Amar Singh and others *v.* Baldev Singh and others

Second Appeal No. 1074 of 1959 will be returned for hearing to the Bench concerned and Civil Miscellaneous No. 1548 of 1959 will be sent back to the trial Court for disposal according to law.

Mehar Singh, J. *B.R.T.*

APPELLATE CIVIL

Before Tek Chand and Shamsher Bahadur, JJ.

THE STATE OF PUNJAB,—*Appellant*

versus

THE HINDUSTAN DEVELOPMENT BOARD LTD., AMRITSAR,—*Respondent*

Regolar First Appeal No. 119 of 1954

Indian Contract Act (IX of 1872)—Section 70—Basis and Principles of—Whether to be restricted by principles of English Law—Conditions for the applicability of—Contractor doing work outside the contract which is accepted by the other party—Whether entitled to reasonable price of such extra work—Contracts—Express, Implied and quasi-contracts—Nature and distinguishing features of—Sections 70 and 73—Respective scope of.

1960

May 25th

Held, that the provisions of section 70 of the Indian Contract Act are based on the doctrine of *quantum meruit* of English Common Law but the rule as embodied in the Indian Contract Act admits of liberal interpretation. When a rule of English law receives a statutory recognition by the Indian legislature it is the language of the Act which determines the scope, uninfluenced by the manner in which the analogous provision is construed in the English law. The language of the provisions of the Indian Contract Act cannot be enlarged, or construed narrowly, or otherwise modified, in order to bring the construction in accord with the scope and limitations of the rule governing the English doctrine.

Held, that before the provisions of section 70 of the Indian Contract Act can be successfully invoked, the plaintiff has to show, firstly, that the delivery of the articles in

question has been lawfully made; secondly, the person delivering the goods was not intending to do so gratuitously; and thirdly the party receiving them had enjoyed benefit thereof. Thus where the defendant received goods from the plaintiff, the latter is entitled to judgment for the reasonable value of the goods at the time they were received by the defendant. Similarly a person, who does work or supplies goods under a contract, express or implied, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the materials supplied. If the work is outside the contract, the terms of the contract can have no application; and the contractor, in the absence of any new agreement is entitled to be paid a reasonable price for such work as was done by him. Of course, it is necessary in all such cases, that the extra work outside the contract has been ordered or accepted by the defendant.

Held, that here is a traditional division between contracts which are express and those which are implied. The contracts, the terms of which are stated by the parties fall in the first category. When the terms are not so stated, contracts are said to be implied. Both types of these contracts assume mutual assent of the contracting parties. Though the natural agreement and understanding between the parties in an implied contract is not expressed in words, there is nevertheless a consensus, regarding its terms and conditions. In order to avoid confusing implied contracts with *quasi-contracts*, the former are more specifically called "'implied contracts in fact", and the latter "implied contracts in law". The conduct of the parties may be viewed as professing their mutual assent. An inference in favour of an "implied contract in fact" is raised when intendment of the parties can fairly be inferred from their unspoken conduct or from the pertinent circumstances. Quasi-contracts are not, strictly speaking, contracts at all, because there is no meeting of the minds *aggregatio mentium.* In the absence of any mutual consent or intendment the relationship cannot be styled as contractual despite certain obligations of a contractual character imposed by law. *Quasi contracts* or constructive contracts, as they are sometimes called, are contracts implied in law but not in fact. They are contracts only in the sense that redress is given by contractual remedies. The promise is purely fictitious and has no existence in reality. The liability is imposed by law and is independent of any mutual accord of the parties. In the case of

a *quasi contract* intention of the parties is not of the essence of the transaction. In the case of actual contracts it can be said that the contract defines the duty, while in the case of *quasi-contracts,* the duty defines the contract. In the case of *quasi-contract* the agreement is a mere fiction imposed, in order to adapt cases to a given remedy. In the case of an implied contract the implication is of the fact based upon the parties' intention. In the case of *quasi-contract,* the Courts do not take notice of parties' intention, sometimes they act even in disregard of their known intention. In such cases the liability exists, independent of the agreement, and rests upon the equitable doctrine of unjust enrichment. *Quasi-contract* gives rise to a situation where an obligation or duty is cast upon the parties by law, but not by the terms of the contract to which they had given their assent. If services are rendered which are neither gratuitous nor forbidden by law, the party at fault will be required by law to disgorge the benefit. In the case of *quasi-contracts* law imposes an obligation in utter disregard of the parties' intention. Such a relationship does not depend upon a promise or privity. The obligation stems, not from parties' consent, express or ascertainable, but rests upon the immutable law of natural justice and equity.

