

NEED, NECESSITY AND IMPORTANCE OF EXTENSION OF TIME CLAUSE

BY

P.C.MARKANDA,
F.I.E., LL.B.
Advocate,
94, Sector 16-A, Chandigarh
Member, Governing Body,
Indian Council of Arbitration

INTRODUCTION

The period during which the contract remains valid is a matter of agreement and if the period originally set for the completion of the work comes to an end, nothing short of agreement of the parties can extend the subsistence and validity of the contract. When the period fixed for the completion of the contract is about to expire, the question of grant of extension of time for completion of the work can be considered by the competent authority at the instance of either party to the contract. However, the extension of time, in order to have a binding effect, must meet the agreement of the parties either expressly or impliedly. The department can also suo motu grant extension of time when the contractor does not apply for the same in order to keep the contract alive. This failure to extend the time on or before the date on which the period, whether originally fixed or extended, expires will render the authority competent to grant extension of time without any remedy for operating on the clause relating to liquidated damages.

In many cases the time fixed by the contract ceases to be applicable on account of some act or default of the employer or his architect or engineer. A provision, is generally inserted, in order to avoid such acts or default, destroying the liquidated damages clause by which the architect or engineer is empowered to grant extension of time on the happening of certain specified events, and the contractor is bound, when such an extension has been properly granted, to complete within the extended time. This has the effect of substituting for the time fixed by the contract a new time from which the liquidated damages are to run. Such a new date can only be substituted for the original time, under such a power, where the extension is given under the circumstances and on the happening of the events expressly provided by the contract.(1)

Where there is an extension of time clause, this is regarded as being inserted for the benefit of the employer, since it operates to keep alive the liquidated damages clause in the event of delay being due to an act of the employer or his agent.

The extension must in any case be made at a reasonable time before the time limited for completion of the work has expired (unless there is some power in the contract to extend the time after completion), so that the contractor may know the time within which he has to complete and arrange his work accordingly (2).

EXTENSION OF TIME CLAUSE

Each contract has its own clause relating to extension of time suitable to serve the interest of the employer. But in most of the State Public Works Departments and in the Central Public Works Department in India, the clause runs as under:

"If the contractor shall desire an extension of time for completion of the work on the grounds of his having been unavoidably hindered in its execution or any other ground, he shall apply in writing to the Engineer-in-Charge within 30 days of the date of hindrance on account of which he desires such extension as aforesaid and the Engineer-in-Charge shall, if in his opinion (which shall be final) reasonable grounds be shown therefor, authorise such extension of time if any, as may, in his opinion be necessary or proper."

An analysis of the clause afore-mentioned would lead to the following inference:-

- (i) That the option to apply for extension of time rests with the contractor since the clause starts with the expression "If the contractor shall desire an extension of time...";
- (ii) That the contractor, if he decides to seek extension of time, must apply in writing to the Engineer-in-charge requesting for extension of time so as to enable him to complete the work;
- (iii) That the application must mention the grounds which hindered the contractor in the execution of the work within the time allowed;

- (iv) That the application must be tendered within 30 days of the date when hindrance took place; and,
- (v) The Engineer-in-charge must be of the opinion that the grounds on which extension of time has been applied for are reasonable.

Since one party to the contract could not unilaterally alter or vary the terms thereof he could not extend the time for performance thereof without the other party's intimating its consent or agreement thereto by any of the methods stated in section 4 of the Contract Act. This is clear from the provisions of sections 55 and 63 of the Contract Act. (3)

The true legal position in regard to the extension of time for the performance of the contract is quite clear under section 63 of the Contract Act. It would not be open to the promisee by his unilateral act to extend the time for performance of his own accord for his own benefit.(4)

TIME FOR EXERCISE

In practice, architects and engineers often delay reaching a decision on questions of extension of time until a very late stage in the work, or even after actual completion. It remains to consider to what extent this may be permitted by the contract. It should be said at once that it has perhaps not been sufficiently appreciated by judiciaries in the past that this practice usually suits the contractor, since for the time being it averts the prospect of any imminent deduction of liquidated damages while giving the contractor more time to assemble and prepare detailed argument showing why an extension is justified, and with the additional prospect that, in the negotiations for various other claims or counter-claims which usually precede the issue of final certificate, the owner's claim for damages may be compromised or withdrawn. Whatever the contractual requirements therefore, there may frequently be present elements of waiver or estoppel which may prevent subsequent complaint as to the lateness of extension of time decision.(5)

