(2011) 06 MAD CK 0208

In the Madras High Court

Case No : A.S. No. 1070 of 2003 and C.M.P. No. 19370 of 2003

The Superintending Engineer, Tamil Nadu Water Supply and Drainage Board,. The Executive Engineer, Tamil Nadu Water Supply and Drainage Board and The Executive Engineer, Tamil Nadu Water Supply and Drainage Board, R.W. Division-II	APPELLANT
Vs	
J. Varadhan	RESPONDENT

Date of Decision : 17-06-2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 12

Citation : (2011) 06 MAD CK 0208

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : Sudharshana Sunder, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Appellants/Defendants have projected this present Appeal against the Judgment and Decree dated 27.06.2003 in O.S. No. 1 of 2002 (on the file of Sub Court, Vellore O.S. No. 305/96) on the file of the Additional District and Sessions Judge, (Fast Track Court), Vellore.

2. The trial Court, in its Judgment, on an appreciation of oral and other documentary evidence available on record, has, inter alia, observed that ''the Respondent/Plaintiff is not entitled to a sum of Rs. 8,34,900/- (Rupees Eight Lakhs Thirty Four Thousand and Nine Hundred only) as claimed in the Pliant and it has not accepted the claim of Rs. 1,07,375/- made by the Appellants/ Defendants as if a counter claim and held that the Appellants/Defendants are still to pay a sum of Rs. 88,159/- to the Respondent/Plaintiff. Accordingly, it partly decreed the suit for a sum of Rs. 88,159/- in favour of the Respondent/Plaintiff directing the Respondent/Plaintiff to receive interest for the aforesaid sum at 9%

per annum from the date of filing of the suit till the date of passing of the decree and thereafter, at 6% per annum till the date of realisation. Moreover, the Respondent/Plaintiff has been directed to pay the required Court Fee.''

3. Before the trial Court, 1 to 7 issues have been framed for adjudication in the main Suit. On the side of the Respondent/Plaintiff, witness P.W.1 (Respondent/ Plaintiff) has been examined and Exs.A.1 to A.29 have been marked. On the side of the Appellants/Defendants, witness D.W.1 has been examined. Exs.B.1 to B.50 have been marked.

4. Being aggrieved against the Judgment and Decree passed by the trial Court in the main suit, the Appellants/Defendants have filed the present Appeal before this Court.

5. The Points that arise for rumination in this Appeal are:

(1) Whether the Respondent/Plaintiff has completed the 13 project works?

(2) Whether the Respondent/Plaintiff is entitled to receive a sum of Rs. 8,34,900/- as balance amount from the Appellants/Defendants with interest?

(3) Whether the suit suffers on account of non-issuance of notice as per Section 80 of Civil Procedure Code?

(4) Whether the suit is barred by limitation?

(5) Whether the trial Court has jurisdiction to entertain the suit?

(6) Whether the Appellants/Defendants are entitled to claim the compensatory cost from the Respondent/Plaintiff?

The Contentions, Discussions and Findings on Point Nos. 1 and 2:

6. The Learned Counsel for the Appellants/Defendants that the trial Court has failed to note that inasmuch as the Respondent/Plaintiff has not completed the 13 project works as agreed, he is not entitled to claim a sum of Rs. 8,34,900/- with future interest and costs.

7. According to the Learned Counsel for the Appellants/Defendants, the trial Court has not taken note of the fact that due to non commencement of Kilarasambattu Water Supply Scheme, the Board has suffered a loss of Rs. 1,07,375/- by granting the same to another contractor. Moreover, the Appellants are entitled to recover a sum of Rs. 1,07,375/- as per Agreement and Departmental Rules.

8. It is the contention of the Learned Counsel for the Appellants that the trial Court failed to take into account that from the inception of agreement, the Respondent/Plaintiff has not co-operated and further has not completed any of the works entrusted to him. Further, he has not returned the unused materials supplied by the Department when the work has been in progress.

9. The Respondent/Plaintiff, in the Plaint, has averred that he was one of the Approved Contractors of Tamil Nadu Water Supply and Drainage Board for North Arcot Ambadkar District & Dharmapuri Circle, for over 15 years. His tender for 13 works for Puttutaku Arapakkam, Kanikapuram and Naryanapuram pipe lines, Kilaiyanur (Chengam Union) Open well construction, Sekkadu Anaicut Union Open well construction, Muthurasikuppam (Sholinghur Union) Overhead tank, Paledaiyampatti (Kanniyambedi Union) Overhead tank and pipeline, Kangeyanellur (Katpadi Union) Sinking Well, WSS Poigai Mottur (Anaicut Union) Overhead tank and pipe line, WSS to Periyasekanur (Vellore Union) Overhead and Pipe line, WSS to Sathumadurai (Kanniyambedi Union) Overhead tank and pipe line, WSS to Nelvoi (Kanniyambadi Union) Overhead and pipe line, Thirupattur Drought Work (Infiltration Well) (Urban Work) and Thikkupattu Sandal Mill (Infiltration Well) (Urban work) were accepted and he executed the agreements in favour of the Appellants 2 & 3/Defendants 2 & 3 and completed the work. However, the final bill for the said 13 works were not paid inspite of repeated demands and registered notices.

10. The Respondent/Plaintiff in respect of 13 works has made the following claim mentioning that a total sum of Rs. 8,34,900/- is due to be paid to him. They are as follows:

