IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1237 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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OMEGA ELEVATORS
Versus
HOTEL PLAZA & ORS.

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Appearance:
MR.HARDIK B SHAH(3751) for the Appellant(s) No. 1
ADVOCATE NOTICE SERVED for the Defendant(s) No. 1,2
RULE SERVED for the Defendant(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 12/10/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. By way of this First Appeal, the appellant – original defendant No.1 challenges the judgment and decree dated 21.07.2004 passed in Special Civil Suit No.310 of 1992 by the learned Civil Judge, Senior Division, Bharuch, whereby the suit preferred by the respondent – plaintiff came to be partly allowed and the plaintiff was held entitled to

recover Rs.14,84,000/- with interest at the rate of 9% per annum from the date of filing of the suit till realization, with proportionate costs.

2. The short facts of the case are as under:

2.1 The respondent No.1 – plaintiff No.1-firm is a registered partnership firm engaged in the business of hoteliering, whereas the appellant – defendant No.1 is a proprietary firm engaged in the business of installation of lifts in the name and style of Omega Elevator. The defendant No.1, through its employee as an authorized person, entered into an agreement for installation of the lift.

2.2 The plaintiff firm decided to commence its business in the name and style of Hotel Shethna Plaza at Bharuch and started the construction of a five storeyed building, wherein the lift was an essential part of the building. One Mr. Tariq Patel visited Bharuch along with the defendant and introduced the defendant to the plaintiff. Shri D.M. Shah, the authorized person of defendant No.1, was also present at the first meeting at Bharuch. After due negotiations, the defendant accepted the offer for installation of the lift in the said 5-storeyed building. Accordingly, an agreement for the said purpose was entered into between the parties on 27.12.1989. On behalf of plaintiff No.1, plaintiff No.2 – Shyam Shethna, and on behalf of defendant No.1, its authorized person Shri D.M. Shah, entered into the said agreement.

2.3 As per the agreement, a lift, including the ground floor, for the 6th storey was to be installed by the defendant, having a capacity of 544 kg. and accommodating 8 persons, with 7 stops and gates. For the said work, the agreement amount was fixed at Rs.1,80,000/-, out of which 30% was to be paid in advance. The defendant was required to complete the installation work within 20 to 32 weeks and was also required to comply with all prevailing rules and obtain the requisite no-objection certificate from the competent authority for use of the said lift.

2.4 Upon payment of 30% of the amount as advance, the agreement was to be treated as confirmed. A further 60% of the agreement amount was to be paid gradually, according to the progress of the work. The said agreement was signed at Bharuch on 27.12.1989 by Shri D.M. Shah on behalf of the defendant and was confirmed by the defendant. Towards the 30% advance, an additional amount of Rs.9,000/- was paid by Demand Draft (D.D.), making a total amount of Rs.63,000/-, which was handed over to Shri D.M. Shah on 29.12.1989. On the same day, the agreement was confirmed by the defendant.

2.5 Since time was the essence of the contract, the agreement was required to be complied with within 20 to 32 weeks and the defendant was required to obtain the no-objection certificate for commencement of the said work. However, the defendant failed to perform its part of the agreement. After installation, the defendant was also required to provide free service for 1 year. However, after receiving the advance amount, the defendant did not send the materials required for installation of the lift.

Only 1 bundle of guide channel was sent on 04.01.1990 and thereafter, material worth Rs.360/- was sent by the defendant on 08.01.1990. Thereafter, the defendant's agent, Shri D.M. Shah, received Rs.27,000/- from the plaintiff. Prior thereto, the defendant had received a D.D. for Rs.54,000/- on 05.01.1990.

2.6 The defendant, even after receiving substantial amounts from the plaintiff, did not send any further material for installation of the lift and, in all, received Rs.1,44,000/- from the plaintiff. At a later stage, on 07.10.1991, some materials were sent by the defendant. Some other materials were purchased by the plaintiff from the local market and handed over to the defendant, with an understanding that the amount paid for such locally purchased goods would be adjusted towards the agreed amount.