An interesting decision is seen in the case of Hawlmac Construction Vs Campbell River Co.(6), by the Supreme Court of British Columbia. There the contract provided that the building work should be completed by a fixed date subject to extension granted by the engineer. Two months before the completion date an application was made for an extension but the engineer failed to consider the

application until the completion date. The works were completed 144 days after the original date of completion. When the contractor was sued for failure to complete in time, the Court held that the contract required the engineer to consider an application for extension of time upon receiving it and to fix the length of extension. Having failed to perform that obligation prior to the expiry of the original time for completion of the contract, there was no longer a specific date within which the contract was to be completed or from which penalties could be imposed.

Ordinarily, the proper time for allowing an extension is when the event happens on which the extension depends. If, for example, extras are ordered which delay the work, an extension of time should be made before the time when the delay is thereby caused. The effect of delay caused by such an order would be to set time at large, at any rate for the time being, and it might be permanently.(7)

A contract to build a bridge provided that, should the works not be completed on a day fixed, the contractor should pay for every day until completion the sum of £ 3 as liquidated damages. It was also provided that in the event of any extra work being required, the engineer should allow such an extension of time as he should think adequate in consequence thereof; and any sum to become payable by way of damages for non-completion should be computed from the expiration of such extended time. Extra works were ordered, but no reference at the time was made to any extended time. Some months after the time fixed by the contract for completion of the works, the engineer, in giving his certificate for a monthly progress payment, deducted for the first time penalties at £ 3 per day as for the previous month, and in subsequent certificates continued to deduct penalties as from the said period. Still later, further extra works were ordered and carried out, but no reference was made to any further extension of time. Held, even if the deduction in the certificate, of penalties from a fixed date, amounted to extension of time to that date, such extension was ineffective, and should have been allowed when the extra works were ordered.(8)

A contract provided that "it shall be lawful for the engineer...to grant from time to time and at any time or times... such extension of time for completion ... and that either prospectively or retrospectively, and to assign such other time or times for completion as to him may appear reasonable" The engineer's decision under this clause was to be final. The contractor applied in July, and in November the engineer granted extension of time till February, and certified liquidated damages as due accordingly. Held, on the construction of the contract as a whole, and having regard to the words "to assign such other time ... for completion",

the contract contemplated exercise of the power within a reasonable time for the cause of delay having ceased to operate, the exercise of the power came too late, and the liquidated damages could not be recovered by the employer.(9)

Where there is power to extend the time for delays caused by the building owner, and such delays have in fact taken place, but the power to extend the time has not been exercised, either at all or within the time expressly or impliedly limited by the contract, it follows (unless the builder has agreed to complete to time notwithstanding such delays) that the building owner has lost the benefit of the clause, as the contract time has in such case ceased to be applicable, there is no date from which penalties could run, and therefore, no liquidated damages can be recovered.(10)

It seems that where there is power to extend the time for delay caused by the building owner, and such delays have in fact taken place but the power to extend the time has not been exercised due to failure to consider the matter within the time expressly or impliedly limited by the contract, the building owner may have lost the benefit of the clause. The contract time in such case ceased to be applicable because of the employer's act of prevention, there is no date from which penalties could run because any purported extension of time given is too late, and therefore no liquidated damages could be recovered. This would seem to be yet another example of the severity with which the Courts in the past have tended to interpret extension of time clauses in case of prevention, where the clause is regarded more for the benefit of the employer than for the contractor, and if possible is held inapplicable so as to invalidate the liquidated damages clause as a whole.(11)

Where the extension clause in a contract does not cover the acts of prevention which have in fact occurred, no decision under the clause can bind the builder, or preserve the liquidated damages clause.(12)

In contracts where there is power to extend, but such power has not been exercised, and where there is no power to extend, the effect of delay caused by the employer is to set the time at large, and the builder is thus exonerated from the liability of liquidated damages, the general view of law being that the performance of a condition is excused by obstruction on the part of the obligee.
(13)