1. Puttutakku, Arapakkam, Kanikapuram & Naryanapuram, Arcot Union: Pipe line & Tap.

Final Bill

Rs. 30,000-00

Interest at 12% p.a. From 10.7.1980 to 10.1.1995

Rs. 52,200-00

Total

Rs. 82,200-00

2. Kilayanur, Chengam Union, Open Well

Final Bill

Rs. 30,000-00

Interest at 12% p.a. From 18.10.1982 to 18.1.1995

Rs. 43,800-00

Total

Rs. 73,800-00

3. Sekkadu, Anaicut Union Construction of Open Well

Final Bill

Rs. 25,000-00

Interest at 12% p.a. From 18.12.1982 to 10.1.1995

Rs. 36,000-00

Total

Rs. 61,000-00

4. Mutharasikuppam, Sholinghur Union, Construction of 30,000 litres O.H.T.

Final Bills

Rs. 5,000-00

Interest at 12% p.a. From 10.7.1984 to 10.1.1995

Rs. 6,300-00

Total

Rs. 11,000-00

5. Palladayampatti, Kanniyambadi Union Laying & Jointing of pipe line, 60,000 litres O.H.T.

Final Bills

Rs. 10,000-00

Interest at 12% p.a. From 4.11.1985 to 10.1.1995

Rs. 11,000-00

Total

Rs. 21,000-00

6. Kugayanallur, Katpadi Union, Internal, Infiltration Well

Final Bills

Rs. 50,000-00

Interest at 12% p.a. From 5.8.1996 to 10.1.95

Rs. 51,000-00

Total

Rs. 1,01,000-00

7. W.S.S. Poigai & New Colony, Ananicut Union Pipe line, 60,000 lts. O.H.T.

Final Bills

Rs. 50,000-00

Interest at 12% p.a. From 1.9.1988 to 10.1.1995

Rs. 38,000-00

Total

Rs. 88,000-00

8. W.S.S. To PoigaiMottur in Annaicut Union Pipeline, 30,000 lts. O.H.T.

Final Bills

Rs. 20,000-00

Interest at 12% p.a. From 31.12.1988 to 10.1.1995

Rs. 14,400-00

Total

Rs. 34,000-00

9. W.S.S. To Periyasekkanur, Vellore Union, Pipeline, 60,000 lts O.H.T.

Final Bills

Rs. 20,000-00

Interest at 12% p.a. From 17.9.1989 to 10.1.1995

Rs. 12,600-00

Total

Rs. 32,600-00

10. W.S.S. To Sathumadurai in Kanniyambadi Union Pipe line 60,000 O.H.T.

Final Bills

Rs. 40,000-00

Interest at 12% p.a. From 11.11.1989 to 10.1.1995

Rs. 24,400-00

Total

Rs. 64,000-00

11. W.S.S. To Nelvoy in Kanniayambadi Union Pipe line 60,000 Lts. O.H.T.

Final Bills

Rs. 40,000-00

Interest at 12% p.a. From 12.6.1989 to 10.1.1995

Rs. 26,000-00

Total

Rs. 66,400-00

12. Thirupattur (Drought work) Infiltration Well

Final Bills

Rs. 70,000-00

Interest at 12% p.a. From 25.11.1985 to 10.1.1995

Rs. 76,300-00

Total

Rs. 1,46,300-00

13. Thekkupattu sandal mill. Infiltration Well

Final Bills

Rs. 30,000-00

Interest at 12% p.a. From 18.9.1988 to 10.1.1995

Rs. 22,500-00

Total

Rs. 52,500-00

Total amount due for 13 works

Rs. 8,34,900-00

11. It is the stand of the Respondent/Plaintiff that inspite of repeated demands and registered notices, the Appellants/Defendants have not paid the due amount to him and he has filed the present suit for recovery of a sum of Rs. 8,34,900/- along with future interest and cost of the suit. As per Final Bills, the Appellants/ Defendants are liable to pay to the Respondent/Plaintiff a sum of Rs. 8,34,900/- together with interest and costs for the 13 works.

12. The 2nd Appellant/2nd Defendant has filed the written statement which has been adopted by the Defendants 1 and 3. In the Written Statement, the 2nd Appellant/2nd Defendant has stated that it is true that the Respondent/Plaintiff was one of the Approved Contractors of the T.W.A.D. Board but was block-listed for his omissions and commissions. The 13 contract works mentioned in the Plaint were awarded to the Respondent/Plaintiff by the Board but none of the work was done by him properly. There is no amount due to the Respondent/ Plaintiff by the Appellants/Board and he himself is due to the Board a sum of Rs. 19,216/-. The Appellants/Defendants, in the Written Statement at paragraph 7 to 20, have averred the following:

7. The first work viz. Poottuthakku, Arapakkam, Kannigahram and Narayanapuram Arcot Union pipe line and tap was awarded to the Plaintiff and the value of the work was fixed at Rs. 45,613/-. The Plaintiff had done the work to the value of Rs. 46,480-36. Towards the said work done by him, a sum of Rs. 44,636,60 was already paid to him by the Board. But the Plaintiff had not returned materials worth Rs. 11,867/- supplied by the Board to the Plaintiff and also a sum of Rs. 37/- as income tax and the total sum payable by the Plaintiff to the Board thus comes to Rs. 11,904/-. The Board is thus liable to recover a sum of Rs. 10,060/- (Rs. 11.904-1844) from the Plaintiff. So in this work the Plaintiff himself is liable to pay a sum of Rs. 10,060/- to the Board.

8. The second work viz. Kilianur, Chengam Union Open well the work was awarded on 18.3.1982 to the Plaintiff to the value of Rs. 47,350/-. The Plaintiff did not commence the work at all. Therefore the work was abandoned and there is no amount due to the Plaintiff by the board.

9. The third work viz. Serkadu Anaicut Union Construction of open well. The work was awarded to the Plaintiff on 2.7.1982 for the value of Rs. 21,410/-. But the Plaintiff had done the work to the value of Rs. 36,410/- and a sum of Rs. 34,649/- was already paid by the Board to the Plaintiff and hence there is a balance of Rs. 1761/- is due to the Plaintiff by the Board. A sum of Rs. 7/- is due for income tax and therefore only a sum of Rs. 1754/- is due to the Plaintiff regarding the said work.

10. The fourth work viz. Mutherasikuppam Sholinghur Union construction of 30,000/- litres of overhead tank was awarded to the Plaintiff for the value of Rs. 32,911-02. The said work was completed by him and the final bill was paid to him on 19.4.1988 vide cheque No. 13872 dated 19.4.1988. Therefore there is no amount due to the Plaintiff in respect of the said work.

11. Regarding the fifth work viz. Pallacedayampati, Kaniyambodo Union laying of pipe line and over-head tank. The work was awarded to the Plaintiff for the value of Rs. 73,609-75. This work was also completed by him and the final bill was paid to him on 29.5.1987 itself vide cheque No. 156482. Thus there is no amount due to the Plaintiff under this item.

12. Regarding the sixth item viz.Kugainallur Katpadi Union. The work was entrusted to the Plaintiff on 5.2.1986 for the value of Rs. 65,353-95 for construction of well. The work was completed by him and the final bill was paid to the Plaintiff on 29.5.1987 vide cheque No. 156482. Thus there is no amount due to the Plaintiff on the said work.

