

APHC010246952025



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3572]

WEDNESDAY, THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

CIVIL REVISION PETITION NOS: 1209 and 1210 of 2025

C.R.P.No.1209 of 2025

Between:

1.ISGEC HEAVY ENGINEERING LIMITED, HAVING ITS
REGISTERED OFFICE AT RADAUR ROAD, YAMUNA
NAGAR, HARYANA - 135 001, REPRESENTED BY ITS
AVP LEGAL, MR.VIVEK SEHGAL, S/O V.K.SEHGAL,
AGED ABOUT 49 YEARS, R/O NOIDA, UTTAR PRADESH.

...PETITIONER

AND

1.M/S FE ENGINEERING, Kowal House, Near Railway Station,
Kanhangad, Kasragod District, Kerala-671 315 Represented
by its Managing Partner, Mr.Jyothish Kowal

...RESPONDENT

Counsel for the Petitioner:

1.M R K CHAKRAVARTHY

Counsel for the Respondent:

1.D S SIVADARSHAN

C.R.P.No.1210 of 2025

Between:

1.ISGEC HEAVY ENGINEERING LIMITED, HAVING ITS
REGISTERED OFFICE AT RADAUR ROAD, YAMUNA

NAGAR, HARYANA - 135 001, REPRESENTED BY ITS
AVP LEGAL, MR.VIVEK SEHGAL, S/O V.K.SEHGAL,
AGED ABOUT 49 YEARS, R/O NOIDA, UTTAR PRADESH.

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AND

1.M/S FE ENGINEERING, Kovval House, Near Railway
Station, Kanhangad, Kasragod District, Kerala-671 315
Represented by its Managing Partner, Mr.Jyothish Kovval

...RESPONDENT

Counsel for the Petitioner:

1.M R K CHAKRAVARTHY

Counsel for the Respondent:

1.D S SIVADARSHAN

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI
CIVIL REVISION PETITION NOS: 1209 and 1210 of 2025

COMMON JUDGMENT: *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri MRK Chakravarthy, learned counsel for the petitioner/defendant and Sri D.S.Sivadarshan, learned counsel for the respondent/plaintiff in both the Civil Revision Petitions filed under Article 227 of the Constitution of India. Both the CRPs are being decided simultaneously vide this common judgment.

2. The petitioner is the defendant in C.O.S.No.3 of 2022 pending in the Court of Special Court for Trial and Disposal of Commercial Disputes at Vijayawada (for short 'Special Court'). The same was filed by the respondent/plaintiff for the following prayers:-

"Prayer: *For the stated above, it is humbly prayed that this Hon'ble Court, may be pleased to pass a Judgement and Decree in favour of the Plaintiff and against the defendant:*

A. *to pay the Plaintiff a sum of Rs.57,34,825/- towards non-payment of Approved R.A. Bills along with interest @ 18% accrued between 20.07.2018 and 27.12.2021 which amounts to Rs.35,57,790/-;*

B. *to pay the Plaintiff a sum of Rs.25,82,397/- towards non-release of retention money along with interest @ 18% accrued between 01.04.2019 and 27.12.2021 which amounts to Rs.12,77,331/-;*

C. *to pay the Plaintiff a sum of Rs.32,00,000/- towards claim for partially completed work which were unpaid at the time of fore closure along with interest @ 18% accrued between 20.07.2018 and 27.12.2021 which amounts to Rs.19,85,227/-;*

D. *to pay the Plaintiff a sum of Rs.64,09,860/- towards the claim of idling of men and machinery along with interest @ 18%*

accrued between 20.07.2018 and 27.12.2021 which amounts to Rs.39,76,571/-;

E. to pay the Plaintiff a sum of Rs.1,32,300/- towards the claim for unpaid crane rent along with interest @ 18% accrued between 20.07.2018 and 27.12.2021 which amounts to Rs.82,076/-;

F. to pay the Plaintiff a sum of Rs.1,93,200/- towards the claim for non-payment for reworks along with interest @ 18% accrued between 20.07.2018 and 27.12.2021 which amounts to Rs.1,19,858/-;

