

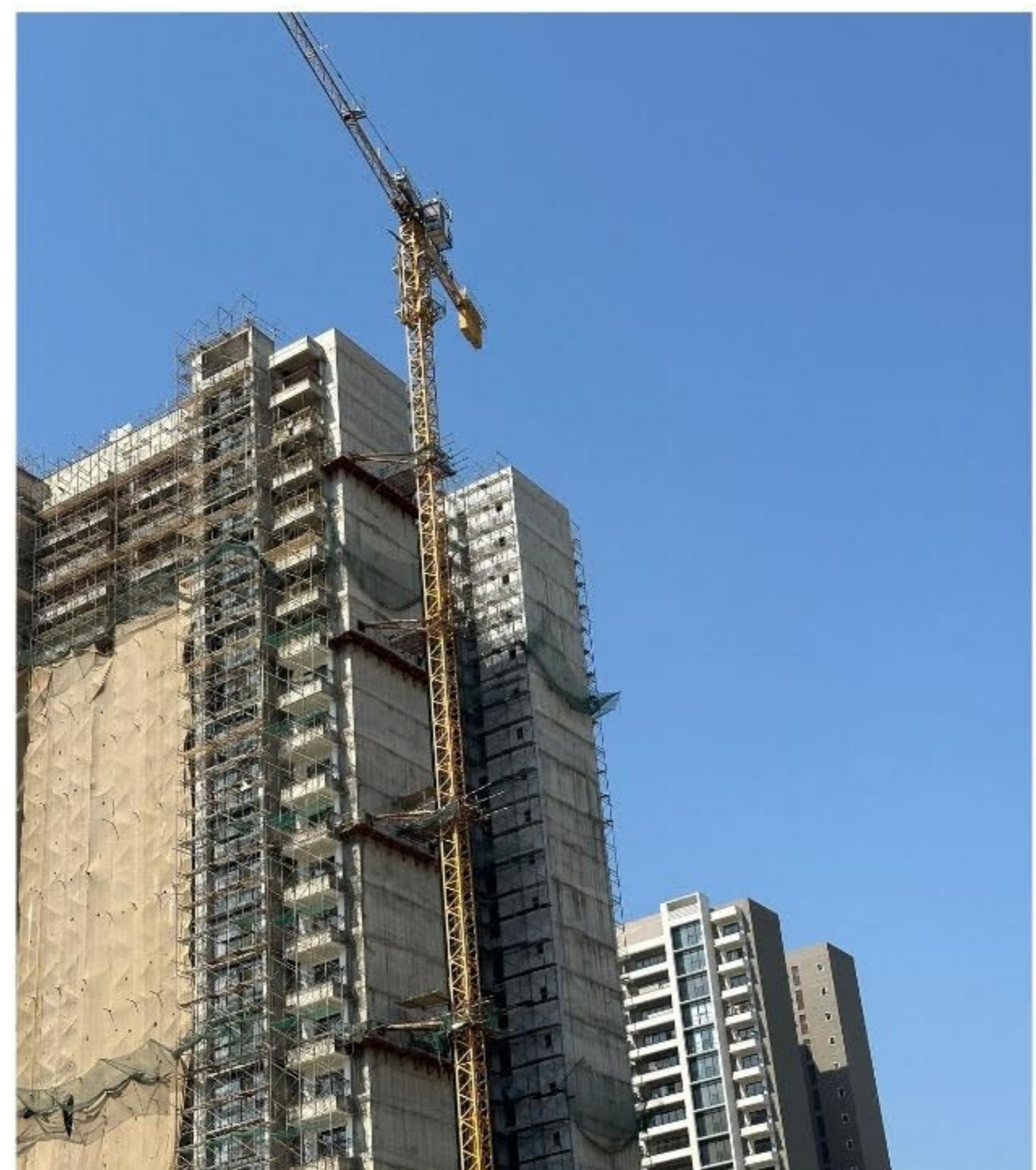
Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Coercion or duress to enter a settlement - material to enquire whether, the person alleged to have been coerced did or did not protest; whether at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it - pressure so as to constitute duress must be such that the victim entered the contract against his will, had no alternative course open to him, and had been confronted with coercive acts by the party exerting the pressure.**
- **Failure to produce evidence - if the party fails to produce evidence, which it could produce to prove a particular fact that it asserts, then the fact of non-production of the same ought to be presumed as the evidence being unfavourable to it and adverse inference with respect to the same ought to be drawn.**
- **Evidence can be led to explain any recital or statement in a document - oral evidence could be adduced to show that the recitals in a deed were nominal or were not intended to be acted upon or that they were not meant to alter the existing state of affairs.**

