IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)
ORIGINAL SIDE

Present:
The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

AD-COM 02 of 2026

Pulinat Ettan Thomas

Vs.

Finorchem Limited

For the appellant	:	Mr. Aniruddha Mitra, Sr. Adv. Mr. Sayan Banerjee, Adv.
For the respondent	:	Mr. P. P. Bishwal, Adv. Ms. Swastikaa Ray, Adv.
Hearing concluded on	:	30.06.2026
Judgment on	:	16.07.2026

Md. Shabbar Rashidi, J.:-

1. The appeal at the behest of defendant in the suit is directed against the judgment dated August 1, 2025 and consequential decree dated November 17, 2025 passed in CS-COM No. 175 of 2024.

2. By the impugned judgment and decree, the learned Trial Judge decreed the suit and directed the defendant to pay a sum of ₹55,47,422/- along with interest calculated at the rate of 8% per annum payable from the date of institution of the suit. At the same time, the counter claim preferred by the defendant was dismissed by the impugned judgment and decree. The learned Single Judge disposed of the suit being CS-COM No. 175 of 2024 in the following terms:

> *"It is ordered, therefore, that the Defendant shall pay the principal sum adjudged of Rs.55, 47,422/- to the Plaintiff with interest at a rate of 8% per annum from the date of institution of the suit. The decretal amount shall be paid within three months from the date of decree in case of failure of which the Defendant shall be liable to pay additional interest of 2% per annum from the expiry of the three months on the principal sum adjudged till repayment. After expiry of the said period of three months, the Plaintiff shall be at liberty to draw up execution proceeding to enforce the decree in case of non-payment.*
>
> *The counter-claim stands dismissed.*
>
> *The suit is disposed of.*
>
> *Let the decree be drawn up."*

3. Learned senior advocate for the appellant submitted that the learned Trial Judge committed error in holding that the agreement dated August 2, 2019 constituted a contingent contract in terms of the provision of Sections 31 and 32 of the Indian

Contract Act, 1872 (for short, 'the Act of 1872') insofar as the contract did not stipulate any uncertain future event. It was further submitted that the learned Single Judge failed to appreciate that the final agreement executed between the parties did not specify the number or the names of the experts and, therefore, no enforceable contingency could have been read in the contract. The learned Single Judge also failed to take into account that the list of experts as provided in the agreement dated August 2, 2019 was provided by the appellant to the respondent.

4. Learned senior advocate for the appellant also contended that the learned Single Judge erred in taking into consideration the terms and conditions of a draft agreement as the final agreement which was contrary to Clause 12 of the agreement entered into between the parties. Such clause was in supersession of all previous drafts, negotiations and understandings between the parties.

5. Learned senior advocate for the appellant also submitted that the learned Single Judge was not justified in holding that 'seven' experts were contemplated under the agreement which is not supported by any document whatsoever. The learned Trial Judge also erred in construing the provisions of Sections 31 and 32 of the Act of 1872 inasmuch as the joining of experts was neither an uncertain event nor collateral to the contract between the parties. The learned Trial Judge was not justified in holding that the contract became unenforceable due to failure of the event of contingency in absence of the proof of impossibility.

6. Learned senior advocate for the appellant also submitted that the learned Single Judge did not appreciate that the evidence adduced at the trial as PW 1 was not reliable. PW 1 admittedly had no knowledge of the post-agreement events, discussions and services rendered by the appellant. At the same time, learned senior advocate for the appellant submitted that the learned Single Judge ought to have drawn adverse inference against the plaintiff/respondent for not examining its Managing Director which amounted to withholding the vital evidence. Moreover, the testimony of PW 1 was self-contradictory.

7. Learned senior advocate for the appellant also submitted that the learned Trial Judge failed to appreciate the testimony of PW 1 which established rendering of services and visits to manufacturing units as well as the business development efforts taken by the appellant. The documentary evidence in the form of WhatsApp communications, emails and tax invoices, which supported the testimony of DW 1, was not considered by the learned Trial Court. In support of such contention, learned senior advocate relied upon ***(2016) 12 Supreme Court Cases 288 (Muddasani Venkata Narsaiah Vs. Muddasani Sarojana)***.