TIME CAN BE EXTENDED ONLY BY MUTUAL CONSENT

Under section 55 of the Contract Act, the promisee is given the option to avoid the contract where the promisor fails to perform the contract at the time fixed in the contract. It is open to the promisee not to exercise the option or to exercise the option at any time, but the promisee cannot by the mere fact of not exercising the option change or alter the date of performance fixed under the contract itself. Under section 63, the promisee may make certain concessions to the promisor which are advantageous to the promisor, and one of them is that he may extend the time for such performance. But such an extension of time cannot be a unilateral extension on the part of the promisee. It is only at the request of the promisor that the promisee may agree to extend the time of performance and thereby bring about an agreement for extension of time. Therefore, it is only as a result of operation of section 63 that the time for the performance of the contract can be extended and that time can only be extended by an agreement arrived at between the promisor and the promisee. The fact that the contract is not put an end does not entail the further consequence that the time for performance of the contract is automatically extended. Forbearance to sue or to give notice of rescission cannot be an extension of time for the performance of the contract within the meaning of section 63. (14)

Every promisee may extend time for performance of the contract. Both the buyer and the seller must agree to extend time for the delivery of the goods. It would not be open to the promisee by his unilateral act to extend the time for performance of his own accord for his own benefit. The agreement to extend time need not necessarily be reduced to writing. It may be proved by oral evidence. In some cases it may be proved by evidence of conduct. Forbearance on the part of the buyer to make a demand for the delivery of goods on due date as fixed in the original contract may conceivably be relevant on the question of the intention of the buyer to accept the seller's proposal to extend time. It would be difficult to lay down any hard and fast rule about the requirements of proof of such an agreement. It would naturally be a question of fact in each case to be determined in the light of evidence adduced by the parties.(15)

Where the proposal to extend time for the performance of the contract was subject to two conditions, unless both the conditions were agreed upon between the parties there would be no valid or binding extension of time. The mere fact that the second condition introduced was vague and uncertain, it does not follow that the said condition was intended to be the addition of a meaningless surplusage.(16)

Since one party to the contract could not unilaterally alter or vary the terms thereof, he could not extend the time for performance thereof without the other party's intimating its consent or agreement thereto by any of the methods stated in section 4 of the Contract Act.(17)

A contractor entered into a works contract with the Government for the construction of a bridge within a specified time but could not complete the same within the said time. He applied for extension of time. Under the terms of the contract, the chief engineer had the authority to extend the time but instead the executive engineer granted extension of time. It was held that the executive engineer's act of extending the time was not legal.(18)

ENGINEER MUST GRANT EXTENSION WITHIN REASONABLE TIME

An obligation to complete within reasonable time arises either because the contract is silent as to time, or because the specified time ceased to be applicable. Where the law implies that the contract shall be performed within a reasonable time, it has invariably been held to mean that the party upon whom it is incumbent duly fulfills his obligations, notwithstanding protracted delay, so long as such delay is attributable to causes beyond his control and he has neither acted negligently nor unreasonably.(19)

Where a contract is to be performed within a reasonable time, the reasonableness should be measured, not by the particular existing staff and appliances of the contractor's business, but by the time by which a reasonable diligent manufacturer of the same class as the contractor would take to carry out the contract.(20)

Before a reasonable time can be assessed, it is necessary that certain questions require to be answered. Firstly, the parties may or may not have contracted with the particular resources and capacity of the particular builder in mind. Thus an employer may have deliberately chosen a small local or jobbing builder with limited resources of capital, plant and labour to build his house, in the hope of getting a cheaper or better job sacrificing speedy completion. On the other hand, a builder with limited resources might tender for a larger contract in competition with more substantial contractors, and give no indication of his inability to carry out the work as rapidly. In the former case, the test might well be subjective, and in the latter objective.(21)

What is a reasonable time is a question of fact depending upon the circumstances of each case. This is a question of fact and must depend on all the circumstances which might be expected to affect the progress of the works. If a builder is prevented from performing his contract by the building owner, so that the contract time ceases to be applicable, and the builder comes under an obligation to complete the work in a reasonable time, the reasonableness must be gauged by the ability of the builder to perform the work in the circumstances affecting him at the time when a reasonable time was substituted for the time stipulated for in the contract, as for instance, orders for which he had already in hand(24), or the builder's ability to procure customary appliances.(22) Another test is the time which a reasonably diligent manufacturer of the same class would take. This is a question for the Court to consider and is to be determined by a consideration of all the circumstances of the case, the nature of the contract, the character of the work to be done, and every thing which, according to the ordinary course of dealing, would affect the progress of the work.(23)

