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COMPENSATION FOR PART-PERFORMANCE IN LUMP-SUM CONTRACTS: AN ANALYSIS OF THE INTERPLAY BETWEEN THE PRINCIPLE OF QUANTUM MERUIT AND SECTION 70 OF THE INDIAN CONTRACT ACT, 1872

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ABSTRACT

The remedy available under the principle of Quantum Meruit is well established and settled *vide* various judicial pronouncements. This remedy is ostensibly available to those who have executed some work or rendered any services for another in the absence of any contractual relationship and/ or obligations. In fact, this specific absence of any rights and obligations arising out of a valid contract is what necessitated the development of this principle which stands statutorily envisaged under Section 70 of the Indian Contract Act, 1872. As the title of the article suggests, the primary aim of the Author is to analyse the interplay between the legal principle and the statutory provision through the various judicial pronouncements in India throughout the years. However, in addition thereto, the Author also briefly attempts to shed light on a lacuna *qua* the applicability of this principle to a unique situation arising, especially in lump-sum construction contracts, wherein prior to the termination of such contract, there has been part performance of the work and the question arises as to how the party performing such work would be compensated, in the specific absence of any price/ compensation fixed for that particular component of the scope of work.

Keywords: Quantum Meruit, Section 70 of the Indian Contract Act, 1872, Part-performance of a contract.

INTRODUCTION

1. As per Black's Law Dictionary¹, the term '*Quantum Meruit*' is defined as '*as much as he deserved*'. To put it more simply, the term refers to a reasonable compensation that should be provided, or rather, that one is lawfully entitled to for performing some work

¹ Black's Law Dictionary, 2nd Edition (1910) @ page 975

and/ or rendering any services, not intended to be done gratuitously. The principle of Quantum Meruit is based on the rationale that a party who has put in some work for the benefit of another party, *albeit* in the absence of an express contractual relationship/ obligation, must still be compensated with reasonable remuneration commensurate to the benefit enjoyed. The basis of such compensation would be directly proportional to the benefit that has accrued to and/ or enjoyed by the party for whom anything is done/ delivered². However, in order to give a more detailed perspective, it may be easier to outline the circumstances which gives rise to the need for relying upon such a principle.

2. Imagine a scenario where a contractor (*the party who has undertaken some work*) has entered into a contract with an employer to perform certain work and/ or render certain services. In case, the employer breaches any terms of the contract, the contractor may seek compensation *qua* such breach by way of liquidated damages and/ or unliquidated damages contemplated under Section 73 or Section 74 of the Indian Contract Act, 1872 (“Contract Act”), whichever may be applicable. However, the question arises that in situations where prior to the untimely termination of the contract due to reasons not attributable to the contractor, the contractor has been made to perform certain extra³/ additional work by the employer, which was outside to the scope of the original contract, how would the contractor be compensated for such additional work done? The evident obstacle in such a case would be that such work that has been executed by the contractor was not within the ambit of the extant contract and consequently, there would be no provision under the contract providing a way for the contractor to be compensated for such additional work done. To counter this precise predicament, the principle of Quantum Meruit is relied upon which is in the nature of an equitable remedy aiming towards compensating such contractors for work done in the absence of any specific contractual relations/ obligations between the parties involved. Such absence of a contractual relationship between the parties, where certain work has been done, generally comes within the ambit of “*Quasi-Contracts*”, giving rise to certain legal implications, so that the party which has done the work has a remedy available seeking adequate compensation in relation thereof.

² *Pallonjee Edulkee & Sons v. Lonavala City Municipality*, [AIR 1937 Bom 417]

³ *Food Corporation of India and Ors. v. Vikar Majdoor Kamdar Sakhari Mandli Ltd.*, [(2007) 13 SCC 544] @ para 21: “The term 'extra' is generally used in relation to the works, which are not expressly or impliedly included in the original contract price, provided the work is within the framework of the original contract. The question whether a particular work is extra will depend upon the terms and conditions of the contract, and other documents connected therewith”

3. A necessary corollary to the above exposition may be a situation contemplated under Section 65 of the Contract Act, which envisages that in case an “*agreement is revealed to be void or becomes void, anybody who earned any advantage or benefits from it is obliged by law to reinstate it or reimburse the individual who received it.*” However, as the Title of the present article suggests, the author shall be focusing primarily on Section 70 of the Contract Act.