13. The seventh work cited in the plaint viz. Water Supply Scheme to Poigai and New colony in Anaicut Village. The work was awarded to the Plaintiff on 1.2.1988 for the value of Rs. 1,55,115-18. He executed the work for the value of Rs. 1,54,706-51. A sum of Rs. 1,23,079/- was already paid to the Plaintiff and there is a balance of Rs. 31,627/- to be paid to the Plaintiff. In this work the Plaintiff returned the materials supplied by the Board partly to the value of Rs. 2,100/-

and failed to return to the value of the Rs. 4,752/-. A sum of Rs. 503/- is due from him for payment of income tax and a sum of Rs. 17/- is due towards storage. Therefore, a total sum of Rs. 5272/- is due from the Plaintiff under this work and a total amount due to him is Rs. 33,727/- less the amount Rs. 5272/- which comes to the net amount due to the Plaintiff by the Board is Rs. 28,455/-.

14. The 8th item viz. the water supply scheme to Poigaimottur in Anaicut Union. The work was awarded to the Plaintiff on 31.5.1988 for the value of Rs. 85,358-60. Towards the said work a sum of Rs. 75,214/- was already paid to him and there is a balance of Rs. 10,145/- is to him by the Board. He has also returned certain materials supplied by the Board to the value of Rs. 857/-. Thus there is a total sum of Rs. 11,002/- is due to the Plaintiff by the Board. Further a sum of Rs. 114/- is due as recovery for payment of income tax. Therefore the net amount due to the Plaintiff comes to Rs. 10,888/-.

15. The 9th item viz. Water supply scheme to Perissekkanur in Vellore Union. The work was awarded to the Plaintiff on 17.2.1989 for the value of Rs. 1,55,115/-. But the Plaintiff had done the work to the value of Rs. 1,38,980/-. A sum of Rs. 1,15,05/- was already paid by the Board to the Plaintiff and there is a balance of Rs. 23,975/- due to the Plaintiff under this work. Recovery of income tax of Rs. 359/- the non return of materials to the value of Rs. 14,302/- and a sum of Rs. 600/- spend by the Board for arresting the leakage of over-head tank. Totaling Rs. 15,261/- is to be deducted from Rs. 23,975/- and there is a balance of Rs. 8,714/- is due to the Plaintiff by the Board. This Defendant submits that the Plaintiff had left the said work unfinished.

16. The 10th item viz. Sethumadurai in Kaniyambadi Union laying of pipe line and over head tank. The work was awarded to the Plaintiff for the value of Rs. 1,87,455-03. The Plaintiff left the work unfinished and also failed to turn up for check measurement and also to sign in the M books and bill forms in spite of number of reminders issued to the Plaintiff at various levels. Hence the final bill was passed by the Department and a sum of Rs. 27,89-/- is kept under other deposit in the Board.

17. Regarding the 11th item viz. Nelvoy water supply scheme in Kaniyambadi Union, the work was awarded to the Plaintiff on 2.11.1989 for the value of Rs. 1,54,983/-. In this work also the Plaintiff did not complete the same and he left the work unfinished in the middle. The total value of work done by him was Rs. 1,24,060/-. A sum of Rs. 98,831/- was already paid to the Plaintiff and there is a balance of Rs. 25,229/- in which recoveries have to be made for a sum of Rs. 13,500/- towards non return of materials. Rs. 401/- towards the income tax and Rs. 600/- towards arresting of leakage, totaling Rs. 14,501/-. Hence there is a balance of Rs. 10,728/- is due to the Plaintiff by the Board.

18. Under the 12th item viz. Tirupattur Drought Relief work. The work was awarded to the Plaintiff for the value of Rs. 1,59,369-74. The Plaintiff had done the work to the value of Rs. 164,413/- in which a sum of Rs. 1,18,782/- was

already paid to the Plaintiff by the Board. In the balance amount of Rs. 48,631/- a sum of Rs. 25,177/- is due from him towards recoveries and hence a sum of Rs. 23,454/- is due to the Plaintiff by the Board under this work.

19. Under the 13th item viz. Thakkupattu Sandal Mill construction for the value of Rs. 1,01,105.95. The Plaintiff did the work to the value of Rs. 98,895/-. A sum of Rs. 85,938/- was already drawn by him from the Board and there is a balance of Rs. 12,957/- is due to the Plaintiff by the Board. The Plaintiff is due to the Board towards recoverable under this work a sum of Rs. 26,621/-. Thus the Plaintiff himself is due to the Board a sum of Rs. 13,664/-.

20. In all the above 13 works entrusted to the Plaintiff by the Board, a sum of Rs. 88,159/- (approx.) is due to the Plaintiff by the Board. Apart from the above said 13 works, another water supply scheme to Kilarasambattu in Kaniyambadi Union was entrusted to the Plaintiff by the Board to the value of Rs. 2,41,808.94 as per agreement No. 10/90-91. But the Plaintiff did not commence the work at all. The Dept. Waited for the more than a year and terminated the aid contract with a condition to recover the extra financial commitment from the running bill of the Plaintiff. The Department is entitled to recover the loss which may occur in entrusting the work to another contractor as per the agreement and also departmental rules. Another tender was called and one V.K. Rangan''s tender was accepted by the Board. The tender was accepted for a sum of Rs. 3,49,183.61. The 2nd contractor V.K Rangan completed the work. Therefore the department sustained a loss of Rs. 1,07,375/- due to the lapses of the Plaintiff and the said amount is recoverable from the Plaintiff. Thus the Plaintiff is due to the Board a sum of Rs. 19,216 i.e. The Plaintiff is due to the Board a sum of Rs. 1,07,375/- and the Board is due to the Plaintiff a sum of Rs. 88,159/-.

13. P.W.1 (Respondent/Plaintiff), in his evidence, has deposed that he has been an Agreement Contractor with the Tamil Nadu Water Supply and Drainage Board for the past 15 years and for completion of 13 contract works, a contract has been given in his favour and as agreed, he has completed the 13 works for which he has not been given the full amount and only a balance amount has been paid to him.

14. It is the further evidence of P.W.1 that as per Agreement in places like Puttutakku, Arapakkam he has laid the pipeline for which he has been paid only a balance amount and a sum of Rs. 30,000/- remains as an outstanding amount in this regard, for which 12% interest will have to be paid to him and he has claimed in all, together with interest a sum of Rs. 82,800/-. Furthermore, the evidence of P.W.1 is to the effect that in Chengam Union at Kilayanur for construction of a well, a contract has been entered into and that he has completed the work, but as per contract, full amount has not been paid to him and that a sum of Rs. 30,000/- is due to him and with an interest at 12% per annum a sum of Rs. 73,800/- is liable to be paid to him. In Anaicut Union, Serkkadu Village he has worked in an open well for which full amount has not been paid and the said amount together with interest of Rs. 25,000/-

aggregating in all a sum of Rs. 65,000/- is due to be paid to him.