Held, that section 73 of the Indian Contract Act contemplates a remedy where there has been a breach of contract, and section 70 imposes a similar obligation on a party resting on a basis which is equitable rather than contractual. In either case the plaintiff is entitled to be compensated, the measure being a just and reasonable remuneration for the labour expended, work done or the goods supplied.

Regular First Appeal from the decree of Shri Parshotam Sarup, Sub-Judge, 1st Class, Ambala, dated the 23rd day of March, 1954, granting the plaintiff a decree for Rs. 16,299-13-0 with proportionate costs.

S. M. SIKRI, ADVOCATE-GENERAL AND HAR PARSHAD, ADVOCATE, for the Appellant.

F. C. MITAL, G. P. JAIN AND L. M. SURI, for Mr. V. C. MAHAJAN, ADVOCATE, for the Respondent.

JUDGMENT

Tek Chand, J.

TEK CHAND,J.—This regular first appeal has been preferred by the State of Punjab and cross- objec- have been filed by the respondent. This appeal arose out of a suit filed by the plaintiff for the recovery of Rs. 46,000-0-0. The plaintiff is a Company engaged in building work. By a notice, dated 9th February, 1948, the Superintending Engineer, Development Circle (North), Ambala, invited tenders for supply of windows and C-windows (Clerestory Windows) for 500 houses at Jagadhri Township. A contractor Dewan Raj Paul Nanda submitted his tender which was accepted and work was allotted to him at the flat rate of Re. 112-0 per square foot but later on he could not perform the contract which was cancelled by the Superintending Engineer and the Executive Engineer was directed to have the work carried out by negotiation through some other contractor. The Executive Engineer negotiated with the plaintiff-company and it agreed to carry out the work at the same rate that is at Re. 1-12-0 per square foot. It is the case of the plaintiff-company that it had undertaken to supply glazed windows in accordance with the plan and designs given to them by the Government. Theese windows were to be glazed but the cost of glass-panes and fixing charges were to be borne by the Government. After the plaintiff had manufactured windows covering 2,000 cft. in accordance with the original designs the plan was revised and the plaintiff-company was required to manufacture and supply panelled windows, and the panels were to be made by the plaintiff from other timber paid for by them and with their labour. As a result of the revised plan higher costs were entailed as the work required more timber and labour.

The State of Punjab
v.
The Hindustan Development Board Ltd., Amritsar

Tek Chand, J.

The plaintiff-company on 5th May, 1948, asked the, Executive Engineer Incharge for enhancement of the flat rate from Re. 1-12-0 per sq. ft. to Rs. 2-12-0 per sq. ft. The Executive Engineer Incharge required the plaintiff to supply detailed analysis in support of the plaintiff's demand for enhanced rate which was done on 26th May, 1948. The Executive Engineer recommended to the Superintending Engineer that the rates for thenew work be enhanced from Re. 1-12-0 to Rs. 2-10-0 per sq. ft. It was also alleged that the Executive Engineer advised the plaintiff to carry on with the supply like a good contractor and that this would be in his own interest. The plaintiff consequently completed the supply as per new design but the Superintending Engineer did not agree to the enhanced rates and the matter had to be referred to arbitration. The arbitrator who was the Superintending Engineer himself, allowed only Rs. 6,720 to the plaintiff under the terms of the award dated 15th February, 1950. Both the award and the reference were later on set aside by the Senior Sub-Judge on objections having been preferred by the plaintiff-company. The plaintiff after serving notice as required under section 80 of the Civil Procedure Code has instituted the present suit for recovery of Rs. 46,000. This sum has been arrived at in the following manner as stated in the plaint :—

> "The windows which had been supplied by the plaintiff measured 52617.25 sq. ft. for which he had already been paid at the rate of Rs. 1-12-0 per sq. ft., leaving a balance of Rs. 52,617-4-0 at the rate of Re. 1 per sq. ft. claimed in addition to the agreed rate. After deducting a sum of Rs. 6,720, which had already been received by the plaintiff under terms of the award, the plaintiff was due Rs. 45,897-4-0 as the

balance of the principal and further a sum of Rs. 413-1-0 as interest at 6 pper cent per annum. Thus the total claim comes to Rs. 46,310-5-0 but the plaintiff having given up his claim for Rs. 310-5-0 has sued for the recovery of Rs. 46,000 only."