8. It was further contended by the learned senior advocate for the appellant that the learned Trial Judge was not justified in holding that the appellant's appointment had never commenced. The learned Single Judge overlooked the admitted payment, deduction of TDS and issuance of tax invoices which established the continuous engagement of the appellant by the respondent. The learned Trial Judge also was not justified in holding that there was no binding contract between the appellant and the respondent inspite of the fact that the conduct of the parties established that the parties were *ad idem* in respect of the existence of a contractual relationship.

9. It was further contended by learned senior advocate for the appellant that there was clear evidence that the appellant rendered services and benefits which were availed by the respondent. Such fact was not considered by learned Trial Judge. The learned Trial Judge negated the claim of the appellant by misapplying the provision of Section 72 of the Act of 1872.

10. Learned senior advocate for the appellant also submitted that the learned Trial Judge wrongly dismissed the counter claim put forth by the appellant, though, the respondent/plaintiff chose not to submit any additional written statement. It was also submitted by learned senior advocate for the appellant that the appellant was entitled for severance, fees and remuneration in terms of the provisions of Clause 14 and Clause 17 of the agreement which were overlooked by the learned Trial Judge.

11. Learned senior advocate for the appellant also submitted that the learned Trial Judge committed error in considering the clause relating to 'simultaneous joining' as a condition precedent and on such basis, the appointment of the appellant was held to be void and inoperative for non-joining of the other experts. It was submitted that the learned Trial Judge erred in not considering that the respondent, having availed professional services of the appellant for several months was estopped from contending that the contract never commenced or was not enforced. The respondent accepted the services of the appellant nevertheless denied the existence of any contractual relationship with the appellant. Moreover, the learned Single Judge did not consider that in a contingent agreement, performance commenced with the consent of the parties which amounted to waiver of the contingency.

12. Learned senior advocate for the appellant also submitted that there was no agreement between the appellant and the respondent to recommend a fix number of experts. Whereas the learned Single Judge erroneously held the contract unenforceable on the ground that all the 'seven' experts were not recommend by the appellant. In fact, the learned Single Judge did not appreciate that the appellant recommend more than 'seven' experts to the respondent. By limiting the number of the recommendations to be made by the appellant, the learned Single Judge erred in considering the true purport of the agreement which amounted to re-writing of the agreement. It was also submitted that admittedly 'four' experts had already joined to the plaintiff concerned. The learned Single Judge failed to consider the joining of the 'four' experts as part performance of the agreement. Learned senior advocate for the appellant submits that such part performance coupled with rendering services by the appellant gave rise to a claim on the basis of '*quantum meruit*', which was not considered by the learned Single Judge. The learned Single Judge did not consider the provisions contained under Section 70 of the Act of 1872. In support of such proposition, learned senior advocate for the appellant relied upon the authority of ***(2007) 13 Supreme Court Cases 544 (Food Corporation of India and Others Vs. Vikas Majdoor Kamdar Sahkari Mandli Limited)***.

13. Learned senior advocate for the appellant also submitted that the learned Single Judge failed to appreciate that the services and expertise rendered by the appellant were accepted by the respondent, nevertheless, the learned Single Judge directed the appellant to refund all the monies paid in advance to the appellant. The learned senior advocate for the appellant also submitted that the claim of interest on such money was not supported by any contractual or statutory provision and also without proof of the actual damages suffered by the respondent rather; the same was awarded in the form of penalty.

14. On the other hand, learned advocate for the respondent submitted that the respondent had hired the services of the appellant as part of a team of experts of business consultant in the Rubber Chemical field. It was agreed between them that the seven experts would be joined in the assignment simultaneously and that the contract of engagement of each member of the team of expert would kick start with the joining of all the seven experts. Since all the seven experts did not join, the contract of employment of the appellant with the respondent company never commenced.

15. According to learned advocate for the respondent, the agreement between the appellant and respondent was in the form of a contingent contract dependent upon happening of a future event which did not happen. Therefore, the alleged agreement between the parties cannot be enforced in view of the provisions of Section 31 and 32 of Indian Contract Act, 1872.

16. Learned advocate for the respondent further submitted that at the time of agreement, the respondent/plaintiff, at the request of the appellant, had made an advance payment of a sum of ₹ 50,47,422/- to the appellant. Since, the contract of engagement of the appellant with the respondent company did not commence for non-joining of the remaining members of the team of experts, the appellant is liable to refund the advance. At the same time, learned advocate for the respondent also submitted that for the self-same reasons, the appellant is not entitled to the monthly remuneration fixed in the agreement dated August 2, 2019.