G. to pay the Plaintiff a sum of Rs.35,30,444/- towards loss due to non-handover of tools and tackle along with interest @ 18% accrued between 20.07.2018 and 27.12.2021 which amounts to Rs.21,90,229/-;

H. DIRECT the Defendant to pay the Plaintiff a sum of Rs.36,03,575/- towards loss of profits for the work not handed over along with interest @ 18% accrued between 20.07.2018 and 27.12.2021 which amounts to Rs.22,35,589/-;

I. DIRECT the Defendant to pay the Plaintiff a sum of Rs.84,70,980/- towards loss of overheads and profits;

J. DIRECT the Defendant to pay the Plaintiff a sum of Rs.1,00,00,000/- towards loss of business opportunity due to delay in project completion;

K. DIRECT the Defendant to pay the Plaintiff a sum of Rs.50,00,000/- towards the claim for breach of agreement;

L. DIRECT the Defendant to pay the Plaintiff pendent lite and future interest at the rate of 18% per annum on a sum of Rs.6,42,82,261/- (Rupees Six Crores Forty-Two Lakhs Eighty-Two Thousand Two Hundred and Sixty-Two Only) till the date of actual payment;

M. DIRECT the Defendant to pay the Plaintiff the costs of this suit; and

N. GRANT such other reliefs as this Hon'ble Court may deem fit to grant in the facts and circumstances of this case."

CRP No.1209 of 2025:-

3. The respondent/plaintiff, vide memo dated 28.03.2025, filed Certificate of Registration of Firm at the stage of cross examination of P.W.1. Learned Special Judge, by order dated 15.04.2025

passed in GL333 dated 28.03.2025 in COS, allowed the same and took that document on record. Challenging the said order, Civil Revision Petition No.1209 of 2025 has been filed.

4. The challenge is on the ground that the said document could not be permitted to be taken on record by the learned Court as the same was filed by way of memo, whereas there is a specific procedure under Order XI Rules 4 and 5 CPC as amended, in its' application to the commercial Court, and consequently in the absence of an appropriate application and steps taken to bring on record with the leave of the court, in terms of the statutory provisions, the document i.e., Certificate of Registration of the Firm, could not be permitted by the learned Special Judge.

5. Learned counsel for the respondent/plaintiff submits that the plaintiff is ready to file the same document by following the procedure along with an appropriate application before the learned Special Judge and with that liberty to the respondent/plaintiff the present CRP may be considered and decided.

6. Learned counsel for the respondent/plaintiff has no objection to the aforesaid submission for grant of liberty but submits that the impugned order cannot be sustained which deserves to be set aside.

7. In view of the submissions made by the learned counsel for the respondent/plaintiff and the learned counsel for the petitioner/defendant as aforesaid, and recording the same, we are of the view that once procedure has been prescribed, the applicant has to follow the procedure. There is no such procedure to bring on record the document by filing memo. Consequently, the impugned order passed on memo cannot be sustained.

8. The respondent/plaintiff, shall, however be, at liberty to file an appropriate application following the procedure, upon which appropriate orders would be passed in accordance with law by the learned Special Court.

9. This CRP No.1209 of 2025 is allowed. The impugned order is set aside on the aforesaid ground alone but with the liberty granted to the respondent/plaintiff to take appropriate steps as per the law by following the procedure as requested.

10. While considering the fresh appropriate application if so filed by the respondent/plaintiff, the fact that the impugned order has been set aside in the present CRP will not come in the way of passing order by the learned Special Judge in accordance with law on the merits of any such application.

C.R.P.No.1210 of 2025:-

11. The respondent/plaintiff filed I.A.No.157 of 2024 under Order XI, Rule 1(5) of CPC, as amended and applicable to the Commercial Court , for permission to receive the document listed in I.A.No.157 of 2024.

12. The listed document was the report of an expert privately engaged by respondent/plaintiff, dated 26.08.2024.

13. The petitioner/defendant filed objections in I.A.No.157/2024.

14. Learned Special Judge framed point for consideration as to “Whether the plea of petitioner/defendant can be considered as prayed for to receive the documents?”