2.7 The defendant failed to install the lift in February 1992 and therefore, the plaintiff pressurized the defendant. However, till the filing of the suit, the agreed work of installation of lift had not been completed by the defendant, and the defendant had also failed to comply with the queries raised by the Lift Inspector. The defendant was therefore served with a notice dated 19.12.1992, but the defendant neither replied to nor complied with the said notice. Due to the lethargic manner in which the defendant carried out the installation work and its failure to complete the same within the stipulated period, the plaintiff's business was delayed for more than 2 years and considering the industrial development in Bharuch, Ankleshwar and the nearby cities and villages, the plaintiffs could have

earned Rs.10,00,000/- per year as net profit from their hotel business. It was further stated that 90% of the bookings in the hotel had been recorded and, considering such bookings, the plaintiffs could have earned Rs.7,00,000/- per year as net profit. Thus, they incurred a loss of Rs.14,00,000/- as the defendant delayed their project by failing to install the lift and obtain the no-objection certificate for the same.

2.8 Due to the defendant, the plaintiff could not commence their business for a period of more than 2 years, thereby causing damage to their reputation amongst their friends and relatives. The plaintiffs had invested Rs.50,00,000/- in the said hotel business and incurred a loss of Rs.12,00,000/- towards interest on the investment, which remained idle for more than 2 years. Thus, the plaintiff also claimed Rs.6,00,000/- towards damages for the lowering of their personal reputation due to the lethargic and delayed work of the defendant. They claimed Rs.14,00,000/- towards loss of net profit for a period of 2 years, Rs.6,00,000/- towards damages to their personal reputation and Rs.12,00,000/- towards loss of interest. In all, they claimed Rs.32,00,000/- as damages with running interest at the rate of 12% per annum and prayed for a decree accordingly.

2.9 The defendant was served and filed its written statement at Exhibit-15, denying the allegations. It was contended that the plaintiff had manipulated the terms and conditions of the agreement and had raised false and frivolous contentions. It was further contended that Shri D.M. Shah was not an authorized agent of the defendant and was not

empowered to enter into any agreement. It was also contended that the plaintiff had failed to pay the amount as agreed and had failed to provide the necessary services and had not informed the defendant about completion of the building. It was further contended that this Court had no jurisdiction to try the suit. It was also alleged that the plaintiff and Shri D.M. Shah had colluded and, in connivance with each other, had acted against the interest of the defendant. According to the defendant, Shri D.M. Shah was not its authorized person and, therefore, the defendant was not liable for any agreement, if any, entered into by Shri D.M. Shah.

2.10 The learned Judge of the Trial Court after considering the evidence produced before the Court oral as well as documentary has partly allowed the suit whereby the plaintiff was held entitled to recover Rs.14,84,000/- with interest at the rate of 9% per annum from the date of filing of the suit till realization, with proportionate costs which has given rise to the present First Appeal.

3. Heard the learned Advocates appearing for the respective parties.

4. Learned advocate for the appellant – defendant No.1 has while vehemently challenging the impugned judgment and award has submitted that the agreement executed between the parties is an ordinary commercial contract having total contract value of Rs.1,80,000/- however the learned Judge of the Trial Court has awarded more than eight times damages aggregating to Rs.14,84,000 with 9% interest and thus the said award is wholly disproportionate and contrary to the law.

4.1 It was further contended that the learned Judge of the Trial Court has erroneously held that the burden of proof lies on the appellant – defendant No.1 to prove the fact that said Shri D M Shah is not the agent of the appellant whereas it is the case of the plaintiff that said Shri D M Shah is the agent of the appellant and has authority to make material alterations in the agreement and therefore the burden is on the plaintiff to prove this fact and thus the learned Judge of the Trial Court has erred in framing such issue on this aspect and has erroneously come to the conclusion.