17. Learned advocate for the respondent also submitted that since the agreement between the appellant and the respondent was yet to be commenced, the appellant has not rendered any service to the respondent company. The respondent has not utilized any services from the appellant. As such, the appellant is not entitled to any remuneration in terms of the alleged agreement. He stood by the impugned judgment and decree and submitted that the same is liable to be affirmed.

18. The plaintiff company negotiated with the defendant to join its concern as business consultant. An agreement in this regard was executed between the two parties on August 2, 2019. According to the case made out in the plaint, the defendant represented himself to be an expert in rubber chemical field. He further represented that he was in a team of such experts in rubber chemical field. Plaintiff/respondent required a team of experts from rubber chemical field. It was agreed between the defendant and the plaintiff company that the defendant and his seven associates namely, Dr. Jaybalan Lakhmanan, Mr. Thomas Valera, Mr. Yashwant VA, Mr. Praveen Patil, Mr. Manoj Choudhury, Mr. Mukesh Singh and Mr. Mathew would join simultaneously. The plaintiff company was not interested in appointing the appellant/defendant alone. The plaintiff had specifically given out that in case all the seven experts or any of them does not join, the respondent would search for another team. Accordingly, the respondent issued a letter to the defendant on August 2, 2019. At the request of the appellant/defendant, the respondent/plaintiff also made an advance payment of ₹ 50,47,422/-. According to the case of the respondent/plaintiff, the appointment letter issued in favour of appellant, clearly stipulated that the appointment of the appellant would commence when the defendant and other experts join simultaneously.

19. However, the plaintiff company could appoint only four of the named experts namely Mr. Praveen Patil, Mr. Manoj Choudhury, Mr. Mukesh Singh and Mr. Mathew. According to the case of the respondent made out in the plaint, the agreement did not come into effect as the other three experts Dr. Jaybalan Lakhmanan, Mr. Thomas Valera, Mr. Yashwant VA did not join.

20. On such pretext, the respondent/plaintiff came up with the suit being CS-COM No. 175 of 2024 seeking a declaration that the appointment of the appellant in the respondent company had not commenced. The respondent also sought refund of the advance sum of ₹50,47,422/- together with interest, since the contract between the parties had failed.

21. The suit was contested by the defendant/appellant by filing written statement coupled with a counter claim. The defendant denied all the material allegations made in the plaint. It was the positive case of the defendant that the defendant was approached by the plaintiff company with a proposal to work as a business consultant in the capacity of 'Chairman Emeritus'. The defendant agreed to such proposal. Consequently, a letter of appointment was issued in his favour on August 2, 2019 which contained the terms and conditions of the appointment.

22. It was further case of the appellant the parties also agreed that the respondent would appoint some experts in the field of Rubber Chemical and requested the appellant to recommend such experts who would be finally appointed by the respondent after due negotiations. The appellant actually, recommended some experts. Out of his recommendation, four experts were appointed by the respondent/plaintiff in August 2019. The appellant submitted that other persons recommended by him were not under his authority that they could be forced to join the plaintiff company. It was further case of the appellant, in his written statement that his appointment with the plaintiff was completely independent and had no nexus with the joining of other experts recommended by him. Since his joining in the plaintiff company, the appellant/defendant discharged his job responsibilities in strict compliance of the terms of job profile enumerated in his letter of appointment.

23. According to the case made out by the appellant/defendant, it was agreed that the appellant would be paid a sum of ₹1,50,00,000/- upfront on his joining in the respondent company. Out of such agreed amount, the respondent paid a sum of ₹50,00,000/- at the time of his joining. The respondent did not pay the remaining amount of ₹1,00,00,000/- inspite of repeated demands. However, the appellant came out with a case that the respondent company never denied its liability to pay the balance amount. Besides the upfront payment, it was also agreed that the appellant would be paid a sum of ₹15,00,000 a month as consultancy fee together with travelling, food and lodging expenses on actuals. However, despite raising such bills, the respondent did not reimburse a sum of ₹58,770.47/- towards such expenses. The respondent company also did not pay the agreed consultancy fees for the months of August, September, October and November, 2019 although, the appellant rendered extensive services. The respondent company utilized the services so rendered.