Equity will not assist where there has been undue delay on the part of one party to contract, and the other party has given him notice that he must complete within a reasonable time. In order to make time of the essence of the contract by notice, it should be proved that there was undue delay in the performance of the contract and the notice must give a reasonable time fixing a definite time. It is, therefore, an established principle of law that when time is not the essence of the contract but it has ceased to be so, a party can, by giving notice to the other party, make time as the essence of the contract by fixing reasonable time within which the other party must perform his part of the contract.(24)

In considering whether the time so limited is a reasonable time the Court will consider all the circumstances of the case. No doubt what remains to be done at the date of notice is of importance, but it is by no means the only relevant fact. The fact that the purchaser has continually been pressing for completion, or has given before similar notices which he has waived or that it is specially important to him to obtain early completion, are equally relevant facts.(25)

In cases where a stipulation making time of the essence has been waived, time may be made of the essence, where there is unreasonable delay, by a notice by a party who is not in default fixing reasonable time for completion stating that, in the event of non-completion within the time so fixed, he intends to enforce or abandon the contract. But the time fixed must be reasonable having regard to the position of the things at the time when the notice is given, and to all the circumstances of the case.(26)

It is clearly desirable that when possible an extension of time should be granted to a date in the future so that the contractor can plan his work accordingly and where delay is caused by the employer an extension can in general only be granted to a future date; but where the delay is not caused by the employer and an extension is for the benefit of the contractor, the position is different.(27)

EMPLOYER CANNOT GRANT EXTENSION WHEN AT FAULT

Where by a building contract certain matters causing delay, e.g., strikes and `other causes beyond the control of the contractor' were to be submitted to a board of directors of the building owners, who were to `adjudicate thereon and make due allowance therefor, if necessary, and their decision' was to be final, it was held that the exclusive jurisdiction of the board did not extend to delay caused by interference by the building owners or their architect with the conduct of the works, by default in not giving the contractor possession of the premises, and in not providing plans and drawings in due time. (28)

Power to extend the time for completion in the event only of strikes or other causes beyond the control of the contractor would not authorise an extension of time for delay in giving to the contractor possession of the site (29) and in such a case the contract time would have ceased to be applicable because there may be no power to fix another date for delay from such a cause, and, therefore, there would be no date for completion or from which liquidated damages could run. (30)

A contractor was delayed and failed to complete in time a contract partly because of his fault and partly because the employer was late in the delivery of certain fixtures in the building. The employer sued the contractor under the liquidated damages clause for a per diem payment of each day's work over due. Held, the failure of the employer to deliver precluded him from relying on the penalty clause, notwithstanding that the contractor would have been over-due in any event, in the absence of the evidence that the contract could not have been completed in time by a special effort on the part of the contractor. (31)

TIME BEING ESSENCE OF CONTRACT - MEANING OF

Where it is alleged that time is of the essence of the contract, it is meant that the particular time mentioned for completion is the predominant constituent

element of the contract without which it would not be what it is, and such that if the time be allowed to pass without the contract being completed, it is fair and reasonable to consider that the promisor has definitely or finally refused or rendered it impossible to carry on the contract.(32)

TIME WHETHER ESSENCE OF CONTRACT

Under both the Contract Act and the Sale of Goods Act, there is no legal presumption that time is of the essence of the contract. Whether or not time should be regarded as an essential condition of the contract is purely a question of intention of the parties to be gathered from the terms of the contract and the surrounding circumstances of the case. (33)

Even where the parties have expressly provided that time is of the essence of the contract such provision shall have to be read along with the other provisions of the contract and such other provisions may, on the construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental, for instance, if the contract were to include clauses providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of the contract. (34)

Where in a contract between a State Government and a contractor for construction of an aqueduct across a river within the stipulated period of 12 months, power was conferred on the executive engineer to grant extension of time for completion of work on reasonable grounds and further provision was made for levying and recovering penalty/compensation from the contractor at specified rates for unfinished work after the expiry of the fixed date, such provision would exclude the inference that time was intended to be of the essence of the contract. The rescission of such a contract on the part of the State Government without fixing any further period making time the essence and directing the contractor to complete work within such period, was clearly illegal and wrongful and thereby the State Government committed a breach of the contract with the result that the security deposit of the contractor could not be forfeited. (35)