4.2 It was further contended that the learned Judge of the Trial Court has materially erred in come to the conclusion while awarding the amount on the basis of conjunctures and surmises and in absence of any leading evidence on behalf of the plaintiff – respondent No.1. It was contended that the learned Judge of the Trial Court has materially erred in presuming such loss in favour of the plaintiff – respondent No.1 and thereby awarding the amount in favour of the plaintiff in absence of any such evidence led by the plaintiff in support of its claim. It was contended on behalf of the appellant – defendant No.1 that the learned Judge of the Trial Court has erred in awarding the exemplary damages in favour of the plaintiff in absence of any evidence and therefore, the conclusion so arrived at by the learned Judge of the Trial Court is required to be quashed and set aside.

4.3 Learned counsel appearing for the Appellant-defendant No.1

submitted that the learned Judge of the Trial Court has committed a serious error in awarding Rs.14,95,000/- when the total contractual consideration under the agreement was only Rs.1,86,000/-. It was submitted that although the installation work could not be completed, there was no sufficient evidence before the learned Trial Court demonstrating actual loss or damage to the extent of Rs.14,95,000/-. It was contended that the plaintiff had claimed Rs.32,00,000/- by way of damages, but mere assertion of a claim cannot constitute proof of actual loss. It is therefore submitted that the amount awarded by the learned Judge of the Trial Court was, therefore, wholly disproportionate and without a proper evidentiary foundation. It was accordingly urged that the impugned judgment and decree be set aside and the appeal be allowed.

5. *Per contra*, learned Advocate appearing for the respondent No.1 – plaintiff while supporting the impugned judgment and decree would submit that the learned Judge of the Trial Court after appreciating the evidence and material placed has awarded the amount and therefore it cannot be said that on the basis of the assumption such amount has been awarded. It is submitted that it was the duty of the defendant No.1 to abide by the terms of the agreement executed between the parties and to complete the work however since the defendant No.1 has failed to complete such work which had caused a serious loss in the business of the plaintiff and plaintiff had suffered a huge loss wherein he has produced the evidence in support of his claim and considering such evidence the learned Judge of the Trial Court has allowed the suit and awarded the amount in favour of the plaintiff.

5.1 Learned Advocate for the respondent – plaintiff has invited the attention of this Court to the fact that at a later stage on 07/10/1991 after the agreement being executed between the parties some materials were sent by the appellant-defendant and some material were purchased by the plaintiff from the local market and handed over it to the appellant - defendant with the understanding that the amount of the said locally purchased goods were to be adjusted towards the agreed amount. It is therefore submitted that in the event of passing the final order, the amount of Rs.25,000/- may be adjusted.

5.2 By making the above submissions, learned Advocate for the respondent – plaintiff would submit that this Hon'ble Court may not interfere with the such finding and dismiss the appeal.

6. Having heard the learned Counsel appearing for the respective parties and considering the facts on record of the case, the undisputed facts emerges from the record of the case are that (i) the parties to the proceedings entered into a contract for supply, installation and commissioning of one lift for a total consideration of Rs.1,80,000/-; out of which 30% was paid in advance by demand draft; (ii) the defendant was to complete the installation work within 20 to 32 weeks and required to comply with all prevailing rules and obtain the requisite no-objection certificate from the competent authority for use of the said lift; (iii) further 60% of the agreement amount was to be paid gradually, according to the progress of the work and the said agreement was signed at Bharuch on 27.12.1989 by Shri D.M. Shah on behalf of the defendant and was confirmed by the defendant. (iv) 30% advance, an additional amount of

Rs.9,000/- was paid by Demand Draft (D.D.), making a total amount of Rs.63,000/-, which was handed over to Shri D.M. Shah on 29.12.1989. (v) the defendant failed to comply with the conditions so decided between the parties, as also after installation, the defendant was also required to provide free service for 1 year. However, after receiving the advance amount, the defendant did not send the materials required for installation of the lift and only one bundle of guide channel was sent on 04.01.1990 and thereafter material worth Rs.360/- was sent by the defendant on 08.01.1990; (07) the defendant's agent, Shri D.M. Shah, received Rs.27,000/- from the plaintiff and previously the defendant had received a D.D. for Rs.54,000/- on 05.01.1990 and thus the defendant, even after receiving substantial amounts from the plaintiff, did not send any further material for installation of the lift and, in all, received Rs.1,44,000/- from the plaintiff; (08) At a later stage, on 07.10.1991, some materials were sent by the defendant, as also other materials were purchased by the plaintiff from the local market and handed over to the defendant, with an understanding that the amount paid for such locally purchased goods would be adjusted towards the agreed amount; (09) the defendant failed to install the lift in February 1992 and the plaintiff pressurized the defendant; but till the filing of the suit, the agreed lift had not been installed by the defendant, and the defendant had also failed to comply with the queries raised by the Lift Inspector.