The defendant denied the plaintiff's claim, and averred that after the plaintiff had supplied some windows the Superintending Engineer asked for the supply of panelled windows and on this the plaintiff requested to be paid Rs. 2-12-0 instead of Re. 1-12-0 per sq. ft. Though the plaintiff did not at first agree to be paid at the rate of Re. 1-12-0 per square foot but later on consented to receiving the remuneration at the old rate previously agreed upon, and on 28th March, 1949, executed and signed the agreement and, therefore, the plaintiff-company was bound by the terms embodied therein. The plaintiff filed a replication reiterating what had been pleaded in the plaint. The pleadings between the parties gave rise to the following issues:—

(1) What was the rate at which the plaintiff agreed to work, after the change of design ?

(2) If no arrangement is proved at what rate the plaintiff is entitled to claim for the work done ?

(3) To how much money is the plaintiff entitled for the work done ?

(4) Is the plaintiff entitled to any interest on the amount due and if so, how much and at what rate ?

After the above issues had been framed on 6th July, 1953 a further issue was framed on 22nd January, 1954 :—

(5) What is the effect of the findings of the Senior Sub-Judge in his order, dated 17th April, 1952, on this suit?

The State of Punjab
v.
The Hindustan Development Board Ltd., Amritsar

Tek Chand, J.

No finding was given by the trial Court on the last issue and no arguments have been addressed to us on this issue in appeal. This issue seems to be redundant and does not require any further reference. On the first issue the trial Court held that there was no agreement between the parties as to the rates at which the plaintiff was to be paid for the revised work. On the second issue it was held that both the plaintiff and the defendant had been guilty of over and under estimation respectively and the trial Court considered that a flat rate of Rs. 2-3-0 per sq. ft. would be a reasonable rate for all the work. At this rate the plaintiff's claim came to Rs. 23,019-13-0 and as the plaintiff had already received under the award a sum of Rs. 6,720, a decree for Rs. 16,299-13-0 with proportionate costs was awarded in favour of the plaintiff and against the defendant.

Under issue No. 1 the learned Advocate-General has argued that the rate of Re. 1-12-0 per sq ft. was the agreed rate not only for glazed windows, which the plaintiff was required to make at first, but also for the panelled windows which the Company was subsequently required to make. The oral and the documentary evidence to which our attention has been drawn by the Advocate-General and which will presently be referred to does not bear out the appellant's contention.

On 29th March, 1948 the plaintiff addressed a communication to the Superintending Engineer agreeing to supply windows at C-windows required for 500 houses at Jagadhri at the rate of Re. 1-12-0 per sq. ft. on the terms and conditions mentioned in the tender notice, dated 9th February, 1948,—*vide* Exhibit D. 1. On 30th March, 1948, the Executive Engineer sent a letter to the Company, replying that the Company's offer was accepted,—*vide* Exhibit D. 2. On

3rd May, 1948, the Superintending Engineer gave his approval to the allotment of the work by the Executive Engineer to the plaintiff-company at the rate of Re. 1-12-0 per sq. ft. The above three communications do not mention any specifications of the windows but it has not been denied by the Advocate-General that plans of the windows had been supplied to the plaintiff. Exhibit D.3 is a copy of memorandum from the Chief Engineer addressed to the Superintending Engineer dated 20th April, 1948, mentioning that 12 copies of the final design were being sent and that all plans previously supplied in this connection should be withdrawn and returned to his office with a view to ensure that there should be no mistake. Two copies of the ferros were sent to the contractors and another to the Sub-Divisional Office at Jagadhri, when the designs were changed. On 5th May, 1948, the plaintiff-company addressed a letter to the Executive Engineer (Exhibit P. 3) stating that in accordance with the order they started construction of windows according to the altered design, which was for panelled shutters whereas the previous design was for glazed shutters. The Company requested that the rate of woodwork allotted to them should be increased from Re. 1-12-0 per sq. ft. to Rs. 2-12-0 per sq. ft. The Executive Engineer asked the plaintiff-company to submit details of the comparative costs between the old and new designs of woodwork, which were furnished,—*vide* Exhibit P. 5, dated 26th May, 1948. On receiving these details the Executive Engineer addressed a communication, Exhibit P. 24, dated 30th May, 1948, to the Superintending Engineer, stating that in view of the change in the design of windows and C-windows from glazed to panelled, the plaintiff was being asked to do something which had neither been negotiated with the company nor agreed upon by it. The difference in costs in the opinion of the Executive Engineer worked