Where a tender to supply bricks for the construction of a road during the season of a year is offered by a contractor and is accepted by the Government and the

agreement is validly executed, then in a suit for damages brought by the contractor against the Government, the question to be considered is, not whether the contract has been extended for the next season also, but whether under the terms of the contract it came to an end after the efflux of time, or it was otherwise terminated with the mutual consent of the parties. The answer to the first question will depend on the true construction of the terms of the agreement whether time was of the essence of the contract so as to be avoided by proper notice after the expiry of the time limit. (36)

Where railway administration entered into contracts with the plaintiff for supply of foodgrains to the railway, needed for the consumption of railway staff, during war period when foodgrains were becoming scarce and prices were rising abnormally, and it appeared that the parties intended, that not only the entire quantity should be delivered within the stipulated period but also the supply should commence immediately. (37)

The question if time was of the essence of the contract should be decided with reference to how the parties to it intended and the same had to be ascertained from the terms and conditions and not by substituting a guess as to what they might have intended in the circumstances. (38)

HOW TO MAKE TIME ESSENCE OF CONTRACT

Where time has not been made of the essence of the contract or, by reason of waiver, the time fixed has ceased to be applicable, the employer by notice may fix a reasonable time for completion of the work and dismiss the contractor on a failure to complete by the date so fixed.(39)

In cases where the stipulation making time of the essence has been waived, time may be made of the essence, where there is unreasonable delay, by a notice from the party who is not in default fixing reasonable time for completion stating that, in the event of the non-completion of the work within the time so fixed, he intends to enforce or abandon the contract. But the time fixed must be reasonable having regard to the position of things at the time when the notice is given, and to all the circumstances of the case.(40)

If time is not of essence originally, it can be made of essence subsequently by serving notice on other party.(41) Time will be of the essence of the contract if it is

so provided in the contract or if one of the parties after unreasonable delay on the part of the other gives a reasonable notice to the other party making time of the essence of the contract. If none of the two has happened, reasonable time will be deemed to be the time which will be of the essence of the contract.(42)

REASONABLE TIME NECESSARY TO MAKE TIME OF ESSENCE

Time can be made the essence of the contract by subsequent notice given by any one of the parties to the contract even though section 55 of the Contract Act does not provide for such notice. It is of course necessary that if notice wants time to be made essence of the contract, it must expressly or by necessary implication say so. Any such notice ought to fix a reasonably long time requiring the other side to perform his part of the contract. The question whether the time prescribed in the notice is or is not of the essence of the contract would naturally depend upon the facts and circumstances of each case.(43)

In cases where time is not originally of the essence of the contract, or where a stipulation makes time of the essence has been waived, time may be made of the essence, where there is unreasonable delay, by a notice from the party who is not in default fixing a reasonable time for performance and stating that in the event of non-performance within the time so fixed, he intends to treat the contract as broken.(44)

The reasonableness of time is determined by the Court with reference not merely to what remains to be done at the date of the notice, but all circumstances of the case, including the previous delay of the party in default and attitude of the other side in relation to it. (45)

Where time is not of essence of contract it can be made so by notice and whether time allowed by such notice is reasonable or not are all questions of fact answerable from the circumstances of each cases.(46)

EXTENSION OF TIME IS A SUBSTITUTE FOR ORIGINAL TIME

Where the Government permitted the contractor to complete the work beyond specified period, Government had not lost right to claim compensation under contract because of non-completion of work within specified time. Liability of the contractor to pay compensation would arise only after expiry of extended time and

not from expiry of time originally fixed because after extension of time original contract fixing limit for completion of work must be deemed to have been modified by consent. (47)

Simple extension of time without any thing more amounts only to a waiver to the extent of substituting such extended time for the original time and does not destroy the essential character of the time.(48)

Since one party to the contract could not unilaterally alter or vary the terms thereof he could not extend the time thereof without the other party's intimating its consent or agreement thereto by any of the methods stated in section 4 of the Contract Act. This is clear from a plain reading of sections 55 and 63 of the Act.(49)