7. Now, in light of the aforesaid undisputed facts, if the conclusion so arrived at by the learned Judge of the Trial Court in favour of the plaintiff is examined, more particularly, Issue No.10 relating to claiming of the damages caused to the plaintiff, the learned Judge of the Trial Court has

after considering the facts of the case come to the conclusion and held the plaintiff entitle to recover the following amount which is mentioned in the tabular form:

Sr. No.	Head	Amount
01	Towards payment to the defendant	Rs.1,44,000=00
02	Towards interestat the rate of 12% p.a. from 30/08/90 till filing of the suit.	Rs.40,000=00
03	Towards the loss of interest	Rs.12,00,000=00
04	Towards the special damages	Rs.1,00,000=00
	Total damages	Rs.14,84,000=00

What appears from the above particulars that the plaintiff is held entitled to recover Rs.1,44,000/- with interest at the rate of 12% from 30/08/1990 to 28/12/1992 which comes to Rs.40,000/-, as also since the plaintiff has claimed Rs.15,00,000/- towards the loss of interest against the investment of Rs.50,00,000/- towards the construction of six storied building to which the learned Judge of the Trial Court has granted 12% p.a. from 30/08/1990 till the filing of the suit which comes to Rs.14,00,000/- and lastly Rs.1,00,000/- was granted towards the special damages and thus in all total Rs.14,84,000/- has been granted towards the total damages. However, no such reasons have been assigned by the learned Judge of the Trial Court on the basis of which such amount of compensation for the damages caused to the plaintiff has been awarded and merely on the basis of the assumptions and presumptions that since the defendant has failed to complete the work in the time-limit, the plaintiff could not earn the business in the Hotel industry and thereby loss

was caused to the plaintiff to the tune of Rs.10.00 Lakh per annum as claimed by the plaintiff.

8. As such no evidence or material was placed by the plaintiff as to how the damage of profit to the tune of Rs.10.00 Lakh per year was caused to the plaintiff on account of non-booking of the hotel. Mere contention that since the area of Bharuch, Ankleshwar, Palej, Vagra comes under the industrial development area and the booking in the hotels have been recorded to the 90% is not sufficient to award compensation in absence of any evidence to be led by the plaintiff.

9. The learned Judge of the Trial Court has failed to consider the fact that plaintiff has not proved by leading any cogent and convincing evidence as to what kind of loss has been caused in the business on account of such delay in completion of the work by the defendant. Merely because the statement was made by the plaintiff that he was unable to commence the business, it would not be presume that the loss was caused (assessed) to the plaintiff on account of the delayed in completion of the work. There may be other reasons also and the learned Judge of the Trial Court has in absence of any material evidence on the basis of surmises and conjectures has come to the conclusion that due to delayed completion of the work, the damage was caused to the plaintiff which is not legal in the eye of law. It would appear that no such discussion has been made by the learned Judge of the Trial Court as to how and on what basis the damages has been caused to the plaintiff and what kind of material / evidence has been placed by the plaintiff to claim such

damages has also not been discussed and therefore, in absence of such material the conclusion so arrived at by the learned Judge of the Trial Court does warrant interference.