15. The learned Special Judge, on consideration, came to the conclusion that the report was finalized only on 26.08.2024, which was subsequent to filing of the suit and consequently it could not be said that the said document was in power, possession and control of the respondent/plaintiff at the time of institution of the suit.

16. Learned Special Judge further recorded that there was justification and sufficient cause to grant permission, and accordingly the leave was granted, also observing that no prejudice would be caused to the defendant if the said document was

permitted on record, subject to its relevancy and admissibility to be considered and decided during trial.

17. Challenging the order dated 28.10.2024, the Civil Revision Petition No.1210 of 2025 has been filed by the petitioner (defendant).

18. Sri MRK Chakravarthy, learned counsel for the petitioner/defendant, submits that the learned Special Judge committed illegality in allowing the application and permitting the document, i.e., the expert report on record. He submits that the said document could not be taken on record as the power to appoint the expert is a judicial function of the Court. The Court did not appoint any expert. The appointment or engagement of the expert privately by the respondent/plaintiff and submitting the report of such a private expert, is not permissible.

19. Learned counsel further submits that in the plaint, (at para-101), the respondent/plaintiff had pleaded "The plaintiff has engaged a claim's expert for calculating the said overheads and profits and the same amounts to Rs.84,70,980/-." His submission is that from the said paragraph it is evident that, in fact, the report was in power, possession and control of the respondent/plaintiff at the time of institution of the suit. The report which has been filed is

dated 26.08.2024, but such a date has been put afterwards making the report, as a report after the date of the institution of the suit.

20. Learned counsel for the petitioner/defendant submits that the report had been filed at the belated stage for which there was no justifiable cause so as to grant leave by the learned Special Judge.

21. Learned counsel for the petitioner/defendant placed reliance in ***Sudhir Kumar alias S.Baliya v. Vinay Kumar G.B¹, Narayana Menoki Vs. Raan Nair², and Pada Sen and Anr. V. The State of U.P.,³*** in support of his submissions.

22. Learned counsel for the respondent/plaintiff submits that the parties to a suit can submit the report of a private expert engaged by such party and can bring it on record as his evidence. There is no bar under the CPC or the Commercial Courts Act that, a private expert cannot be engaged and his report cannot be filed.

23. With respect to para-101 of the plaint, the submission of the learned counsel for the respondent/plaintiff, referring to para-104 of the plaint, is that, it has been inter alia pleaded in para-104 that “The plaintiff is entitled to revise this figure after ascertaining the exact amount via an expert for quantification of the said claim.” He submits that there was a specific pleading to revise the figure

¹ AIR 2021 SC 4303

² 1966 Supreme (Ker) 301

³ AIR 1961 SC 218

mentioned in para-101 of the plaint after ascertaining the exact amount through an expert. So, the report sought to be filed is the report obtained after the institution of the suit which was not in power, possession and custody of the respondent/plaintiff at the time of the institution of the suit.

24. Learned counsel for the respondent/plaintiff submits that such a plea, now being raised, was neither taken in the objections filed by the petitioner/defendant to the respondent/plaintiff's application (I.A.No.157/2024) nor has such a plea been taken in the Civil Revision Petition.

25. Learned counsel for the respondent/plaintiff further submits that there is no delay in filing I.A.No.157/2024. The expert report is dated 26.08.2024 and the I.A. was filed on 06.09.2024.

26. Learned counsel for the respondent/plaintiff placed reliance on the Judgment of the High Court of Karnataka in ***Parappa and Ors. Vs. Bhimappa and Ors.***⁴ and of the High Court of Kerala at Ernakulam in ***Santhosh K.S Vs. State of Kerala and Ors.***⁵

27. We have considered the aforesaid submissions and perused the material on record.

⁴ MANU/KA/0059/2008

⁵ MANU/KE/3572/2024

28. The points for consideration and determination are as under:

“(i) Whether a report of an expert privately engaged by a party to the suit is impermissible to be taken on record by the Court?