In many cases, the time fixed in the contract ceases to be applicable on account of some act or default of the employer or his architect or engineer. A provision, therefore, is generally inserted in order to avoid such acts or defaults destroying the right to liquidated damages, by which the architect or engineer is empowered to grant extension of time on the happening of certain specified events, and the contractor is bound, when such an extension is properly granted to complete within the extended time. This has the effect of substituting the time fixed by the contract a new date from which the liquidated damages have to run. Such a new date can only be substituted for the original time, under such a power, where the extension of time is given under the circumstances and on the happening of the events expressly provided by the contract. (50)

COMPENSATION WHETHER ADMISSIBLE WHEN TIME EXTENDED

Where the cause of delay is due to breach of contract by the employer, and there is also an applicable power to extend time, the exercise of that power will not, in the absence of the clearest possible language, deprive the contractor of his right to claim damages.(51)

A contract provided by clause 11 that non-delivery of the site, delay in giving written orders to commence, or delivery of plans, drawings, section, "or any other delay from whatever cause alleged against the council or its officials" should not vitiate the contract or entitle the contractor to any allowance in respect of money, time or otherwise than such extension of time as might be given. The extension of time clause included, among other things, delays due to extras

ordered by the council. Held, obiter, by DU PARCQ J., clause 11 did not include delay due to extras, or interference by other contractors of the employer.(52)

It is provided that it shall be lawful for the architect to grant extension of time, but it is neither said that the Architect must give it... nor that the contractor must accept whatever extension of time the architect is pleased to give, in full satisfaction of his claim for damages.(53)

REFERENCES

1. Wells Vs Army & Navy Co-op Society Ltd., (1902)86 L.T. 764
2. Halsbury's Laws of England, 2nd Ed., Vol. 3, p. 281
3. Venkateswara Minerals Vs Jagalkishore Ciranjital, AIR 1986 Kant 14: ILR 1986 Kant 1523 (DB)
4. Keshavlal Lallubhai Patel Vs Lalbhai Trikumlal Mills Ltd., AIR 1958 SC 512: 1958 SCJ 866
5. Hudson's Building and Engineering Contracts, 11th Ed., Vol. 2, para 10.078, pp. 1182-83
6. 13 CILL 57
7. Anderson Vs Tuapeka County Council, (1900)19 N.Z.L.R. 1; Murdoch Vs Lockie, (1986)15 N.Z.L.R. 296; Dodd Vs Churton, [1897]1 QB 562 C.A.
8. Anderson Vs Tuapeka County Council, supra
9. Miller Vs London County Council, (1934)50 T.L.R. 479
10. Hudson's Building and Engineering Contracts, 11th Ed., Vol. 2, para 10.080, p. 1184
11. ibid, 10th Ed., p. 664
12. Murdoch Vs Luckie, supra
13. Russell Vs Sa Da Bandeira (Viscount), (1862)13 C.B. (N.S.) 149; Westwood Vs Secretary of State for India in Council, (1863)7 L.T. 736; Dodd Vs Churton, supra
14. Anandram Mangtaram Vs Bholaram Tanumal, AIR 1946 Bom 1: 47 BLR 719 (DB)
15. Kesharlal Lallubhai Patel Vs Lalbhai Trikhumlal Mills Ltd., AIR 1958 SC 512
16. ibid
17. Venkateswara Minerals Vs Jugalkishore Chiranjital, AIR 1986 Kant 14: ILR (1985)Kant 2992 (DB)
18. Gannon Dunkerley & Co. Ltd. Vs State of U.P., AIR 1981 NOC 129 (All) (DB)