24. It was the further case of the appellant/defendant that by an email message dated September 7, 2019, the respondent was informed that in terms of the discussions the experts namely Dr. Balan, Mr. Thomas Valera and Mr. Yashavant were to join the Plaintiff/Company with the Defendant but they did not join. Following such email, the respondent also served a letter dated November 23, 2019 upon the appellant intimating him that Defendant's appointment in the plaintiff company had not commenced as it was agreed to commence upon the joining of other experts. By the said letter, the plaintiff also sought refund of ₹55,00,000/-.

25. By filing the written statement, the appellant/defendant denied all the allegations made in the plaint. The defendant also took out a counter claim which was noted by learned Trial Judge. It would be apposite to reproduce the heads of counter claim made by the appellant in his written statement that is to say:

"i) Balance payment payable on appointment	₹1,00,00,000/-
ii) Fees for the month of August, 2019	₹17,70,000/-
iii) Fees for the month of September, 2019	₹17,70,000/-
iv) Fees for the month of October, 2019	₹17,70,000/-
v) Fees for the month of November, 2019	₹17,70,000/-
vi) Reimbursement of expenses for travel, food and lodging	₹58,770/-
vii) Severance fee as per Clause 14 of the agreement dated 02/08/2019	₹50,00,000/-
viii) Interest at a rate of 18% p.a.	₹59,77468/-
Total	₹2,81,16,238/-"

26. On the basis of rival pleadings put in by the parties, the learned Trial Judge, framed as many as 12 issues for proper adjudication of the disputes which are,

1. "*Is the suit maintainable in its present form?*
2. *Are the claims and the counter-claim barred by the laws of limitation?*

3. *Is the Plaintiff right in alleging that the Defendant's appointment did not take effect as all the seven experts did not join the Plaintiff along with the Defendant?*
4. *Whether the appointment of the Defendant was dependent upon all the seven other experts joining the Plaintiff Company?*
5. *Whether the Plaintiff is entitled to its claim for refund of Rs.55,47,422/- or any part thereof?*
6. *Whether the Defendant is entitled to fees and expenses as agreed upon as per the Terms of Engagement dated 2nd August, 2019?*
7. *Whether the Defendant is entitled to the sum of Rs.2,81, 16, 238/- as claimed?*
8. *Whether the Defendant is entitled to any compensation for the valuable knowledge imparted to the Plaintiff?*
9. *What other reliefs the parties are entitled to?*
10. *Whether the appointment of the Defendant as a business consultant in the Plaintiff did not fructify in view of the fact that the experts did not join the Plaintiff?*
11. *Whether the Defendant is entitled to the reliefs claimed in the written statement and the counter-claim?*
12. *Whether the reliefs claimed in the written statement and the counter-claim are barred by limitation?"*

27. It was noted in the impugned judgment and decree that the parties did not press and argue issue nos. 1, 2 and 12 at the time of hearing of the suit. The learned Trial Judge also held that the suit as well as the counter claim was presented within the time of limitation. Consequently, the learned Trial Court decided the issues in favour of the plaintiff/respondent. The aforesaid issued were not raised during the hearing of instant appeal as well. In such view of the facts, we find no reason to interfere with the findings of the learned Trial Judge in respect of these issues.

28. Issue nos. 3, 4 and 10 namely, were taken up together by the learned Trial Judge. Evidence on record goes to demonstrate that the plaintiff company and the defendant were in a negotiation regarding appointment of the defendant. According to the case made out in the plaint, the defendant had agreed to join the plaintiff company as a business consultant along with seven other experts on certain terms and conditions. One of the conditions was that the appointment of the defendant was agreed to commence with the joining of defendant and other seven experts simultaneously. Per contra, the defendant came up with a case that he agreed to recommend certain other experts in the Rubber Chemical field who were to be appointed by the plaintiff company after due negotiations. According to defendant's case, he actually recommended some names of such experts, out of which, four persons joined the plaintiff company.

29. A case was made out by the defendant that under the agreement, he was obliged to recommend the names of some experts in the field of Rubber Chemical and that there was no stipulation in the agreement to recommend specific persons or specified number of such experts. Therefore, the appointment of the defendant was independent of such recommendation and commenced when appointment letter was served upon him.