(ii) Whether the impugned order dated 28.10.2024 passed by the learned Special Judge in I.A.No.157 of 2024 in COS No.3 of 2022 suffers from any illegality or infirmity warranting interference in the exercise of jurisdiction under Article 227 of the Constitution of India?”

29. So far as the submission with respect to the date in the report of expert i.e., 26.08.2024 is concerned, as argued, the same is a date subsequent to the institution of the suit, whereas the contention of the learned counsel for the petitioner is that the report was available to the plaintiff at the time of institution of the suit, which in his submission is evident from the amount mentioned in para-101, which is the same amount in the report under the head of loss of overheads, i.e., 84,70,980/-. Learned counsel for the respondent's submission is that the amount under head of loss, in para-101 of plaint & in the report is the same because the said amount was arrived at by applying the same formula applicable to determine such loss. He also referred to para-104 that the amount mentioned therein towards losses is different from the amount mentioned in the plaint. We are of the view that any such plea has not been taken with respect to the change of the date or that the

report dated 26.08.2024 is of a date prior to the institution of the suit and was available to the plaintiff/respondent neither before the learned Special Court nor in the Civil Revision Petition. Only during arguments such a submission has been made. Firstly, a plea of fact cannot be taken for the first time in the Civil Revision Petition under Article 227 of the Constitution of India and secondly, merely on the amount being same under one head, it cannot be presumed or inferred that the report dated 26.08.2024 is not a report after the institution of the suit but was in power, possession or custody of the plaintiff/respondent at the time of institution of suit.

30. The submission that a party cannot engage a private expert and place on the record in evidence his report is misconceived. Order XXVI Rule 9 and 10 of CPC, provides for the appointment of Commissioner. But on the ground that the expert was not appointed by the Court in the exercise of judicial function it cannot be said that the report obtained by the plaintiff privately cannot be taken on record. The appointment of Commissioner or expert may be the function of the Court, but that does not preclude to engage an expert and submit that report in evidence as also to produce such an expert to prove the report. In such a case the other side shall also have opportunity to file his evidence if so required as also to cross examine the expert, and produced as a witness in evidence. No doubt, the Court can pass order for appointment of

the expert, but that does not mean that a party cannot engage a private expert and submit the report of his opinion.

31. In **Santosh** (supra), it was held that though the Court should be circumspect while appreciating the evidentiary value of a report obtained without the intervention of the court, there is no restriction in obtaining such a report. However, when such a report is obtained from a private expert without the intervention of the Court, private witness can certainly be brought in by the parties to the litigation. Para-13 in **Santosh** (supra) reads as under:

“13. In Annexure A14, while declining to issue notice to the private expert, the learned Magistrate has observed that the report of the expert not being substantive evidence, it is not necessary to issue summons. Reliance was placed upon the judgment of the High Court of Jharkhand in Chethan Sharma v. State of Jharkhand (Crl.M.P.No.2764/2023). Though the court should be circumspect while appreciating the evidentiary value of a report obtained without the intervention of the court, there is no restriction in obtaining such a report. However, when such a report is obtained from a private expert without the intervention of the Court, and that too when the originals of the cheques in question are in the custody of the Court, the party who obtained such a report cannot insist that the Court should issue summons to such a private witness. Nothing prevented the petitioner from examining the said witness on his behalf especially since that person’s report was obtained by the petitioner without the intervention of the court. Private witness can certainly be brought in by parties to the litigation.”

32. In **Parappa** (supra) the Kanataka High Court, held that it is also possible that even in civil cases, a party to substantiate his

case may rely upon the report of the expert which was obtained prior to the institution of the suit or even after the institution of the suit. If the party wants to rely on such report and if he produces the said report it would not be treated as evidence in the suit by mere production of the same and in such circumstances, it would be obligatory on the part of the party who relies on the expert report to examine him, produce the report through him, get it marked and then subject the expert for cross-examination of the opposite party. It is only after the examination of such expert, his report would become admissible in evidence.