*[Patel Engineering Ltd. v. Acron Developers Pvt. Ltd. -
Bombay High Court - Decided on 14.7.2025]*



- **Claim for difference in wages of labour on account of increase in the minimum wages - contract provided for payment of differential amount on account of price variation to the extent of 45% - claim towards the price variation in excess of 45% for 'component of labour' impermissible in law.**
- **Claim for extra cost in excavation of soft strata due to change in the geographical structure of tunnel - change in tunnelling methodology escalating the overall cost - Contractor had quoted the rates after inspection of the site and after familiarizing all contractual features such as accessibility, working condition, geological feasibility / terrain conditions - claim for extra cost not permissible.**

*[Gammon India Limited v. Konkan Railway Corporation Ltd. - Bombay High Court
- Decided on 22.7.2025]*



**Patel Engineering Ltd. v. Acron Developers Pvt. Ltd. - Bombay High Court -
Decided on 14.7.2025**

The contract was for carrying out construction work at residential apartments. The timeline to complete the project as per the contract came to an end. The Employer terminated the contract, amongst others, on the ground that the Contractor had failed to achieve the milestones to complete the project as stipulated in the contract. However, the parties entered into a settlement which recorded that the contract stood revived subject to the modifications as contained in the Deed of Settlement. As per the Deed of Settlement, the timeline to complete the project came to an end. The Contractor requested for extension of time. Fresh timelines for completion of the project were agreed between the parties. The Contractor contended that all commitments made by it were based upon reciprocal promises to make timely payment of the Running Account (RA) Bills by the Employer. The disputes between the parties were referred to arbitration. The arbitral tribunal held that the Contractor was not responsible for the delay notwithstanding the recital in the Deed of Settlement entered between the parties. The Employer after execution of the Deed of Settlement did not terminate the contract and instead from time to time extended the time to complete the works by the Contractor. Therefore, time was not the essence of the contract. The Court upheld the award and observed that the arbitral tribunal had appreciated the evidence on record whilst granting the claims in favour of the Contractor regarding additional expenditure incurred by the Contractor during the extended period of the contract and additional expenditure incurred for retaining its machinery, tools and other equipment at site during the extended period of contract. Further, the Court observed that the finding on adverse inference to be drawn against the Employer for non-production of the best evidence in defence, by upholding the Contractor's claim that the Employer failed to timely provide the Good For Construction (GFC) drawings, would amount to re-appreciating of evidence, which is not permissible in law.

Gammon India Limited v. Konkan Railway Corporation Ltd. - Bombay High Court
- Decided on 22.7.2025

The Contractor was awarded the contract for construction of B.G. Single Line Tunnel (Tunnel No. 20 - Karbude Tunnel) in Ratnagiri (North). The Contractor raised disputes upon completion of the works. The arbitral tribunal allowed some of the claims of the Contractor including reimbursement of difference between price variation on account of increase in minimum wages, and extra cost in excavation of soft strata of tunnel from Bhoke Portal side. The Contractor contended that while excavating the tunnel, it came across soft strata contrary to the Geo-technical appraisal given in the bid document indicating that the excavation was likely to go across amygdule basalt. The strata encountered was not rock/dense basalt, but laterite and soft material throughout in 400 mtrs from Bhoke side. This forced the Contractor to resort to drift method of tunnelling with heavy seepage issues not permitting proper drilling cycle and meeting of unexpected expenditure. The arbitral tribunal held that there was a significant change in the geographical structure from reasonably hard rock to laterite and soft material forcing the Contractor to change the tunnelling methodology, thereby escalating the overall cost two to three times as compared to hard strata in similar working conditions. The Court held that the claim of the Contractor towards the price variation in excess of 45% for 'component of labour' was impermissible as per the contractual conditions. The Court while rejecting the claim of the Contractor held that the Contractor had quoted the rates after inspection of the site and after familiarizing all contractual features such as accessibility, working condition, geological feasibility / terrain conditions.



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