bill.

76. Nowhere has the Appellant explained *what was the total amounts that had been retained by the Respondent and the entitlement for release of the said amount*. The best way of proving his claim for return of retention money was to file the Statement of Account reflecting the amount for which each Bill including the Final Bill was raised; the payments that were received by the Appellant against each Bill including the Final Bill, and what was the total money retained by the defendant/Respondents as retention money.

77. Significantly, in the Minutes of Meeting dated 08.05.2010 as considered above, it was recorded that there was a security amount of Rs.34.54 lakhs retained and that the Bill of Rs.62.23 lakhs was to be paid to Appellant and that 10% of the said amount was to be retained as security amount. It is pertinent to note here that the figures were recorded in the Minutes of Meeting, but it was also agreed between the parties that the final payments/deductions shall be done at the time of settlement of Final Bill dated 15.06.2010.

78. *Significantly, the Appellant himself has claimed that the Final Bill was cleared for the* final amount of Rs.5,12,59,694/-, *which had been accepted by it and the amount was paid.* Herein, also it has not been explained by the Appellant as to what was the amount retained at the time of settlement of Final Bill.

79. Furthermore, even if 4% of final Contract value is taken as of Rs.5,13,00,000/-; then too, the 4% of this amount comes to ***Rs.20,52,000/-*** and not 41,00,776/-, as has been asserted by the Appellant.

80. While it is not in dispute that 8% retention money was to be retained from every Bill and at the time of settlement of the Final Bill, 4% of this amount was to be retained as retention money, but in order to be entitled to a particular amount, it was on the Appellant to have proved the exact amount for recovery of Rs.41,00,776/- having been retained as the earnest money, but no evidence whatsoever, has been led on this account.

81. The entire claim of the Appellant for recovery of retention money is based only on *Clause 10* and on an assertion that Rs.51,25,969/- had been retained by the Respondent, without there being any corresponding document.

82. Even in the Legal Notice dated 11.11.2010 Ex. PW1/17, the Appellant had claimed that, out of the total amount of the Final Bill, a sum of Rs.51,25,969/- had been retained as 10% of the total Billed amount, in terms of Clause 10 of the Contract / Article of Agreement dated 02.01.2007. While 92% was to be received by the Plaintiff, but out of retained 8%, only 50% of this, which is 4% could have been kept as retention money.

83. Herein also, Appellant has not given any exact figure, but has purely relied upon the *Final Bill and Clause 10 of the Article of Agreement dated 02.01.2007.* There is no clear figure of the amount, proved to be retained by the Defendant.

84. Furthermore, the Plaintiff/Appellant had also claimed Rs.10.25,193/- as the balance of the Bill amount, but it has not been specified against which Bill the payment of Rs.10.,25,193/- was not made; the said Bill has also not been exhibited during the evidence. The claim for recovery of Rs.10,25,193/- as a balance payment against some Bill, is again only in the realm of a claim, which has not been supported with any evidence.

85. The learned District Judge granted a sum of Rs.15,52,000/- to the Appellants by his own calculation of retention money,@ 8% of the initial Contract value. The learned District Judge fell in error in calculating the Retention money by taking the initial value of the Contract as Rs.1.94 Crore, stated in the Article of Agreement dated 02.01.2007 Ex.PW1/4 and calculated 8% of the same, as Rs. 15.52 lakhs. The Retention money was 4% and not 8%, as granted to the Plaintiff. *However, the Respondent has not filed any Appeal and thus, the findings of the learned District Judge are not re-considered.*

86. *There is no evidence whatsoever, to prove the quantum of money retained from the Running Bills as well as the Final Bill, by the Defendant, which could be held payable. Also, no evidence has been led to prove the recovery of Rs.10.25,193/-, as an amount payable under a Bill.*

87. The **Appeal of the Plaintiff is therefore, without merit and is accordingly**, **dismissed.**

88. The pending Applications, are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 23, 2026/*R/VA*