15. P.W.1''s evidence also speaks to the effect that he has completed the 13 contract works for which he has not been paid the full amounts by the Appellants/ Defendants and he is not in possession of the materials belonging to the Appellants/Defendants and before filing of the suit he has given Exs.A.1 and A.10 notices for which no reply has been received.

16. P.W.1, in his cross examination, has deposed that he has no accounts relating to the work performed by him and in the office, they will give a letter to him in regard to the contract work accepted by him and that the 13 contracts have been accepted and for which one of them they have given a letter and further some of the letters are available and some are not available.

17. P.W.1 proceeds to state in his evidence that in case of dispute the matter can be referred to Arbitration as mentioned in the agreement entered into by him and in regard to the laying of pipeline at Puttutakku, the agreement has been entered into in the year 1980 and he does not know in how many days the pipeline has to be laid as per agreement and at the time of tender, the work is for Rs. 50,000/- and moreover, he does not know in how many days he has completed this work.

18. The evidence of P.W.1 is to the effect that he does not know to what distance he has laid the pipeline and he has completed half the job for which he has been paid the amount, but he does not remember as to the amount paid to him but all the payments have been made through cheques and in regard to the Puttutakku work how much amount remains to be paid to him, he does not know and he does not know that the place of work has been allotted to him on 11.6.81 and for a sum of Rs. 45,613/- the agreement has been entered into and he has been given a cheque for Rs. 44,636.60 paise which he has received. Further, it is the evidence of P.W.1 that it is wrong to state that the value of cement and iron rod to an extent of Rs. 11,861/- have not been paid back to him and it is wrong to state that in respect of Puttutakku work, he himself due to pay a sum of Rs. 11,904/-.

19. P.W.1, in his evidence, has stated that it is wrong to state that in respect of Puttutakku work, there is a balance of work amounting to Rs. 10,400/- and in Kilayanur-Chengam Village for digging up a well an agreement has been entered into, but he has not been furnished with the agreement copy and after the year 1982-1983 for the aforesaid contract, an agreement has been entered into and in the said agreement, in how many days the work has been completed, it will be mentioned and at present, he is not remembering as to when he has finished the work, but it will be seen from the agreement. Added further, it is the further evidence of P.W.1 that since the well has been dug on the river side and also because of the loose sand, the authorities have informed him that they will change the estimate but the same has been stopped and for this, he has not been paid the amount and that the authorities have come and seen the work

done by him but they have not recorded the same. He cannot say in Kilayanur to what amount the contract has been entered into for digging the well and this can be seen from the records and the cement and iron rods have not been given to him and in respect of digging the well, a contract has been entered into on 18.3.82 for a sum of Rs. 47,350/-. But he is not in possession of records pertaining to the work turned by him and the same has been received by the officers.

20. P.W.1 has deposed that in Serkadu he has been granted the permission to dig a well. But he does not know the date, year in which the contract has been entered into and that he is not in possession of the agreement and also he is not filed the same into Court. Continuing further, it is the evidence of P.W.1 that he is not in possession of the accounts in his hands and the bill has been given in favour of the party and further, he does not remember to what amount the bills have been given and to a suggestion whether he has accounts in respect of the suit amount, he has stated that at that time he has been in possession, later he has given the same for preparing the bill and he does not know on 2.7.89 a contract has been given for Rs. 21,410/-. But the said contract will be for Rs. 50,000/- and he does not remember that a sum of Rs. 34,619/- has been paid by the Department to him and it is not correct to state that a sum of Rs. 1,754/- is due to be paid to him and further, it is not correct to state that he has to pay a sum of Rs. 7/- towards the income tax. The evidence of P.W.1 (in cross examination) is to the effect that in Ex.B.1-Contract dated 21.10.1980 in respect of Puttutakku, Kannikapuram, Narayanapuram works, he has signed and in the said contract, the details relating to the number of days, within which the work will have to be completed is made mention of and that he has received the cheque in respect of Puttutakku village. But he does not remember to what amount he is received the cheque and also he cannot say the amount due to him.

21. P.W.1, in his further evidence, has stated that on 24.3.82 through cheque he has received a sum of Rs. 13,952/- as per Ex.B.2 and in Ex.B.3 Puttutakku work he has received a cheque on 16.6.83 for Rs. 8,008/- and on 6.4.84 in Ex.B.4 he has received a cheque for Rs. 5,651/- and in Chengam Union at Kiliyanur he has signed in a Contract-Ex.B.5 dated 18.3.82 and it is wrong to state that as per Ex.B.5 he has not done any work.

22. The evidence of P.W.1 proceeds on the footing that in respect of Ex.B.6-Agreement of Serkkadu Anaicut Union work, in the agreement he has signed and on 3.8.82 he has received a sum of Rs. 28,825.50 and his signature is Ex.B.7.

23. P.W.1, in his cross examination, has stated that in Mutharasikuppam, Sholinghur Union for constructing a overhead tank on 10.4.84 he has entered into an agreement and his signature is under Ex.B.8-Agreement and as per Agreement, he has to perform the work for Rs. 32,911/- and on 31.12.84 he has received a cheque for Rs. 18,564.75 and his signature is Ex.B.9 and Ex.B.10 is the Agreement in respect of Pallaedayampatti, Kaniyambadi Union for laying down pipeline and overhead tank and Ex.B.10 is the said agreement which is for

Rs. 73,609.75 and he has received a sum of Rs. 27,064.05 through cheque on 10.6.85 by putting his signature which is Ex.B.11 and on 1.6.87 he has affixed a signature in receiving a sum of Rs. 15,592.85 and in this, a sum of Rs. 11,396.85 is included in the final amount due to be paid to him in respect of Pallaedayampatti work and it is not correct to state that the said amount is included and still a balance amount has to be paid to him and in respect of Kugainallur work a sum of Rs. 4196/- is included which is Ex.B.12 and he has received a sum of Rs. 17,045.75 through cheque by affixing a signature in respect of Kugainallur Katpadi Union work which is Ex.B.13 and Ex.B.14 is the Agreement which has been entered into for supplying water to Anaicut Union Poigai village new colony and he has received a sum of Rs. 74,176.95 paise on 30.12.88 for doing the work of Poigai New Colony and in respect of Poigai Mottur job he has received a sum of Rs. 52,213.85 and in all he has received a sum of Rs. 1,26,390.80 paise through cheque which is Ex.B.15.