The State of Punjab
v.
The Hindustan Development Board Ltd., Amritsar

Tek Chand, J.

out approximately to Re. 1 per square foot. He recommended that the rate should be enhanced to Rs. 2-10-0 per square foot. No prompt action appears to have been taken by the Superintending Engineer on receiving this communication from his Executive Engineer. On 6th November, 1948, nearly four months after the plaintiff had demanded a higher rate, a brief communication was received from the Executive Engineer, informing the plaintiff-company, that if it had any grievances regarding the rates, the Company might, if it so desired, refer the case to the Superintending Engineer under clause 25-A of the contract for his arbitration. But the Company was advised 'to carry on with the supply like a good contractor. This would be in your interest.' This communication was tantamount to refusal on the part of the Superintending Engineer to accede to the plaintiff's demand for enhancement of rates.

On 28th March, 1949, a draft agreement, Exhibit P. 7, was prepard. It was signed on behalf of the plaintiff by Dharam Singh, but not by the Superintending Engineer. The principal reason appears to be that the Superintending Engineer objected to the following remarks given by the contractor over his signatures:—

> "As per plan shown to us while negotiating and which has been verified by us."

The Superintending Engineer in his letter, dated 28th May, 1949, Exhibit P. 36, addressed to the Executive Engineer, thought that the above remarks were objectionable and the contractor should not make such an addition without first obtaining the approval of his office. The attention of the Executive Engineer was also drawn to certain other items which required correction, but no reference to them is material for purposes of deciding the present controversy. The

draft agreement was consequently returned. It may be mentioned at this stage that the work which had been entrusted to the plaintiff-company was being continued and the new design windows as they were manufactured were being accepted by the defendant. On 21st December, 1949, th Government forfeited the plaintiff's security under the orders of the Superintending Engineer. On 15th April, 1950, the matter was referred to arbitration. The Superintending Engineer himself being the arbitrator awarded a sum of Rs. 6,720 to the plaintiff. This award was set aside by the Senior Sub-Judge, Ambala, at the instance of the plaintiff and the reference was superseded. This led to the present suit having been filed.

The parties have also led some oral evidence. Neither the documentary evidence referred to above nor any oral evidence shows that the plaintiff had agreed to work after the change of the design at the rate or Re. 1-12-0 per sq. ft. which had been originally agreed upon the glazed windows. The argument of the learned Advocate-General that the rate of Re. 1-12-0 per sq. ft. should be deemed to be the rate also for a panelled window or as a matter of that, for any typpe of window simply because there was no mention in the correspondence of any specific window, is erroneous. In this case when the contractors started work of the windows designs of glazed windows were given,—*vide* Exhibit P. 1. When the plaintiff was required to make panelled windows, then new designs of panelled type of windows were given,—*vide* Exhibit P. 2. It is the case of both parties that the plaintiff-company was originally required to make glazed windows, and it was later on, when the design was changed, and the plaintiff was asked to make panelled windows instead. When settling the rate of glazed windows it was not within the contemplation of the defendant that panelled windows would have to be

The State of Punjab
v.
The Hindustan Development Board Ltd., Amritsar

Tek Chand, J.

made and, therefore, it cannot be said that the rate of Rs. 1-12-0 per sq. ft. should also govern panelled. windows. It is of the essence of a contract that there should be an *aggregatio mentium,* the meeting of the minds of the contracting parties. In this case there was no *conseusus ad idem* as to the making charges of windows of altered design. Rates for new type of windows were not settled and there was neither any offer by the one nor acceptance by the other . No sooner the design was revised, the plaintiff demanded enhanced rates to which the Government never agreed. I, therefore, concur with the conclusion of the trial Court on the first issue.

This takes me to the second issue which relates to the determination of the rate at which the plaintiff is entitled to be paid for the work done by him and accepted by the defendant. The plaintiff has placed reliance upon the provisions of section 70 of the Indian Contract Act, which is reproduced below:—

> "70. 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."

Below the section following illustration is given in the Indian Contract Act by F. Pollock and D. F. Mulla (8th Edition):—

> (A furnishes supplies for Government service to the order of an officer who has not authority for the purpose. The supplies are in fact accepted and used. A can recover the value from the Secretary of State according to the market rates.)