30. The learned Trial Judge decided issue nos. 3, 4 and 10 in favour of the plaintiffs to the following terms, that is to say:

> *"Clause 1 of the agreement is very clear and conspicuous. This Clause stated that appointment of the Defendant would commence on simultaneous joining of other experts from rubber chemicals field. From forgoing discussions, it is clear and established that seven experts were to be appointed based on recommendation of the Defendant and approval of the Plaintiff. The Defendant accepted this term as pre-condition for his appointment. Subsequently, a plea was taken that their appointment dependent on their own will and approval of the Plaintiff but the Defendant agreed to the terms and bound himself with its terms and conditions as stipulated in Clause 1. Once it is accepted and agreed upon that the Defendant's appointment was dependent of simultaneous joining of other experts, he is bound by such term; there was no exit rout from that. It is admitted that seven experts were not appointed or did join. The case of the Defendant was that four of them joined. It is not established that the Defendant recommended the names of all the seven experts. Therefore,*

obviously and very clearly, in the absence of joining all the seven other experts the Defendant's appointment did not take place. It is not a case that their appointment became subsequently impossible. No such plea is there. Therefore, it is safe conclusion, in view of discussions made above, that there was a contingent contract between the parties dated 02/08/2019. Since the contingency failed, no formation of contract took place and the contract became unenforceable under Section 32 of the Contract Act, 1872.

It is inevitable conclusion, therefore, that there was no binding and enforceable agreement or contract between the parties.

Issue No.3, 4 and 10 are decided in favour of the Plaintiff."

29. While deciding these issues, the learned Trial Court held that the agreement between the plaintiff company and the defendant was a contingent contract depending upon the joining of the other seven experts. The learned Trial Judge, although held in reference to Exhibit D, that the agreement was not explicit in relation to the number or specific names of experts but referring to Exhibit B, it observed that the draft agreement, which ultimately culminated into final agreement (Exhibit D) had a reference of specific names of experts who were to join the plaintiff company concurrently with defendant to kick start the appointment of defendant. Besides that, in answer to question No. 16, the defendant (DW1) stated that basically he had suggested seven names to the plaintiff company but it was his request not to include his suggestions in the agreement.

30. Clause 1 of Exhibit D i.e. agreement dated August 2, 2019 stipulated that the appointment of the Defendant in the Plaintiff/Company as the business consultant would commence on joining simultaneously with joining of other experts from rubber chemicals field. It also provided that the experts would be selected and recruited based on recommendation of the Defendant and approval of the Plaintiff. However, referring to the evidence of DW1, the learned Trial Court observed that DW1, in his deposition, when his attention was drawn to Exhibit B, admitted that he had recommended the name of seven experts. He had further stated in his deposition that basically he had suggested seven people to be inducted but told Mr. Holani not make it a part of the agreement. Learned Trial Court also noted that DW 1 reiterated in his cross-examination at question no. 122 that in the draft document Mr. Holani and himself had mentioned seven experts but on suggestion of the Defendant those names were not incorporated in the final agreement because their joining was subject to the personal decisions and subject to the approval of the Plaintiff. Such evidence by the defendant himself together with various Clauses of the agreement dated August 2, 2019 (Exhibit D) clearly indicates the intention of the parties that the parties had agreed on simultaneous appointment of defendant and seven experts named in Exhibit B and that the appointment of defendant was to commence upon joining of all such experts. In view of the evidence so discussed hereinabove, we find no reason to fault the findings of learned Trial Judge.

31. Issue nos. 5, 6, 7, 8, 9 & 11 with regard to refund of the advance money paid by the plaintiff to the defendant as well as counter claim raised by the defendant were decided by learned Trial Judge together. The plaintiff claimed that a sum of ₹55,47,422/- was paid to the defendant in pursuance of an agreement dated August 2, 2019 (Exhibit D). Such money was paid as advance, in anticipation of an enforceable contract. However, the contract became unenforceable on account of non-happening of contingency contemplated in the agreement. Since the agreement failed, the defendant is liable to refund such advance payment.