24. Ex.B.16 is the Agreement in respect of Poigai Mottur and Ex.B.17 is the Agreement entered into in respect of Water Tank Pipeline at Vellore Union and the South Madurai drinking water supply agreement for Rs. 1,87,455.03 is Ex.B.18 and in Ex.B.19 is the cheque he has received for Rs. 25,000/- on 13.11.89 and the Nelvoy Agreement is Ex.B.20 and for the payment of Rs. 52,136.15 paise he has put his signature on 30.4.90 which is Ex.B.21 and for the Tirupattur Municipality digging of well the agreement is Ex.B.22 and on 21.8.87 he has received a sum of Rs. 61,232.25 paise through cheque and his signature is Ex.B.23 and the agreement Ex.B.24 is for digging up a well at Tirupattur Sandal Wood Factory and on 7.10.88 for receiving a sum of Rs. 12,535.80 he has signed in Ex.B.25. For construction of overhead water tank at Kilarasampattu Kaniyambadi, on 12.12.1990 the agreement has been entered into under Ex.B.26 and the contract is Rs. 2,41,808.94 paise and he has not turned out the work of Kilarasampattu and that he has not been given the materials and therefore, he has not completed the work and since he has not completed the work, whether the said work has been entrusted by V.K. Rangan, he does not know and he has filed a suit O.S. No. 680/91 on the file of Munsif Court for avoiding the contract to another person, but the suit has been dismissed.

25. As a matter of fact, P.W.1, in his cross examination, has deposed that it is not correct to state that the Government has incurred a loss of Rs. 1,07,375/- since it has awarded the contract to another person.

26. The evidence of D.W.1 is to the effect that the Respondent/Plaintiff has been the contractor at their Water Supply and Drainage Board office at Vellore and he has taken the contract for laying down the water supply pipeline in the office of Puttutakku and Arapakkam and on 21.10.80 an agreement has been entered into and on 11.6.81 the site has been handed over to him and the pipe in entirety has been supplied to the Respondent/Plaintiff through their Board and the contract is for Rs. 45,613/- and Ex.B.1 agreement is in respect of Puttutakku work which has not been completed fully by the Respondent/Plaintiff and within two months

he has to complete the said work, but on 23.1.84 he has not completed the work fully and has left the same.

27. The evidence of D.W.1 is to the effect that the Respondent/Plaintiff on 30.9.81 has been paid a sum of Rs. 12,794/- through cheque in respect of the work turned out by him for which they are not able to get the records. But on 23.3.82 through Ex.B.4 he has been paid a sum of Rs. 13,959.45 paise and for the same work on 16.6.83 through Ex.B.5 cheque he has been paid a sum of Rs. 8,008/- and on 31.3.84 he has been paid a sum of Rs. 5,651/- through cheque which is Ex.B.6 and in all, a sum of Rs. 40,412.45 has been paid to him in respect of the said work and Ex.B.27 is the Cheque Measurement Book No. 2049 for the work performed by him and in Ex.B.27 pages at 8, 9, 11, 12, 14, 15, 17, 18, 33, 40 and 44, he has signed which is Ex.B.28 and in Measurement Book No. 188B Book in page No. 18, 21, 26, 29 and in Measurement Book No. 455A he has signed in Ex.B.29 at page No. 2, 3, 4 & 5 and also in Measurement Book No. 2236A he has signed in page No. 25, 28 which is Ex.B.30 after accepting the work turned out by him and in the aforesaid pages how much pipelines supplied to him as used has been made mention of and the value of supplied materials like cement and pipe which has been given to the Respondent/Plaintiff and not returned back to the Appellants is valued at Rs. 11,867/- and for the work performed by the Respondent/Plaintiff, the Board has to pay a sum of Rs. 1,844/- which is to be adjusted towards income tax and security deposit and in respect of this item, a sum of Rs. 44,636.60 paise has been paid to the Plaintiff and as per this calculation, the Respondent/Plaintiff is to pay a sum of Rs. 11,867/- and a sum of Rs. 37/- towards income tax and in all, he has to pay a sum of Rs. 11,904/- and in this, the Respondent/Plaintiff''s amount of Rs. 1,844/- is with the Board and after deducting a sum of Rs. 1,844/-, the Respondent/Plaintiff is to pay the balance of Rs. 10,060/- to the Board.

28. It is the evidence of D.W.1 that in respect of Puttutakku contract the Respondent is due to the Board to a sum of Rs. 10,060/- and it is not correct to state that a sum of Rs. 30,000/- together with interest is to be paid to him and Ex.B.3 is the agreement in respect of second item viz. Kilianur-Chengam Union well digging work and the agreement is dated 18.3.82 which is Ex.B.3 and for digging a well, the Respondent/Plaintiff has been given the work for Rs. 47,350/- but he has not performed the work and since he has not performed the work, the Board itself has fixed the bore well and completed the work and Ex.A.31 is the letter dated 5.6.96 written by the Assistant Administrative Engineer, Chengam to the Vellore Administrative Engineer and Ex.A.32 is the letter of the Superintending Engineer, Vellore dated 31.3.91 addressed to Chief Engineer, Water Supply Board, Vellore and the Kilianur work has not been performed by the Respondent and it is incorrect to state that a sum of Rs. 30,000/- is due to be paid to him.

29. In respect of Serkadu Anaicut Union, a contract has been given to the Respondent/Plaintiff on 2.7.82. The value of the work is Rs. 21,410/- and the

agreement has already been filed into Court and that the Respondent/Plaintiff has dug a well for the value of Rs. 31,410/- and for which he has been allotted a sum of Rs. 34,649/- and this has been recorded in Measurement Book No. 97, 98 in which the Respondent/Plaintiff has been signed and the said Measurement Book 79/A which is Ex.B.33 and in Measurement Book No. 63/A at page No. 100 the Plaintiff has accepted the measurements and signed which is Ex.B.34 and in the amount of Rs. 34,639/- to be paid to him, after deducting the amount due to be paid by him to the Board, the balance of Rs. 28,825.50 has been paid to the Respondent/Plaintiff and for this work, an income tax amount of Rs. 1,761/- has been deducted and only Rs. 1,761/- alone is due to be paid to the Respondent/ Plaintiff and there is no amount of Rs. 25,000/- due as stated by P.W.1 and in Measurement Book No. 369/A at page 85, Ex.B.35 there is an indication that a sum of Rs. 28,825.50 has been paid to him.