This illustration is based upon a decision of Bench of Lahore High Court in *Secretary of State* v. *G. T. Sarin and Company* (1). In that case the plaintiff had entered into a contract for the supply of horses' food with the Officer Commanding the Depot of a Cavalary Regiment, but he was not one of the officers authorized by the Governor-General-in-Council to enter into contracts on behalf of the Secretary of State. The contract sued upon was *ultra vires* and, therefore, could not be enforced against the Secretary of State, but in view of the provisions of section 70, it was held, that the plaintiff having lawfully supplied grain for the horses belonging to the Secretary of State, not intending to do so gratuitously and the latter having enjoyed the benefit thereof, the former was entitled to compensation. The provisions of section 70 are based on the doctrine of *quantum meruit* of English Common Law but the rule as embodied in the Indian Contract Act admits of liberal interpretation. When a rule of English Law receives a statutory recognition by Indian Legislature it is the language of the Act which determines the scope, unifluenced by the manner in which the analogous provision is construed in English law. The language of the provisions of Indian Contract Act cannot be enlarged, or construed narrowly, or, otherwise modified, in order to bring the construction in accord with the scope and limitations of the rule governing the English doctrine,—*vide Secretary of State* v. *G. T. Sarin and Company* (1), *Chunna Mal-Ram Nath v. Mool Chand-Ram Bhagat* (2), *Damodra Mudaliar* v. *Secretary* (3), and *Ram Nagin* v. *Governor-General-in-Council* (4). It was held in the Lahore case that the amount of compensation payable to the plaintiff under section 70 must be

(1) I. L. R. 11 Lah. 375.
(2) I. L. R. 7 Pat. 221, 227 (P. C.).
(3) I. L. R. 9 Lah. 510, 518 (P. C.).
(4) A. I. R. 1952 Cal. 306.

The State of Punjab
v.
The Hindustan Development Board Ltd., Amritsar

Tek Chand, J.

assessed at the market rate prevailing on the date on which the supplies were made.

In *B. N. Railway* v. *Ruttanjit Ramji* (1), the parties had by agreement abandoned the old rates for the work which had to be done by the contractor, but had not agreed upon the new rates. The work was done by the contractor for the Railway and the Railway had accepted that work. It was held by the Privy Council that the amount, which the contractor was entitled to recover from the Railway, should be determined on the basis of fair and reasonable rates.

Before the provisions of section 70 can be successfully invoked, the plaintiff has to show firstly, that the delivery of the articles in question has been lawfully made; secondly, the person delivering the goods was not intending to do so gratuitously; and thirdly the party receiving them had enjoyed benefit thereof. All these elements co-exist in this case. The principle has been explained by Denning L. J. in *Davis Contractors* v. *Fareham U. D. C.* (2) :—

> "If in the course of carrying out a contract, a fundamentally different situation—different, that is, from anything which the parties had in contemplation—is brought about by the conduct of one of them, then even though his conduct may not be a breach of contract, he will not be allowed to take advantage of the new situation to the detriment of the other party when it would be unjust to allow him to do so."

In *Steven* v. *Bromley & Son* (3), the characters of a ship had agreed to load her with a full cargo of steel billets at a specified rate of freight. A cargo was loaded, consisting in part of general merchandise

(1) A. I. R. 1938 P. C. 67.
(2) (1955) I. Q. B. 302 (307).
(3) (1919) 2 Q. B. 722.

the current rate of freight for which was higher than the specified rate. The shipowners claimed payment for the excess at the current rate outside the charter-party. It was held that there was implied an offer by the charters, to load general merchandise, at the current rate of freight and there was an acceptance by the shipowners of that offer; and, therefore, the shipowners were entitled to freight at the current rate in respect of the general merchandise loaded. Atkin L. J. illustrated this principle in these words:—

> "If I order from a wine merchant twelve bottles of whiskey at so much a bottle and he sends me ten bottles of whiskey and two of brandy and I accept them, I must pay a reasonable price for the brandy. That is the position here."