32. On the contrary, it was the case of the defendant that his appointment in the plaintiff company was not dependent upon the simultaneous joining of other seven experts. He received the amount under the agreement and had been discharging his obligations as business consultant from the very time when he received his appointment letter. The agreement entered into between the defendant and the plaintiff company was in force after its execution. Therefore, he is not liable to refund the money received under the contract. Besides that, the defendant also made out a case that since after his appointment in terms of appointment letter dated August 2, 2019, the defendant has been diligently rendering services to the plaintiff company as a business consultant. The plaintiff company has also utilized his services in such capacity without any demur. Therefore, the plaintiff is obliged to pay the defendant the monthly consultation fee as agreed in the agreement. The plaintiff also did not pay the agreed travelling expenses as well as lodging and boarding expenditure incurred by the defendant in discharge of his obligations under the contract. The defendant, on such heads, made a counter claim to the tune of ₹2,81,16,238/- as against the plaintiff company.

33. The learned Trial Court decided Issue nos. 5, 6, 7, 8, 9 & 11 to the following terms:

> *"It is the case of the Defendant that the agreement came into being and he took money on the strength of the agreement. The case of the Plaintiff, on the other hand, is that the money was nothing but advance payment. As decided above, the executory contract could not be performed and stood unenforceable in view of failure of the contingency on which the agreement dependent. The Defendant cannot be allowed to retain the money so received from the Plaintiff for his unjust enrichment. Money*

was paid on expectation of fulfillment of the contingency. The contingency did not happen. Therefore, the Defendant is liable to refund money taken under an unenforceable contract. This is based on the principal "Nul ne doit senrichir aux depens des autres"—No one ought to enrich himself at the expense of others. This doctrine at this stage of English common law was remedied by indebitatus assumpsit which action lay for money had and received to the use of the Plaintiff. In Mahabir Kishore & Ors. Vs. State of Madhya Pradesh [(1989) 4 SCC 1], the Supreme Court India observed that it lay to recover money paid under a mistake, or extorted from the Plaintiff by duress of his goods, or paid to the Defendant on a consideration which totally failed. In Mafatlal Industries Ltd. Vs. Union of India [(1997) 5 SCC 536], the principal so laid down was considered by the Nine Judges Bench of the Supreme Court of India with reference to this case. The principal laid down in Mahabir Kishore's case was reiterated that the principal of unjust enrichment requires – first that the Defendant has been enriched by the received of a benefit; that this enrichment is an expense of the Plaintiff and thirdly that retention of the enrichment is unjust. This justifies restitution. Money can be refunded under provision of section 72 of the Indian Contract Act, 1872, which itself embodies the principle of equity (see Mafatlal Industries Ltd. Vs. Union of India [(1997) 5 SCC 536]). Similarly, the Defendant cannot rely upon an unenforceable contract to vindicate his right to demand any money as claimed here. In absence of any executed and enforceable contract, the Defendant cannot claim money as prayed for in the counter-claim."

For reasons stated above, this Court is of opinion that Plaintiff's case succeeds and the Plaintiff is entitled to recover the money from the Defendant and the Defendant is liable to pay the amount to the Plaintiff with interest. This is also conclusion of this Court that the Defendant has not right to claim any money as prayed for.

In nutshell, the plaint case succeeds and the counter-claim fails.

These issues are decided in favour of the Plaintiff."

34. On the basis of evidence led at the trial, we have held hereinbefore, that since the defendant did not join simultaneously with the other seven experts, agreed in the negotiations between the parties, the contract of employment of the defendant did not commence. Although, the defendant has made out a case that the appointment of the other experts was not within his control and contractual obligation, but, materials on record establishes that the defendant/appellant expressively accepted such condition. He cannot now turn around to say that the other experts were not under his control. Apparently, the money was advanced to the defendant in relation to engagement of the defendant and other experts in the plaintiff company. Since, such engagement was not started; the defendant has had no right to retain such money advanced to him which was dependent upon the terms of his engagement. He is liable to refund the same to the plaintiff.