30. D.W.1''s evidence goes to the effect that the 4th item of work mentioned in Plaint relates to the contract pertaining to the overhead drinking water tank which has been given to the Respondent/Plaintiff and the value of the work is Rs. 32,911.02 and the said contract is marked as Ex.B.8 and the said work has been completed by him. Further, it is the evidence of D.W.1 that it is wrong to state that there is an outstanding sum of Rs. 11,300/- as regards the 4th item of work and the measurement pertaining to the 4th item of work is Ex.B.36 series (3 books).

31. As regards the 5th item of work at Palladayampatti of Kaniyambadi Union which relates to the laying of overhead water tank pipe has been given to the Respondent/Plaintiff and the Agreement is Ex.B.10 which is valued at Rs. 73,609.75 paise and the said work has been completed by him. Moreover, as per cheque on 29.5.79 full amount has been paid to the Respondent/Plaintiff which is marked as Ex.B.11, Ex.B.12 and as such, there is no amount due as regards the 5th item of work and the measurement and bill book is Ex.B.37 series (3 books).

32. D.W.1 has also deposed that in regard to the Kugainallur Katpadi Union work relating to the digging of well with motor pump set .The value of the work is estimated at Rs. 65,353.95 which has been completed by the Respondent/ Plaintiff and for completion of the said work on 29.5.89 a cheque of Rs. 65,353.95 has been given to him and the total expenses incurred towards that work is Rs. 67,568/- and the value of the Government viz. a sum of Rs. 21,241.75 paise has been given to the Respondent/Plaintiff and in two cheques, the aforesaid money has been paid and Ex.B.13 is the document shows that the money has been paid to the Respondent/Plaintiff.

33. It is the evidence of D.W.1 that in respect of the 7th work water supply scheme of Poigai New colony in Anaicut Village, the work has been given to the Plaintiff as per Ex.B.14 and the value of the work is Rs. 15,11,66.33 and the Respondent/Plaintiff has worked for an amount of Rs. 1,54,706.51 paise and that the Respondent/Plaintiff has given the cheque on 13.12.98 and the payment of Rs. 74,176.95 paise is evidenced by Ex.B.15 and the Respondent/Plaintiff has to

pay a sum of Rs. 31,677/- to the Board and further, he has to pay a sum of Rs. 4,752/- to the Board and the said sum of Rs. 4,752/- is the amount paid to the Respondent/Plaintiff by the Board and that amount which refers to the construction of estimate has not been returned back by him. Apart from the aforesaid sum of Rs. 4,752/- the Respondent/Plaintiff is to pay a sum of Rs. 503/- towards income tax and Rs. 17/- for godown and if the aforesaid sum which is to be paid by the Respondent/Plaintiff to the Board is deducted, then, the amount to be paid to the Respondent/Plaintiff is Rs. 28,455/- and the measurement book is Ex.39 series (4 books).

34. In regard to the 8th item of work viz., Water Supply Scheme Poigai-Mottur in Anaicut Union, as per Ex.B.16 the said work has been given to the Respondent/ Plaintiff and the work estimate is Rs. 86,564.86 paise and the Respondent/ Plaintiff has turned out the work to an extent of Rs. 85,359/- for which a cheque dated 30.12.88 for Rs. 58,213.55 has been issued to the Respondent/Plaintiff as per Ex.B.15 and in this work, the Board has to pay a balance of Rs. 10,888/- and Ex.B.39 is the Measurement Book.

35. Regarding the 9th item of work relating to water supply scheme to Periyasekkanur in Vellore Union, the work has been awarded to the Respondent/ Plaintiff as per Ex.B.17 and the value of the work is Rs. 1,55,115.18 and a sum of Rs. 71,343/- has been paid to the Respondent/Plaintiff through a cheque. But the work turned out by the Respondent/Plaintiff is Rs. 1,38,980/- and since the Respondent/Plaintiff has utilised the construction materials of the Board, the said value has been deducted and only the balance has been paid to him and out of Rs. 1,15,505/- which is due to be paid to the Respondent/Plaintiff after deducting the value of construction materials a balance of Rs. 71,343/- has been paid to him and further, the Respondent/Plaintiff has to pay a sum of Rs. 15,261/- and apart from that the Board has to pay a sum of Rs. 8,214/- to the Respondent/ Plaintiff and major part of the work has been completed by him and Ex.B.40 series (4 books) is the proof of payment made to the Respondent/Plaintiff in respect of the 9th item of work.

36. D.W.1, in his evidence, has stated that the 10th item of work Sathumadurai in Kaniyambadi Union pertains to laying of pipeline and overhead tank and the agreement is Ex.B.18 and that he has completed the work and the value of the work is Rs. 1,62,090/- and in which a sum of Rs. 1,29,369/- has to be paid to the Respondent/Plaintiff and the said amount has been paid into two cheques and in all a sum of Rs. 81,725.65 has been paid to the Respondent/Plaintiff as per Ex.B.19 and since the Respondent/Plaintiff has not signed in the Measurement Book, the final bill has not been issued and as such, a sum of Rs. 27,890/- has to be paid to him and the Measurement Book is Ex.B.41 (4 books).

37. The 11th item of work viz., Nelvoy Water Supply Scheme has been given to the Plaintiff as per Ex.B.26 and the work estimate is Rs. 1,54,983.46 paise and that he has performed the work for Rs. 1,24,060.30 paise and that a sum of Rs. 98,831/- has been paid to the Respondent/Plaintiff and the balance sum of Rs.

10,728/- has to be paid to the Respondent/Plaintiff by the Board and Ex.B.42 series (4 books) is the Measurement Book.

38. As regards the 13th item of work viz., Thekkupattu Sandal Mill construction of well, it is the evidence of D.W.1 that the Respondent/Plaintiff has been awarded the work which is valued at Rs. 1,01,105.95 paise and that he has completed the work to an extent of Rs. 98,895/- and a sum of Rs. 85,938/- has already been paid to him through cheques dated 29.4.89 and 7.10.88 and the proof of cheque payment is Ex.B.25 and the Board has to pay a sum of Rs. 16,108/- to the Respondent/Plaintiff towards the cost of materials and the security deposit is Rs. 2,478/- and the income tax is Rs. 171/- and small portion of work has not been performed by the contractor and hence, the balance work has been given to another person. Therefore, the contractor has to pay a sum of Rs. 26,621/- to the Board and if the above mentioned amount is deducted, then, the Respondent/Plaintiff has to pay a sum of Rs. 13,664/- to the Board.