Story in this Treatise on the Law of Contracts, Vol. I, page 11, para 18 has illustrated the doctrine of *quantum meruit* in the following words:—

> "Yet if the special contract be wholly abandoned, or its terms be caried by the mutual consent of the parties, the law implies a new promise. Thus, if work additional to that contemplated in the original contract be done at the request of the party benefited by it, he will be liable therefor, upon an implied promise to pay for it. So, also, where either party to an express contract is injured, or the labour or expense sustained by him in doing the work is enhanced by the neglect or omission of the other, an implied promise of indemnity therefor will arise, additional to the express agreement. So, also, if entire performance, according to the express agreement, be rendered

The State of Punjab
v.
The Hindustan Development Board Ltd., Amritsar

Tek Chand, J.

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."

In a case like the present where the defendant received goods from the plaintiff, the latter is entitled to judgement for the reasonable value of the goods at the time when they were received by the defendant. A person, who does work or supplies goods under a contract, express or implied, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the materials supplied. If the work is outside the contract, the terms of the contract can have no application; and the contractor, in the absence of any new agreement is entitled to be paid a reasonable price for such work as was done by him. Of course, it is necessary in all such cases, that the extra work outside the contract has been ordered or accepted by the defendant. In this case, however, the subsequent requirement of the defendant, to supply panelled windows, instead of glazed windows, was in the nature of a novation; and the defendant was bound in law to compensate the plaintiff for the panelled windows, the obligation to supply which was *de hors* the original undertaking. In such a case, the plaintiff can claim a fair and reasonable price for the work done, or the goods supplied on the basis of *quantum meruit* that is, so much as is deserved or merited. Here the original contract had been superseded by a new undertaking; and the new work was not complementary to the work originally contemplated, but outside its scope. The defendant cannot avoid payment of the extra cost involved in the new type of the work which was required to be done. In this connection the oft quoted dictum of Lord Cairns in

Thorn v. *Mayor and Commonalty of London* (1), may be reproduced with advantage:—

> "If it is the kind of additional or varied work contemplated by the contract he must be paid for it, and will be paid for it according to the prices regulated by the contract. If, on the other hand, it was additional or varied work, so peculiar, so unexpected, and so different from what any person reckoned or calculated upon, that it is not within the contract at all; then, it appears to me, one of two courses might have been open to him, he might have said: I entirely refuse to go on with the contract, *non haec in foedra veni*: I never intended to construct this work upon this new and unexpected footing, or, he might have said, I will go on with this, but this is not the kind of extra work contemplated by the contract and if I do it, I must be paid a *quantum meruit* for it."

There is a traditional division between contracts which are express and those which are implied. The contracts, the terms of which, are stated by the parties, fall in the first category. When the terms are not so stated contracts are said to be implied. Both types of these contracts assume mutual assent of the contracting parties. Though the mutual agreement and understanding between the parties in an implied contract is not expressed in words, there is nevertheless a consensus, regarding its terms and conditions. In order to avoid confusing implied contracts with quasi-contracts, the former are more specifically called "implied contracts in fact," and the latter "implied contracts in law". The conduct of the parties may

(1) L. R. (1876) Appeal Cases 120 (127).

The State of Punjab
v.
The Hindustan Development Board Ltd., Amritsar

Tek Chand, J.

be viewed as professing their mutual assent. An inference in favour of an "implied contract in fact", is raised when intendment of the parties can fairly be inferred from their unspoken conduct or from the pertinent circumstances. *Quasi-contracts* are not strictly speaking, contracts at all, because there is no meeting of the minds *aggregatio mentium*. In the absence of any mutual consent or intendment the relationship cannot be styled as contractual despite certain obligations of a contractual character imposed by law. *Quasi-contracts* or constructive contracts, as they are sometimes called, are contracts implied in law, but not in fact. They are contracts only in the sense that redress is given by contractual remedies. The promise is purely fictitious and has no existence in reality. The liability is imposed by law and is independent of any mutual accord of the parties. In the case of a *quasi-contract* intention of the parties is not of the essence of the transaction. In the case of actual contracts it can be said that the contract defines the duty, while in the case of *quasi-contracts,* the duty defines the contract. In the case of a *quasi-contract* the agreement is a mere fiction imposed, in order to adapt cases to a given remedy. In the case of an implied contract the implication is of the fact based upon the parties' intention. In the case of a *quasi-contract* the Courts do not take notice of parties' intention, sometimes they act even in disregard of their known intention. In such cases the liability exists, independent of the agreement, and rests upon the equitable doctrine of unjust enrichment. *Quasi-contract* gives rise to the situation where an obligation or duty is cast upon the parties by law, but not by the terms of the contract to which they had given their assent. If services are rendered which are neither gratuitous nor forbidden by law, the party at fault will be required by law to disgorge the benefit. In the case of *quasi-contracts* law imposes an obligation in utter disregard of the parties' intention. Such a relationship

does not depend upon a promise or privity. The obligation stems, not from parties' consent, express or ascertainable, but rests upon the immutable law of natural justice and equity.