19. Hick Vs Raymond and Reid, (1893) A.C. 22
20. Hydraulic Engineering Co. Vs McHaffie, (1878)4 Q.B.D. 670
21. Attwood Vs Emery, (1856)1 C.B. (N.S.) 110
22. ibid
23. Lyle Shipping Co. Vs Cardiff Cor., (1900)2 Q.B. 638
24. Hudson's Building Contracts, 7th Ed., 353
25. Stickney Vs Keeble, [1915] A.C. 386: 84 L.J. Ch. 259: 112 L.T. 664
26. Dominion of India Vs Raj Bahadur Seth Bhikraj Jaipuria, AIR 1957 Pat 586: ILR 36 Pat 633 (DB)
27. Amalgamated Building Contracts Ltd. Vs Waltham Holy Cross, U.D.C., [1952]2 All ER 452
28. Wells Vs Army and Navy Co-operative Society Ltd., (1902)86 LT 764
29. Dodd Vs Charton, [1897]1 QB 562, CA
30. Wells Vs Army and Navy Co-operative Society Ltd., supra
31. Perini Pacific Vs Greater Vancouver Sewerage and Drainage District, (1965)57 DLR (2d) 307 (British Columbia, CA)
32. Doulatram Valabdas Vs Alibhai Ibrahimji, AIR 1916 Sind 71: 33 IC 668
33. Dominion of India Vs Raj Bahadur Seth Bhikraj Jaipuria, AIR 1957 Pat 586: ILR 36 Pat 633 (DB); Beni Sah Turaha Vs Sew Sah Turaha, AIR 1949 Cal 661
34. Halsbury's Laws of England, 4th Ed., Vol. 4, para 1179; Lamprell Vs Billericay Union, (1849)3 Exch. 383; Webb Vs Hughes, (1870)10 Eq. 281; Charles Rickards Ltd. Vs Oppenheim, (1950)1 K.B. 616
35. Hind Construction Contractors Vs State of Maharashtra, AIR 1979 SC 720: (1979)2 SCC 70; Shambulal Pannalal Vs Secretary of State, AIR 1940 Sind 1: 144 Ind Cas 785 (DB)
36. Hindustan Construction Co. Vs State of Bihar, AIR 1963 Pat 254 (DB)
37. Dominion of India Vs Raj Bahadur Seth Bhikraj Jaipuria, AIR 1957 Pat 586: ILR 36 Pat 633 (DB)
38. Venkateswara Minerals Vs Jugalkishore Chiranjitlal, AIR 1986 Kant 14: ILR (1985)Kant 2992: (1985)2 Kant LJ 319 (DB)
39. Halsbury's Laws of England, 4th Ed., Vol. 4, para 1179
40. Dominion of India Vs Raj Bahadur Seth Bhikraj Jaipuria, AIR 1957 Pat 657: ILR 36 Pat 633 (DB)
41. Gomathinayagam Pillai Vs Palaniswami Nadar, AIR 1967 SC 868: (1967)1 SCR 227; Stickney Vs Keeble, 1915 AC 386: 112 LT 664: 84 LJ Ch 259; Mangal Ram Namasudra Vs Premananda Namasudra, AIR 1972 A&N 8: (1972) Assam LR 17

42. Sat Prakash L. Tara Chand Vs Dr. Bodhraj L. Bhagwan Das, AIR 1958 Punj 111: 60 PLR 97 (DB); Bal Saroop Daulat Ram Vs Lakhbir Singh Kirpal Singh, AIR 1964 Punj 375 (DB)
43. Tandra Venkata Subrahmanayam Vs Vegesana Vishwanadharaju, AIR 1968 AP 190
44. Halsbury's Laws of England, 4th Ed., para 485
45. Mahdeo Prasad Agarwalla Vs Narain Chandra Chakrabarty, AIR 1920 Cal 651: 30 CLJ 224 (DB)
46. Karandas Purshotamdas VS Gopaldas Trikamji, AIR 1924 Bom 282: 25 BLR 1144 (DB)
47. Gannon Dunkerley & Co. Ltd. Vs State of U.P., AIR 1981 NOC 129 (All) (DB)
48. Kamal Krishna Kundu Chowdhury Vs Chatoorbhuj Dassa, AIR 1925 Cal 324: 78 IC 962 (DB)
49. Venkateswar Minerals Vs Jugal Kishore Chiranjitlal, AIR 1986 Kant 14: ILR(1985) Kant 2992
50. Wells Vs Army and Navy Co-operative Society Ltd., (1902)86 LT 764
51. Hudson's Building and Engineering Contracts, 11th Ed., Vol. 2, para 10.091, p. 1191; Metro Electric Co. Vs Delhi Development Authority, AIR 1980 Del 266 (DB); Rawla Engineering Co. Vs Union of India, ILR (1982)1 Del 44; State of Karnataka Vs R.N. Shetty and Co., AIR 1991 Kant 96 (DB)
52. Miller Vs London City Council, (1934)50 T.L.R. 479
53. Robert Vs Bury Commissioners, (1870) L.R. 5 C.P. 310