|  |  |
| --- | --- |
| ***Contract Law***  ***Vol. 3: No. 1***  ***April 4, 2022*** | A person standing in front of a book shelf  Description automatically generated with medium confidence  *Sakshi Singhal*  *Associate* |

**SUPREME COURT ON ABANDONMENT OF CONTRACT**

1. **Introduction:**

The Supreme Court (“**SC**”) in *Shripati Lakhu Mane* case,[[1]](#footnote-1) on 30th March 2022, held that refusal of a contractor to perform a contract due to non-performance of the reciprocal promises does not amount to abandonment of contract.

1. **Brief Facts:**
2. Shripati Lakhu Mane (“**Mane**”) is a registered contractor with the Maharashtra Water Supply and Sewerage Board (“**Board**”) and was awarded a contract for executing a project of the water department.
3. Although work order was issued in July 1986, it was kept in abeyance and only in December 1986, Mane was instructed to start work.
4. However, he was informed about the non-availability certain pipes of the diameter stipulated in the contract and he claimed modification in rates.
5. Due to this dispute, Mane was instructed to stop this work and carry out some other construction. Subsequently, a modification involving another work issued through another work order. Further, bills raised by him were not timely honoured due to funds shortage.
6. Mane stopped working and the Board threatened to withdraw the work order and also to impose a per-day fine.
7. Mane filed suit for money recovery before the trial court, which partially decreed the suit, directing the Board to pay to Mane a part of the amount claimed with interest.
8. Aggrieved by the decree, the Board appealed before the High Court of Bombay (“**HC**”). It partially allowed the appeal and reduced the decree amount. Therefore, Mane approached the SC.
9. **Order and Reasoning of SC:**
10. SC observed that the HC had rejected the claim of recovery of money solely on the ground that Mane had abandoned work under the main contract. It took the view that Mane’s actions did not amount to abandonment. It allowed the appeal and set aside the HC’s order and restored the trial court’s decree.
11. It relied on Section 67[[2]](#footnote-2) of the Indian Contract Act, 1872 and opined that: “*It is fundamental to the Law of Contract that whenever a material alteration takes place in the terms of the original contract, on account of any act of omission or commission on the part of one of the parties to the contract, it is open to the other party not to perform the original contract. This will not amount to abandonment. Moreover, abandonment is normally understood, in the context of a right and not in the context of a liability or obligation. A party to a contract may abandon his rights under the contract leading to a plea of waiver by the other party, but there is no question of abandoning an obligation. In this case, the Appellant refused to perform his obligations under the work-order, for reasons stated by him. This refusal to perform the obligations, can perhaps be termed as breach of contract and not abandonment*.”[[3]](#footnote-3)
12. It laid down that: “*The refusal of a contractor to continue to execute the work, unless the reciprocal promises are performed by the other party, cannot be termed as abandonment of contract. A refusal by one party to a contract, may entitle the other party either to sue for breach or to rescind the contract and sue on a* quantum meruit *for the work already done*.”[[4]](#footnote-4)
13. **Conclusion:**

SC adjudged that it was the Board who made it difficult for Mane to execute the contract as per the terms originally agreed. In this situation his refusing to work, did not amount to abandonment of contract.

----

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For any clarifications, please contact us at: [info@counselence.com](mailto:info@counselence.com). Past issues of *Counselence Connect* are available at the ‘Newsletters’ page of our website ([www.counselence.com](http://www.counselence.com))

1. *Shripati Lakhu Mane vs. The Member Secretary, Maharashtra Water Supply and Sewerage Board and Ors*, MANU/SC/0382/2022 [↑](#footnote-ref-1)
2. *“****Effect of neglect of promisee to afford promisor reasonable facilities for performance****. --If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.*” [↑](#footnote-ref-2)
3. Paragraph 19 of the SC Judgement. [↑](#footnote-ref-3)
4. Paragraph 22 of the SC Judgement. [↑](#footnote-ref-4)