It may very often happen that one party is incapable of giving consent due to immaturity of mind or because of infancy or lunacy. Whenever necessaries are supplied to a person, suffering from such a disability, the law implies an obligation on his part to pay for it. In a case where the claim arose for the price of necessaries supplied to a lady of unsound mind, Cotton L. J. in *Rhodes* v. (1), said:—

> "Now the term'imlied contract' is a most unfortunate expression, because there cannot be a contract by a lunatic. But whenever necessaries are supplied to a person who by reason of disability cannot himself contract, the law implies an obligation on the part of such person to pay for such necessaries out of his own property. It is asked, can there be an implied contract by a person who cannot himself contract in express terms? The answer is, that what the law implies on the part of such a person is an obligation, which has been improperly termed a contract, to repay money spent in supplying necessaries. I think that the expression 'implied contract' is erroneous and very unfortunate."

Section 73 of the Indian Contract Act contemplates a remedy, where there has been a breach of contract; and section 70 imposes a similar obligation on a party resting on a basis, which is equitable rather than contractual. In either case the plaintiff is entitled to be compensated, the measure being a just and

(1) L. R. 44 Ch. D. 1890 P. 105.

The State of Punjab
v.
The Hindustan Development Board Ltd., Amritsar

Tek Chand, J.

reasonable remuneration for the labour expended, work done or the goods supplied.

In determining a compensation payable to the plaintiff the trial Court has followed a rule of thumb, the method being practical, without the basis being scientific. Having regard to the facts on the record of this case the position of a Judge who is called upon to determine the amount is not free from difficulty. The evidence of the respective parties is divergent in the extreme, and taken separately, does not permit of ready acceptance of one or the other version. The basis of determination of the costs, furnished by either pary, is unsatisfactory and open to criticism. Whereas the plaintiff has disproportionately magnified his claim, the defendant has unduly minimised it. After having carefully considered the respective points of view, we are not in a position to accept the one or the other. We, therefore, thought it proper to get the rates determined through an independent expert. The parties to whom we put our difficulties agreed to this suggestion. Mr. D. V. Sahni, Executive Engineer, was called by us and we have asked him to calculate the costs per sq. ft. of making panelled windows according to the terms agreed to between the parties, and at the prevailing rates in 1948, when the goods were supplied by the plaintiff and accepted by the defendant. He has also been given an opportunity to study Exhibit P.34, P. W. 1/1 and P. W. 3/1, the respective estimates furnished by the respective contestants and also to look at the two models of windows Exhibit P. 1 and P. 2. He has submitted his report which has been marked C. W. 1/1 and has also prepared analysis of rates for different types of windows both glazed and panelled. These analyses have been placed on the record and are marked Exhibits C. W. 1/2 to C. W. 1/12. Mr. Sahni has been examined in Court as Court witness; and the counsel

for the parties have availed of the opportunity to cross-examine him. According to the analysis prepared by him the rate of panelled windows comes to Rs. 1-12-4 per sq. ft. He has allowed 20 per cent on account of wastage and 10 per cent on account of profits to the contractor. He has not permitted profit on the materials supplied by the department as that is not the practice. Mr. Sahni has taken considerable pains and has given a detailed report which is intelligible and reliable. Mr. F. C. Mital appearing on behalf of the contractor has criticized the report on the ground that the information furnished by C. W. 1 is based upon his personal knowledge and is not based on any Government rules, instructions or manual. This witness has been in the Buildings and Roads Branch of the P. W. D. since 1952 and is presumed to know the rates for different types of work given to the contractors. His statement and report have left a very favourable impression about the reliability of his testimony. It was urged before us by Mr. F. C. Mital that glazed window of the type WT-1 (Exhibit P. 1) $6\frac{3}{4}' \times 4\frac{1}{2}'$ was substituted by a panelled window of the type WT-1 (Exhibit P. 2) $6' \times 4\frac{1}{2}'$, Mr. Sahni has stated that the difference in rate would be Re. 0-3-2. In other words the rate the rate of Rs. 1-9-7 per sq. ft. of glazed window. The design of glazed window of type WT-2 (Exhibit P. 1) $4'\text{-}2'' \times 4\frac{1}{2}'$ was also replaced by a panelled window of for a pannelled window would be Rs. 1-12-9 as against $4' \times 4\frac{1}{2}'$. The rate of the glazed window WT-2 has been calculated at the rate of Re. 1-9-8 per sq. ft. as against the rate of panelled window $4' \times 4\frac{1}{2}'$ at the rate of Rs. 1-12-4. The cost of panelled window therefore comes to Annas 0-2-8 per sq. ft. in excess of the glazed type. According to this calculation therefore, the cost of panelled window of the type WT-1 is Rs. 1-12-9 and of the other type i.e. $4' \times 4\frac{1}{2}'$ is Rs. 1-12-4 per sq. ft. It is not possible for us to entertain