10. A mere assertion or claiming of damages is not sufficient; the claimant must establish the basis, entitlement and, where required, the actual loss through cogent evidence. Furthermore, making an assertion or quantification of damages in a claim does not entitle the claimant to an award of compensation. In a claim arising out of breach of contract, the claimant must establish the loss allegedly suffered, its causal connection with the breach, and a reasonable evidentiary basis for the quantum claimed, subject to the applicable principles governing the particular head of damages. At this juncture, it would be apt to refer to the decision in case of ***ITC Limited v. Aashna Roy reported in 2026 INSC 135*** where the Hon'ble Apex Court has held that the damages cannot be awarded merely on presumptions or whims and fancies of the complainant. Relevant observations made in paragraph No.22 reads thus:

> *"22. The damages cannot be awarded merely on presumptions or whims and fancies of the complainant. To make out a case for award of damages, especially when the claim is to the tune of crores of rupees, some trustworthy and reliable evidence has to be led. It is not a case where the Commission was considering a small issue where compensation could be awarded by applying a thumb rule. Claim of compensation was for crores of rupees, for which some loss suffered by the respondent because of deficiency in service was required to be established. This could not be*

established by merely producing photocopies of the documents. Even the discrepancies in the photocopies produced on record by the respondent, as pointed out by the appellant, have been noticed above. Thus, even after remand, respondent has not been able to make out a case for award of such huge compensation."

11. In ***H.J. Baker & Bros. Inc. v. Minerals and Metals Trading Corporation Ltd., 2023 INSC 747***, particularly paragraphs No.18 to 20, the Hon'ble Supreme Court emphasised the significance of supporting evidence in determining contractual damages and upheld the rejection of a claim for a subsequent period where the requisite evidence of loss was not produced. Section 73 of the Indian Contract Act, 1872, further excludes remote and indirect losses and requires the assessment of compensation in accordance with the loss legally attributable to the breach.

12. Though much has been emphasized or pressed upon by the learned Advocate for the respondent that the suit from the inception is barred on account of lack of jurisdiction as it has been expressly made clear in the contract wherein under the head of Note condition No.(d) has been incorporated as "the above is subject to Ahmedabad Jurisdiction." However, the learned Judge of the Trial Court while considering the factum of the ordinary commercial transaction pertaining to the installment of the elevator at a place situated in the territorial jurisdiction of the Bharuch and the cause of action can rightly be said to have been arose within the jurisdiction of the said Court and the said Court is duly

vested with the jurisdiction to try, entertain and dispose of the issue as per the provisions of Section 20 of the CPC. Thus, nothing more required to be gone into the said aspect.

13. The submission of learned Advocate for the respondent – plaintiff that some of the materials were purchased by the respondent – plaintiff and handed over to the appellant – defendant finds some force as there is no dispute to the transaction on the said aspect by the appellant - defendant. Thus, the respondent – plaintiff is held entitled to recover the amount of Rs.25,000/- with 9% interest which is required to be given the set-of while passing the final order.

14. It would be relevant to note that at the time of admission of the appeal, the impugned judgment and decree has been stayed subject to deposit a sum of Rs.5.00 Lakh by the appellant – defendant before the Trial Court and the same will be disbursed to the respondent providing solvent security with surety of the like amount. However, if the adverse order is passed, the said amount is ordered to be returned with current rate of interest.

15. It is submitted by learned Advocate for the appellant – defendant that amount of Rs.5.00 Lakh has been deposited before the Trial Court pursuant to the order passed by this Hon'ble Court while admitting the appeal; however as submitted by learned Advocate for the appellant – defendant the said amount has not been withdrawn by the respondent – plaintiff. Thus, in view of this fact situation, the amount of Rs.5.00 Lakh

deposited by the appellant-defendant with the Trial Court, shall be refunded to the appellant-defendant with the interest accrued thereon after deducting Rs.25,000/- with simple interest accrued thereon till today towards the material purchased by the plaintiff on due verification and identification. Simultaneously, the deducted amount of Rs.25,000/- with 9% interest from the date of filing of the suit till today shall also be paid to the plaintiff – respondent on due verfication and identification.

16. In the result, the present appeal deserves to be allowed and accordingly the appeal is partly allowed. The judgment and decree dated 21.07.2004 passed in Special Civil Suit No.310 of 1992 by the learned Civil Judge, Senior Division, Bharuch is modified to the aforesaid extent. Decree to be drawn accordingly.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MANISHKUMAR JYOTINDRA SOMPURA(HC00189), Principal Pvt. Secretary, at High Court of Gujarat on 12/10/2026 17:02:46