35. So far as the counter claim of the defendant is concerned, the defendant has claimed a sum of ₹2,81,16,238/- as counter claim. This amount includes ₹1,00,00,000/- towards the balance of upfront amount of ₹1,50,00,000/- which was agreed to be paid upon joining of the defendant in the plaintiff company in terms of Para I of the letter dated August 2, 2019 (Exhibit D) which reads, thus:

> *"Your appointment with ML as a business consultant will commence on your joining ML simultaneously with joining of other experts from the rubber chemicals field. The aforesaid experts will be selected and recruited based on your recommendation and our approval thereof. These experts will be absorbed in ML for the smooth running of the business and those experts will be absorbed as consultants or on permanent employment in the payroll of ML at not less than their current emoluments. Your appointment as above shall be valid from the date of joining of all aforesaid experts and shall be in force for a period of 5 (Five) years unless terminated/separated earlier by either side subject to the terms and conditions mentioned herein below."*

36. At the same time, as per the letter dated August 2, 2019 (Exhibit D), the defendant was entitled to various remuneration and incentives detailed in Para 17 of such letter. It would be appropriate to set out paragraph 17, which is as follows:

> *"17. (A) Against compliances/provision of services mentioned in Para 16 above, you will be entitled to receive*

i. Fixed amount of ₹.1.80 crores (₹. 1 crore 80 lakhs only) per annum, which will be payable to you on monthly basis at the end of every month in equal instalments of ₹ 15 lakhs (₹ Fifteen lakhs only) per month,

ii. ₹. 150 lakhs (rupees one crore Fifty lakhs only) after your appointment as referred to in paragraph 1 hereinabove.

iii. Loyalty Bonus of ₹ 1 50 lakhs (Rupees One Crore Fifty Lakh only) on completion of rendering of your services person to the sacrament for and an interrupted period of 2 years (Two Years) from the date of your appointment as referred to in para 1 hereinabove.

iv. Special Loyalty Bonus of ₹ 200 lakhs (Rupees Two Crore only) on completion of rendering of your services person to the sacrament for and an interrupted period of 4 years (Four Years) from the date of your appointment as referred to in Para one hereinabove.

v. While on official tour, he will be entitled for travelling, food & lodging as per actual incurred in terms of policy of ML in this regard.

(B) In case ML gets opportunity to use and utilise manufacturing facilities at Marchem India Private Limited by virtue of outright purchase on mutually amicable terms and condition, you will be entitled to receive such additional sum as may be decided to mutually between you and ML after ML gets the said opportunity."

37. As noted above, the appointment of appellant/defendant did not start in terms of the condition envisaged at Para 1 of the agreement, the defendant was not entitled to retain the sum of

₹55,47,422/-paid in advance towards the payment contemplated in Para 17 (A)(ii) of the agreement dated August 2, 2019. The defendant is liable to refund such amount. We therefore, affirm the findings of learned Trial Court, in so far as refund of advance money is concerned. Applying the same analogy of non-starter of the employment, the claim of defendant towards severance fee in terms of clause 14 of the agreement dated August 2, 2019 cannot be allowed.

38. So far as payment under the condition envisaged at Para 17 (A)(i)of the agreement is concerned, the defendant was to receive a remuneration of ₹15,00,000 a month on account of consultation fee. According to the case of the plaintiff company, since the appointment of the defendant did not kick start, the defendant was not entitled for such payment. On the other hand, the defendant claims that upon his engagement in the plaintiff company in terms of an appointment letter issued in his favour, the defendant has been rendering diligent services to the plaintiff. He travelled extensively under directions of the plaintiff company and provided his expertise for smooth functioning of the plaintiff company in accordance with the terms and conditions of his engagement. The plaintiff company never raised any objection rather, utilized such services without any demur and therefore, the defendant is entitled to the monthly consultation fees for the months of August, September, October and November 2019. The defendant also claimed travelling, food and lodging expenses incurred by him amounting to ₹58,770/-.

39. At the time of his cross examination, the answer to question numbers 27 and 28 by the defendant (DW1) shows that the defendant was neither aware of the location of the office of Plaintiff Company nor he visited such office. As regards the claim of the plaintiff that he rendered services to the Plaintiff Company, answer to question no. 32, DW1 stated that he had been interacting with Mr. Holani, the Managing Director of the company on almost daily basis and that too, at the direction of Mr. Holani. He used to be in discussions with unit heads at Panoli, Gujrat and Cochin, Kerala and suggested various measures to be undertaken for commissioning the plants in Panoli and Cochin. He also personally visited Panoli Plant and called joint meeting in presence of Mr. Holani. All other team members including the General Manager and unit head participated in the discussions, exchanged information and several documents required for commissioning the unit.