The State of Punjab
v.
The Hindustan Development Board Ltd., Amritsar

Tek Chand, J.

the argument of Mr. F. C. Mital that his client is entitled to be paid at the flat rate of Rs. 2-10-0 per sq. ft. because that was the rate which had been recommended to the Superintending Engineer by Mr. Chopra, the Executive Engineer, as per letter (Exhibit P. 24), dated 30th May, 1948. That is obviously an inflated-rate, for the acceptance of which, there is no reasonable basis at all. His recommendation to the Superintending Engineer was not accepted by the latter. Again, there does not appear to be any rational basis for the rate of Rs. 2-3-0 per sq. ft. which the trial Court considered to be reasonable. In our view the plaintiff deserves to be allowed a higher rate of profit; and the rate of profit, at 10 per cent suggested by the Government and also by Shri Sahni appears in the circumstances of this case to be disproportionately low. It has also to be considered, that the contract was originally given to another contractor and he failed to execute it at the rate of Rs. 1-12-0 per sq. ft. for glazed window and gave it up. It was then that the plaintiff was given the contract and he agreed to supply glazed windows at the same rate. After a certain quantity of glazed windows measuring 2,000 cubic feet had been supplied by the plaintiff the Government changed th design and directed him to supply panelled windows of different dimensions instead. The plaintiff immediately demanded higher rate of Rs. 2-12-0 per sq. ft. for the altered design,—*vide* Exhibit P. 3, dated 5th May, 1948. He was asked to give analysis of the comparative cost between the old and new design of wood work on 26th May, 1948,—*vide* Exhibit P. 5. On 30th May, 1948, the Executive Engineer by his letter Exhibit P. 24 recommended to the Superintending Engineer the rate of Rs. 2-10-0 per sq. ft. No reply was given to the plaintiff though he was desired by the Executive Engineer to carry on with the supply like a good contractor. He was also told in the same letter dated

6th September, 1948 (Exhibit P. 6) that if he had any grievance regarding the rates he should refer the case to the Superintending Engineer under clause 25-A. The supply of panelled windows was completed by the plaintiff in March, 1948. The grievance of the plaintiff is, that he was required to supply the new design windows, under an assurance that he would receive a higher rate, and he did not stop to supply which he would have done, if it had been made clear to him, that he would not be paid at a higher rate and that the old rate fixed for glazed windows would be deemed to be the rate for panelled windows also. It would have been appropriate if the Government had informed him, with reasonable promptitude, of its intention, not to enhance the rates for the altered design of wood work. This was not done and the plaintiff has a just grievance on this score. Under the circumstances we are of the view that the rate payable to the plaintiff for the new type of work deserves to be increased and he should get a higher margin of profit. We, therefore, consider that a flat rate of Rs. 1-15-6 per sq. ft. should be a reasonable compensation. At this rate the plaintiff is entitled to be paid a sum of Rs. 11,509-14-6 in all. Allowing a deduction of Rs. 6,720 already received by the plaintiff under the award the balance comes to Rs 4,789-14-6 for which amount the plaintiff's suit is decreed with proportionate costs. The appeal of the Punjab State is allowed to the extent that the decretal amount payable to the plaintiff is reduced from Rs. 16,299-13-0 to Rs. 4,789-14-6.

On behalf of the plaitiff cross-objections under Order 41, rule 22 had been filed claiming that his rate should be increased from Rs. 2-3-0 to Rs. 2-12-0 per sq. ft. These cross-objections fail and are dismissed.

SHAMSHER BAHADUR, J.—I agree.

R. S.