SECTION 70 OF THE INDIAN CONTRACT ACT, 1872

1. In India, a claim under *Quantum Meruit* is statutorily enshrined under Section 70⁴ of the Contract Act. As stated hereinabove, this provision is ostensibly based on the doctrine of Quantum Meruit; however, the provisions of the Contract Act carry a more liberal interpretation; the principle of the section being wider than the principle of Quantum Meruit⁵. A bare perusal of the said provision categorically reveals that three conditions need to be fulfilled before the benefit of this provision can be invoked by a person. Firstly, a party should either lawfully do something for another person or deliver something to him. Secondly, while doing or delivering something, the party must not be acting gratuitously and thirdly, the person for whom something is done or to whom something is delivered must have enjoyed the benefit thereof. In such a case, the party who has enjoyed the benefit of the work done and/ or goods delivered, is obligated to compensate the other party for the same. Reliance is placed on *State of W.B. v. B.K. Mondal and Sons*⁶, wherein the Hon’ble Apex Court held that:

“14. It is plain that three conditions must be satisfied before this section can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied Section 70 imposes upon the

⁴ Section 70 of the Contract Act:

Obligation of person enjoying benefit of non-gratuitous act. —Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

⁵*Food Corporation of India and Ors. v. Vikar Majdoor Kamdar Sakhari Mandli Ltd.*, [(2007) 13 SCC 544] @ para 19

⁶ [AIR 1962 SC 779]

latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered....”

JUDICIAL PRONOUNCEMENTS ON THE APPLICABILITY OF THE PRINCIPLE OF QUANTUM MERUIT AND SECTION 70 OF THE CONTRACT ACT:

1. Through various judicial pronouncements, the Hon’ble Apex Court as well different High Courts in India have done well to settle the position *vis-à-vis* the applicability of Quantum Meruit and Section 70 of the Contract Act. In the case of ***Food Corporation of India and Ors. v. Vikar Majdoor Kamdar Sakhari Mandli Ltd., [(2007) 13 SCC 544]***, the Hon’ble Apex Court held that:

“19.... A person who does work or who supplies goods under a contract, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the goods supplied. If the work is outside the contract, the terms of the contract can have no application; and the contractor is entitled to be paid a reasonable price for such work as was done by him.

20. *If a party to a contract has done additional construction for another not intending to do it gratuitously and such other has obtained benefit, the former is entitled to compensation for the additional work not covered by the contract. If an oral agreement is pleaded, which is not proved, he will be entitled to compensation under Section 70. Payment under this section can also be claimed for work done beyond the terms of the contract, when the benefit of the work has been availed of by the defendant.”*

2. In ***Michigan Engineers Pvt. Ltd. v. Municipal Corporation of Greater Bombay, [(2016) SCC OnLine Bom 2173]***, the Hon’ble Bombay High Court held that:

“21. ... The extension of principle of quantum meruit, in the facts and circumstances, rightly made and therefore, the award ought not to have modified as done by the learned Judge. There was no express provision with this regard though two methods were provided under the contract of payment. As directed and permitted, the Appellants completed the work and agreed by both the parties to refer the decision to the Arbitrator, itself means and shows that there was no fixed contractual rights

agreed and fixed by the Appellants and/or by the parties, as there was no express terms of contract in this regard and specifically about the rates. The decision so taken by the learned Arbitrator, ought not to have been faulted with, as the amount was not towards the liquidated damages and/or compensation, but for the actual work done under the supervision of the Respondents. The findings, therefore, so given by the learned Arbitrator in no way can be stated to be perverse and/or required to be interfered with by the learned Judge. [Associate Builders (supra)]. It is relevant to note that the Respondents never stopped and/or asked the Appellants not to work unless the rates are settled by agreement. On the contrary, as recorded, permitted to work and/or proceeded with the work by one method out of two so available with further agreement to refer the Executive Engineers decision to the Arbitration. Therefore, the issue of rate was not decided finally and/or agreed by and between the parties and left for the Arbitrator to adjudicate the same. The learned Arbitrator, as recorded, accordingly adjudicated and awarded the reasonable compensation....”