33. Para-15 of **parappa** (supra) reads as under:

“15. It is also possible that even in civil cases, a party to substantiate his case may rely upon the expert which has obtained prior to the institution of the suit or even after the institution of the suit. If the party wants to rely on such report and if he produces the said report into Court, the said report would not form part of the record and the report of such expert would not be treated as evidence in the suit by mere production of the same. In such circumstances, it is obligatory on the part of the party who relies on the said expert to examine him, produce the report through him, get it marked and then subject the said expert for cross-examination of the opposite party. It is only after the examination of such expert, his report would become admissible in evidence. Therefore, it is necessary to bear this distinction in mind while dealing with a report of an expert, who is not a Commissioner.”

34. We are in agreement with of the view taken in **Santosh** (supra) and **Parappa** (supra).

35. An expert can be engaged privately without the intervention of the court as well and his report can be filed in the Court. However, the relevancy and the admissibility of that report shall be subject to the proof, to be determined or seen at the stage of trial.

36. The Judgments relied upon by the learned counsel for the petitioner in ***Sudhir Kumar*** (supra), ***Narayana Menoki*** (supra) and ***Pada Sen*** (supra), are not the authorities directly on the point whether a private expert can be engaged or not and whether report of such an expert can be submitted or not. Those authorities hold that it is a judicial function and drawing the interference from those Judgments, learned counsel for the petitioner submitted that once the appointment of expert is a judicial function it cannot be exercised by party by engaging an expert privately. We are not convinced with the said submission. Neither it has been so laid down as a law in the aforesaid judgments of ***Sudhir Kumar*** (supra) & ***Narayana Menoki*** (supra), nor any such inference can be drawn by us.

37. The point for determination framed as 28(i) supra answered accordingly.

38. The learned Special Judge has observed that relevancy and the admissibility of the report of the private expert will be considered during trial. While taking on record the report of the

private expert, the learned Special Judge has made it subject to its relevancy and admissibility.

39. The reason has been assigned by the learned Special Judge for granting permission which are justified. The Court has clearly taken the report subject to its relevancy and admissibility.

40. There is no illegality in the impugned order dated 28.10.2024, is grant of leave to take on record the report of the expert engaged privately by the plaintiff/respondent.

41. We find no justification or any error of law with the impugned order, so as to invoke the provisions under Article 227 of the Constitution of India.

42. The point for determination framed as 28(ii) supra, we find no illegality in the impugned order.

43. Civil Revision Petition No.1210 of 2025 is dismissed.

There shall be no order as to costs. As a sequel, interlocutory applications pending if any, shall stand closed.

RAVI NATH TILHARI, J

BALAJI MEDAMALLI, J

Date: 15.04.2026

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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

CIVIL REVISION PETITION NOS: 1209 and 1210 of 2025

DATE: 15.04.2026

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*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
*** THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**
+ CIVIL REVISION PETITION Nos: 1209 and 1210 OF 2025

% 15.04.2026

1. ISGEC Heavy Engineering
Limited rep. by its AVP Legal,

.....Petitioner

And:

\$ M/s FE Engineering
Rep. by its Managing Partner

....Respondent.

!Counsel for the Petitioner

: Sri MRK Chakravarthy

^Counsel for the respondent

: Sri D.S.Sivadarshan

<Gist:

>Head Note:

? Cases referred:

- 1) AIR 2021 SC 4303
- 2) 1966 Supreme (Ker) 301
- 3) AIR 1961 SC 218
- 4) MANU/KA/0059/2008
- 5) MANU/KE/3572/2024

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

CIVIL REVISION PETITION Nos: 1209 and 1210 OF 2025

DATE OF JUDGMENT PRONOUNCED: **15.04.2026**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

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| 1. <i>Whether Reporters of Local newspapers may be allowed to see the Judgments?</i> | Yes/No |
| 2. <i>Whether the copies of judgment may be marked to Law Reporters/Journals</i> | Yes/No |
| 3. <i>Whether Your Lordships wish to see the fair copy of the Judgment?</i> | Yes/No |

RAVI NATH TILHARI,J

BALAJI MEDAMALLI,J