39. The 12th item of work relates to Tirupattur Drought Relief Work has been awarded to the Respondent/Plaintiff and the value of the work is Rs. 1,59,369.74 paise and Ex.B.22 is the agreement and that the Respondent has performed the work to an extent of Rs. 1,67,402.82 paise for which he has been paid a sum of Rs. 1,18,782/- and a sum of Rs. 61,232.25 through cheque dated 28.8.87 as per Ex.B.23 has been paid and the Board has to pay a sum of Rs. 48,638/- to the Respondent/Plaintiff. But the Respondent/Plaintiff has to pay a sum of Rs. 16,097/- towards construction materials to the Board and a sum of Rs. 23,454/- the Board has to pay to the Respondent/Plaintiff and that Ex.B.44 series (3 Measurement Books) relates to item 12 and item 13 relates to Measurement Books (2 books) Ex.B.43 series and in respect of 13 contract works mentioned in the Plaint, the Board has to pay to the contractor a sum of Rs. 1,11,883/- and the Respondent has to return to the Board the material value and also the expenses incurred towards the contractor taking the materials through another contractor works out to Rs. 23,724/- and for the 13 items the Board has to pay to the Plaintiff a sum of Rs. 88,159/-.

40. D.W.1 has stated in his evidence that in regard to the Kilarasampattu Water Supply Scheme the value of the scheme is Rs. 2,41,808.94 paise, which has been awarded to the Respondent/Plaintiff. But, he has not performed the work and Ex.B.26 is the agreement and for the two years he has not performed the work and Ex.B.45 is the work order issued to the Respondent/Plaintiff and since he has not performed the said work for two years, the said work has been given to a different person through a tender and the new contractor is Rangan and he has finished the said work for a sum of Rs. 3,31,071/- and a sum of Rs. 89,263/- has been incurred as loss to the Board because of the new contractor and Ex.B.46 is the said agreement and a sum of Rs. 1,094/- is due to be paid by the Respondent/Plaintiff to the Board and if the Respondent/Plaintiff pays a sum of Rs. 1,094/-, then, he is to receive a sum of Rs. 20,170/- towards E.M.D. and as per the work order, if one contractor has not completed the job and in his place if

another person is appointed, then, the new contractor''s expense will have to be incurred by the first contractor and since the Respondent/Plaintiff has not completed the agreed work, his name has been removed from the list and Ex.B.47 is the order to that effect.

41. Continuing further, it is the evidence of D.W.1 that the Respondent/Plaintiff has not filed any petition before the 1st Appellant/1st Defendant and for Ex.B.48-Notice, the Respondent/Plaintiff has not come to the Board for production of final bill and therefore, his accounts have been closed by the Board and that legally no amount is due to the Respondent/Plaintiff and if any amount is to be paid to him, then, since the suit has been filed belatedly, the amount is not liable to be paid to him.

42. D.W.1 (Superintending Engineer), in his cross examination, has deposed that from the year 1987 he has been an Administrative Engineer and at the time of 1, 2, 3, 5, 4, 6 item of works, he has not been present, but he has been present at the time of 7 to 11th item of works being entered into. But, he has not been present when 12th and 13th item of work have been entered into and at the time of entering into an agreement in respect of suit 3rd item of work, he has not been in the concerned job and even at a time in respect of 4th and 5th item of work being entered into also, he has not been present and in respect of suit 6th item of work agreement being entered into, he has not been in-charge.

43. On perusal of the evidence of P.W.1 and D.W.1, it is quite clear that the contract item of work Nos. 4, 5 and 6 have been completed by the Respondent/ Plaintiff and has received the full amount. Item 10 and 11 of the contract works have not been completed by the Respondent/Plaintiff. As regards item Nos. 7, 8, 9, 12, 13 contract works, the Respondent/Plaintiff has carried out the works and the Board has paid some portion of the amount. In regard to the item No. 11 of the contract work, the Respondent/Plaintiff has performed the work to an extent of Rs. 1,24,060/- and has been paid a sum of Rs. 98,831/-. The 2nd item of contract work at Kiliyanur has not been commenced by the Respondent/Plaintiff. D.W.1 (Superintending Engineer of the Board), in his evidence, has clearly spelt out that for the 13 item of work mentioned in the Plaint, the Board has to pay a sum of Rs. 88,159/- to the Plaintiff . Though the Respondent/Plaintiff has claimed a sum of Rs. 8,34,900/- as due amount from the Appellants/Defendants, this Court is of the considered view that the Appellants are liable to pay only a sum of Rs. 88,159/- to the Respondent/Plaintiff and in short, the Respondent/Plaintiff is not entitled to claim a sum of Rs. 8,34,900/- as per Plaint.

44. Further, the Appellants/Defendants, in the Written Statement at paragraph No. 20, have claimed that the Respondent/Plaintiff is due to pay a sum of Rs. 1,07,375/- and that the Board is due to pay a sum of Rs. 88,159/- to the Respondent/Plaintiff. According to the Appellants/Defendants, the T.W.A.D. Board has sustained a loss of Rs. 1,07,375/- due to the lapses of the Respondent/ Plaintiff and the same is recoverable from him. In respect of breach of contract, it is for the Appellants/Defendants to prove to the satisfaction of this Court that

the Respondent/Plaintiff has committed the breach of contract in respect of the contract works undertaken by him. It is well settled that the Appellants/ Defendants can only be bound by the contracts that are entered into in a certain manner and which are signed by the Competent Authority, in the manner known to law. Further, the Appellants/Defendants are also to prove the actual loss suffered by them. Mere averment of the Appellants/Defendants that another tender has been called and one V.K. Rangan''s tender has been accepted by the Board and that the tender has been accepted for a sum of Rs. 3,49,183.61 paise and that the said V.K. Rangan (2nd Contractor) completed the work will not be quite sufficient to prove the loss of Rs. 1,07,375/-, as claimed by the Appellants/ Defendants. Moreover, this claim of the Appellants/Defendants to an extent of Rs. 1,07,375/- is like a counter claim and in the absence of payment of necessary Court Fee by the Appellants/Defendants, this Court holds that such a counter claim cannot be accepted and accordingly, the same is rejected.