3. Further, the Hon’ble High Court of Guwahati in **NHPC Ltd. v. Oriental Engineers, [2016 SCC OnLine Gau 60]** as regards Section 70 of the Act observed as follows:

“31. It is settled law that in a case where the contract agreement does not specifically provide for compensating reasonably for the work done by the contractor, the principles of quantum meruit would be applicable. ...”

4. In view of the judgments referred to above, it is no more *res-intergra* and has been duly settled that in case the work done by a party is outside the scope of the contract or if no price specific price is fixed in terms of which the party can be compensated, the contractor is lawfully entitled to be paid a reasonable sum for such additional work done. In view thereof, by way of invoking Section 70 of the Contract Act and relying upon the principle of Quantum Meruit, the relevant party may seek reasonable and lawful remuneration for the extra/ additional works done, provided the same is beyond the scope of the contract, and/ or for work done for which no price is fixed in the contract. It is pertinent to note that the said extra work should not be gratuitous in nature and the same should be executed in accordance with the instructions and/ or under the supervision/ awareness of the other party, which has in fact, enjoyed the benefit thereof.

5. Moreover, an interesting observation has been made by the Hon'ble High Court of Delhi in *S. N. Nandy & Co. v. Nicco Corporation Ltd., 2011 SCC OnLine Del 987* (“**Nandy**”), wherein the Hon'ble High Court observed that even if the extra work done was not authorised by the concerned employer, the same would still be liable to compensate the party who has executed the extra work, if the employer accepted such extra work done and enjoyed benefit of the same. In light of the said judgement, the employers cannot cover behind the fact that no specific authorisation was given for execution of the extra work, and mere acceptance and enjoyment thereof, would be sufficient for an action seeking remuneration by invoking the principle of Quantum Meruit and Section 70 of the Contract Act. The relevant excerpt from *Nandy* judgement is reproduced below for ready reference

*“23. In the case before this Court, though the plaintiff has not specifically pleaded the provisions of Section 70 of the Contract Act, nor has any issue been framed by the Court on its applicability, he has pleaded all the ingredients necessary for invocation of the aforesaid statutory provision. In the plaint, the plaintiff has repeatedly alleged execution of **extra work** for the defendant..... The plaintiff has, thus, pleaded all the necessary ingredients of Section 70 of the Contract Act by claiming that (i) he had executed extra works for the defendant; (2) extra works executed by him were accepted by the defendant and (3) he had not executed extra work gratuitously. **The defendant could have refused to accept the extra works/extra quantities executed by the plaintiff. In that event, it would not have been liable to pay for them. But, the defendant failed to do so and accepted these works. Therefore, even if it is presumed that the defendant had not consented to pay for the extra work by the plaintiff, it is obliged in law to compensate him for the extra works, which were accepted by it, without any protest and without claiming that the plaintiff will not be paid for those works.**”*

6. The above judgment was challenged before the Division Bench of the Hon'ble High Court in *M/s. Nicco Corporation Ltd. V. M/s. S.N. Nandy & Co, [2011 SCC OnLine Del 4656]* and the Division Bench upheld the observations on Section 70 of the Contract

Act on the grounds that “...as a matter of fact the works were executed and accepted by the defendant”.⁷

SITUATION WHERE WORK DONE/ SERVICES RENDERED ARE PURSUANT TO THE TERMS OF THE CONTRACT AND THE CONTRACT PROVIDES FOR THE CONSIDERATION PAYABLE IN RESPECT THEREOF.