40. DW1 further stated in such deposition that in Cochin Plant also he held several meetings. The General Manager and Mr. Holani visited his office in Cochin a couple of times to obtain appropriate directions to proceed with the commissioning of the plant. DW1 also travelled to Mumbai to assist Mr. Holani in taking interview of certain other persons who were discussed by the defendant and the plaintiff Company. DW1 also stated in his deposition that he used to send his bills through electronic mail and WhatsApp messages.

41. However, we find from the materials on record, specially the deposition of DW1 that the plaintiff has not cross examined DW1 as to his claim regarding holding of meetings and providing expert support for commissioning of the Panoli and Cochin plants of the plaintiff company in presence of Mr. Holani and others. There is absolutely no cross examination of DW1 that as to his statement that he undertook travel to Mumbai to assist Mr. Holani in the recruitment interview. Moreover, the witness examined on behalf of the plaintiff company (PW1) was not conversant with and had no personal knowledge about the facts of the case.

42. In ***Muddasani Venkata Narsaiah*** (supra), it was observed by the Hon'ble Supreme Court that,

> *"15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non-cross-examination is that the*

statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.

16. In Maroti Bansi Teli v. Radhabai, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in A.E.G. Carapiet v. A.Y. Derderian has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely technical one. A Division Bench of the Nagpur High Court in Kuwarlal Amritlal v. Rekhlal Koduram has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in Karnidan Sarda v. Sailaja Kanta Mitra has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is

> *to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff."*

43. In the facts of the case, if the claim of the defendant/appellant with regard to rendering services and plaintiff company accepting and utilizing such services, is not challenged by the respondent/plaintiff by filing written statement or by cross examination of the concerned witness, Section 70 of the Indian Contract Act, 1872 is immediately pressed into service. The Hon'ble Supreme Court, in the case of ***Food Corporation of India*** (supra) laid down that,

> *"19. The principle of quantum meruit is often applied where for some technical reason a contract is held to be invalid. Under such circumstances an implied contract is assumed, by which the person for whom the work is to be done contracts to pay reasonably for the work done, to the person who does the work. The provisions of this section are based on the doctrine of quantum meruit, but the provisions of the Contract Act admit of a more liberal interpretation; the principle of the section being wider than the principle of quantum meruit. The principle has no application where there is a specific agreement in operation. 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."*

44. Therefore, in view of the ratio laid down by the Hon'ble Supreme Court in ***Food Corporation of India*** (supra), we are of the opinion that although, the contract of employment of the defendant did not commence but the defendant did render services to the plaintiff company and such services were not gratuitous. Therefore, the defendant is entitled to the remuneration for the services rendered. As such we do hold that the defendant is entitled for the remuneration at the agreed rate of ₹15,00,000/- a month, in terms of Exhibit D, for the months from August, 2019 to November 2019 totaling to ₹60,00,000/-

45. The respondent paid a sum of ₹55,00,000/- to the appellant as part payment including ₹5,00,000/- towards Tax Deducted at Source (TDS), as evident from Exhibit E and Exhibit G. The appellant would therefore be entitled to ₹5,00,000/- towards remuneration after adjusting the sum of ₹55,00,000/- which he already received towards the receivable ₹60,00,000/-. Therefore, there will be a decree for ₹5,00,000/- in favour of the appellant and as against the respondent. Appellant will be entitled to recover the sum of ₹5,00,000/- from the respondent. There will be decree for interest at the rate of 8% per annum from the sum of ₹5,00,000/- from December 1, 2019 till realization.

46. Interest at the rate of 8% per annum is awarded in view of the nature of transactions between the parties.

47. Moreover, the defendant has also claimed for the travelling, food and lodging expenses incurred by him for his travel to and stay at Mumbai. However, such expenses are not substantiated by any documentary evidence led at the trial. Exhibit G is the document which shows payment of ₹47,422/- towards reimbursement of travelling, food and lodging expenses incurred by the defendant for his visit to Calcutta. But the claim for visit at Mumbai has not been substantiated by any such document. For such reason, we are not in a position to allow such claim of the defendant as against the plaintiff.

48. AD-COM 2 of 2026 is disposed of accordingly. Connected application(s), if any, shall also stand disposed of.

49. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

50. I agree.

[DEBANGSU BASAK, J.]