45. As far as the interest is concerned, the Respondent/Plaintiff, in the Plaint in paragraph 4, has claimed interest at the rate of 13% per annum for the claim amount of Rs. 8,34,900/-. Section 34 of the CPC relating to the award of interest is a general procedural provision and its applicability or inapplicability or the extent of applicability will depend on the facts and circumstances of each case, in the considered opinion of this Court. Indeed, Section 34 deals with post litigation interest. Since a Court of Law has a discretion to award interest in this regard, this Court, exercising its discretion, awards 6% interest for a sum of Rs. 88,159/- to be paid by the Appellants/Defendants to the Respondent/Plaintiff and the Point Nos. 1 and 2 are answered accordingly.

Point No. 3:

46. In the Written Statement filed by the 2nd Appellant/2nd Defendant (adopted by the 1st Appellant/1st Defendant and 3rd Appellant/3rd Defendant), a plea is taken that the suit filed by the Respondent/Plaintiff is not maintainable for want of issuance of Notice as per Section 80 of CPC and as such, the suit is liable to be dismissed. In this connection, this Court pertinently points out that the T.W.A.D. Board is not ''Government'' and that the Appellants Engineers'' are not the ''Public Officers'' and therefore, no notice as per Section 80 of CPC is to be issued to the Appellants, in the considered opinion of this Court.

47. At this stage, it is not out of place for this Court to point the decision V. Padmanabhan Nair Vs. Kerala State Electricity Board, wherein it is held as follows:

A statutory body - whether it be Electricity Board or the Food Corporation or Urban Development Corporation or any of that category - may be an instrumentality of the State within the meaning of Article 12 of the Constitution. It nevertheless would not answer the description of Government as understood in law and as it is understood in the context of Section 80, Code of Civil Procedure.

Also, in Smt. Minakshi Patra Vs. Secretary, Irrigation and Power, Govt. of Orissa and Others, it is held that ''Though Electricity Board can be construed as ''State'' within the meaning of Article 12 of the Constitution, for the purpose of Section 80 it is not ''State'' and therefore, Notice u/s 80 of CPC is not necessary.''

48. Resultantly, the filing of the suit by the Respondent/Plaintiff without issuance of Section 80 CPC Notice to the Appellants is perfectly maintainable in law and the Point No. 3 is answered in favour of the Respondent/Plaintiff and against the Appellants/Defendants.

Point No. 4:

49.The Appellants/Defendants, in the Written Statement, have taken a plea that the suit is time barred. In the Plaint, the Respondent/Plaintiff, in the cause of action paragraph No. 7, has, inter alia, stated that the cause of action for the suit has arisen on 10.1.1980, 18.3.1982, 18.5.1982, 10.12.1984, 4.4.1985, 5.2.1986, 1.2.1988, 31.5.1988, 17.2.1989, 11.4.1989, 12.11.1989, 25.4.1985 and 16.2.1988 when contracts have been entered into in respect of the 13 works and on 10.7.1980, 18.10.1982, 18.12.1982, 10.7.1984, 4.11.1985, 5.8.1986, 1.9.1988, 31.12.1988, 17.9.1989, 11.11.1989, 12.6.1989, 25.11.1985 and 16.9.1988 when the Appellants/Defendants are liable to pay the final bills for the said 13 works and also at Gandhi Nagar, Vellore-6 where the contracts have been entered into within the jurisdiction of the trial Court. Ex.B.47 is the letter of the 1st Appellant/Superintending Engineer dated 29.8.91 removing the name of the Respondent/Plaintiff from the panel of approved contractors. Between the parties, there has been a protracted correspondence/communication in regard to the settlement of bills. Subsequent to Ex.B.47-Letter dated 29.8.91 of the Superintending Engineer, there are other letters exchanged between the parties. To state precisely, Ex.B.49 is the letter dated 17.1.94 written by the 1st Appellant/Superintending Engineer addressed to the Respondent/Plaintiff''s Advocate as regards the settlement of claims. Finally, the Respondent/Plaintiff has filed the suit on 30.1.95. It is not in dispute that the Appellants/Defendants have admitted that they have paid some portion of the amount to the Respondent/Plaintiff. In view of the above, it cannot be said that the suit filed by the Respondent/Plaintiff is barred by limitation and hence, the Point No. 4 is answered against the Appellants/Defendants.

Point No. 5:

50. The Respondent/Plaintiff has filed the suit in respect of the final bills relating to the 13 contract works at Gandhi Nagar, Vellore, where the contracts have been entered into within the jurisdiction of the trial Court. According to the Respondent/Plaintiff, inspite of repeated demands and registered notices, the Appellants/Defendants have not paid the amount to him. Hence, he has filed the present suit. The Appellants/Defendants are not in a position to explain as to how the trial Court has no jurisdiction to entertain the suit. Inasmuch as the Respondent/Plaintiff has filed the present suit within the jurisdiction of the trial Court wherein the 13 contracts have been entered into between the parties, this Court holds that the trial Court has jurisdiction to entertain the suit and

accordingly, it has rightly entertained the suit and thus, the Point No. 5 is answered against the Appellants/Defendants.

Point No. 6:

51. Only, if a party/litigant files a frivolous, vexatious suit, the ingredients of Section 35(A) of CPC in regard to the award of exemplary costs or compensatory costs can be resorted to. The Respondent/Plaintiff has been forced to file a suit against the Appellants/Defendants on the ground that the Appellants/Defendants owe him a sum of Rs. 8,34,900/-. However, this Court has found that the Appellants/Defendants are liable to pay to the Respondent/Plaintiff a sum of Rs. 88,159/- together with interest at 6% per annum from the date of filing of the suit till date of realisation. Therefore, this Court is of the considered view that the Appellants/Defendants are not entitled to claim exemplary or compensatory costs from the Respondent/Plaintiff and the Point No. 6 is answered against the Appellants/Defendants.

52. In the result, the Appeal is allowed in part, leaving the parties to bear their own costs. The Appellants/Defendants are directed to pay a sum of Rs. 88,159/- together with interest at 6% per annum from the date of filing of the suit till date of realisation together with costs, within a period of two months from the date of receipt of copy of this Judgment. Accordingly, the Judgment and Decree of the trial Court dated 27.6.2003 made in O.S. No. 1 of 2002 are modified. Consequently, connected miscellaneous petition is closed.