1. It is pertinent to mention that one of the major thresholds *qua* the question regarding the applicability of the principle of Quantum Meruit is that the price for the *work done or services* rendered should not be fixed under the contract and the same should not be pursuant to the terms of a contract. It may be noted that Section 70 of the Contract Act falls under Chapter V of the Act titled '*Of Certain Relations Resembling Those Created by Contract*', which ostensibly means that the provision would be applicable in the absence of a specific contract dictating the rights and obligations between the parties concerned. In such circumstances, where there exists no contract in place or if there was one, the price of rendering the services was not already agreed upon, the courts would be empowered to grant reasonable compensation/ remuneration to the concerned party for the services rendered.
2. In this aspect, it may be relevant to refer and rely upon the judgment passed by the Hon'ble Apex Court in *Mahanagar Telecom Nigam Ltd. V. Tata Communications Ltd.*, [Civil Appeal No. 1766 of 2019], wherein the Hon'ble Apex Court has distinguished between reasonable remuneration under Section 70 of the Contract Act and compensation for damages arising out of breach of the contract. The Apex Court observed that:

“2. Having heard the learned counsel for both sides, one neat question arises before this Court, which is, whether, when parties are governed by contract, a claim in quantum meruit under Section 70 of the Indian Contract Act, 1872 [“Contract Act”] would be permissible. Section 70 of the Contract Act reads as under...

This Section occurs in Chapter V of the Contract Act, which chapter is headed, “of certain relations resembling those created by contract”. There are five sections that are contained in this Chapter. Each of them is posited

⁷ @ para 16, *M/s. Nicco Corporation Ltd. V. M/s. S.N. Nandy & Co*, [2011 SCC OnLine Del 4656]

*on the fact that there is, in fact, no contractual relationship between the parties claiming under this Chapter. For example, under Section 68, if a person incapable of entering into a contract is supplied necessities by another person, then the person who has furnished such supplies becomes entitled to be reimbursed from the property of the person so incapable of entering into the contract. Section 69 also deals with a case where a person has no contractual relationship with the other person mentioned therein, but who is interested in the payment of money which the other person is bound by law to pay, and who, therefore, pays it on behalf of such person. Such person is entitled to be reimbursed by the other person. Under Section 71, again, the finder of goods spoken of is a person who is fastened with the responsibility of a bailee as there is no contractual relationship between the finder of goods and the goods which belong to another person. Equally, under Section 72, a person to whom money has been paid or anything delivered by mistake or coercion must repay or return it, or else, such person would be unjustly enriched. **Here again, there is no contractual relationship between the parties. It is in this setting that Section 70 occurs.***

3. Further, in **Alopi Parshad and Sons Ltd. v. Union of India, (1960) 2 SCR 793**, the Hon'ble Apex Court held:

“...It is difficult to appreciate the argument advanced by Mr. Chatterjee that the Agents were entitled to claim remuneration at rates substantially different from the terms stipulated, on the basis of quantum meruit. Compensation quantum meruit is awarded for work done or services rendered, when the price thereof is not fixed by a contract. For work done or services rendered pursuant to the terms of a contract, compensation quantum meruit cannot be awarded where the contract provides for the consideration payable in that behalf. Quantum meruit is but reasonable compensation awarded on implication of a contract to remunerate, and an express stipulation governing the relations between the parties under a contract, cannot be displaced by assuming that the stipulation is not reasonable.....”

4. From the afore-stated judgements, it is clear that a *sine qua non* for invocation of Section 70 of the Contract Act is that the work done and/or services rendered should not be in

pursuance of the terms of a contract where the price has already been fixed and/ or contemplated.

CONUNDRUM

1. Even though the law regarding the applicability of Quantum Meruit and Section 70 of the Contract Act has been definitively settled through various judicial pronouncements, however, there is still a lacuna which has managed to slip through the cracks and needs to be adjudicated upon and conclusively settled by the Hon'ble Courts. This area of concern pertains to the unique situation regarding applicability of the above principle *qua* part performance of a contract.
2. Let us take an example: A party (*contractor*) enters into a lump-sum contract with another party (*employer*) for execution of certain scope of work having components 'a', 'b' and 'c'. The total contract price for execution of the entire works (*i.e.*, $a+b+c$) is specified under the contract itself. However, the price break-up for the individual components is categorically absent. In such a case, for reasons attributable to the employer, the contract is terminated prior to its completion and the contractor is only able to execute component 'a' of the entire scope of work, the question arises as to how would the contractor be compensated for the portion of the work duly executed by the same? Would the principle of Quantum Meruit be applicable to such a scenario and whether the contractor is entitled to invoke Section 70 of the Contract Act? At first blush, it may appear that the ingredients of Section 70 of the Contract Act would be satisfied in such a case, namely, the contractor has lawfully done something for the employer, which was not intended to be done gratuitously and the employer has attained benefit thereof. Further, the price of the component is also not fixed under the contract, thereby, attracting the applicability of the principle of Quantum Meruit. However, can it be said that the work done (component 'a') was not in pursuance to the terms of the contract?
3. In *Mulamchand v. State of M.P.*⁸, the Apex Court categorically denied the applicability of Section 70 of the Contract Act in view of the existence of a contract. Further, in *Alopi*

⁸ *Mulamchand v. State of M.P.*, [(1968) 3 SCR 214], the Apex Court observed that: "6...in a case falling under Section 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something...".

Parshad (Supra), where the Hon'ble Apex Court observed that “*Compensation quantum meruit is awarded for work done or services rendered, when the price thereof is not fixed by a contract.*”. However, immediately thereafter the Hon'ble Court goes on to state: “*For work done or services rendered pursuant to the terms of a contract, compensation quantum meruit cannot be awarded where the contract provides for the consideration payable in that behalf.*” The question arises as to how the above two statements would reconcile in a situation where the work done or service rendered is merely a component of the entire work, which is however, in pursuance of and/or contemplated within the terms of the contract and the price is only fixed for the totality of the work and not in respect of a component thereof.

4. However, at this juncture, it may be relevant to refer to the *Treatise on the Law of Contract*⁹, where the following has been elucidated *vis-à-vis* the principle of Quantum Meruit: “*...So, also if entire performance, according to the express agreement, be rendered impossible through the fault of either party, the party in fault will be liable on a quantum meruit, or other action on the case, the compensation being graduated as far as possible by the terms of the express contract.*”
5. Further, the only judgment which has somewhat expounded upon the afore-discussed issue is *Krishna Menon v. Cochin Devaswom, Board and Anr.*, [1962 SCC OnLine Ker 102] where the Hon'ble High Court of Kerala observed:

“15. *No claim in the nature of a quantum meruit can be founded upon a contract which has not been performed, unless the person who has a right to insist on its performance has elected to accept some benefit resulting from its partial or defective performance, or the circumstances are such as to show, in some other way, that a new contract has arisen between the parties. This is further qualified by the doctrine that where a contract has been only partly performed, the mere fact that the part performance has been beneficial is not enough to render the party benefited liable to pay for it; it must be shown that he has taken the benefit of the part performance under circumstances sufficient to raise an implied promise*

⁹ Vol. 1, page 11, para 18, *Treatise on the Law of Contract*, William Wetmore Story

to pay for the work done, notwithstanding the non-performance of the special contract. Thus, if a builder contracts to build and complete a house for a lump sum payable on completion, and he partially builds the house, but fails to complete it, the fact that the owner of the premises has resumed possession of them does not entitle the builder to sue either on the special contract or for work and materials; for the special contract has not been performed, and the mere fact that the owner has taken possession of his own premises does not afford an inference that he has dispensed with the special contract and made a new contract to pay for the work actually done.”

CONCLUDING REMARKS

1. Although, the judgment in *Krishna Menon (Supra)* restricts its analysis to situations where the reasons for the incomplete/ defective performance of the contract is attributable to the party executing the works, however, what can be conclusively inferred from the same is that the principle of Quantum Meruit can definitely be invoked in such case, *albeit*, to a limited extent wherein “*..the person who has a right to insist on its performance has elected to accept some benefit resulting from its partial or defective performance, or the circumstances are such as to show, in some other way, that a new contract has arisen between the parties.*”
2. This leaves the question as to how the principle of Quantum Meruit would apply in situations where the non-completion of the entire works/ contract is due to reasons attributable to the party who has extended/ issued the concerned lump-sum contract. In such a case, whether the component of the work actually performed/ executed can entitle the party performing the same to lawful remuneration from the other defaulting part under the principle of Quantum Meruit, is an issue that need redressal and consideration by the Hon’ble Courts so that the same can be finally and conclusively settled through judicial pronouncements.