



LAW RELATING TO BUILDING CONTRACTS (1990). By M.A. Sujan. Universal Book Traders, Delhi. Pp. xxiv + 455. Price Rs. 225.

TO WRITE specialised books on building contracts shows that the study has been deep and long enough to enable the author to bring out its special features.

The book under review<sup>1</sup> brings out the reason why the subject of building contracts has to be treated as a speciality. These contracts run for a period of time. The performance has to be assessed objectively. Therefore, the architects, engineers and quantity surveyors have a role to play—an objective one in assessing the quality of the work as per the contract conditions. Formerly it was believed that these persons act as quasi-arbitrators. But the decisions of the House of Lords in *Sutcliffe v. Thackerah*<sup>2</sup> and *Arenson v. Arenson*<sup>3</sup> held that they were not in the position of arbitrators. Their decisions are not, therefore, awards under the law of arbitration and do not enjoy immunity from being sued. This is to be contrasted with the judicial position accorded to the arbitrators under the common law in UK and under section 1 of the Judicial Officers' Protection Act 1850. The result is a curious one. Between the contractor and the employer, as per the contract, the decision of the architect or the valuer is final and binding on the parties. On the other hand, the architects and valuers do not enjoy the immunity accorded to the arbitrators. Therefore, the remedy of the party who suffers by the negligence of the architect or the valuer in granting the certificate is to sue them personally for damages for negligence.

Another peculiarity of the law relating to building contracts was brought up when a building was accepted as duly constructed but the latent defect in it was discovered many years afterwards and the question was whether any claim for damages for such a defect would be barred by limitation. The House of Lords in *Anns v. Merton London Borough Council*<sup>4</sup> held that the limitation would run from the date on which the defect first emerged or became reasonably discoverable or on the date on which the state of the property constituted imminent danger to the occupier. The builder would thus be liable long after the building was completed and handed over to the employer-purchaser. What is further significant is the statement by Lord Wilberforce that the duty of the builder would be owed not only to the immediate purchaser but also to the subsequent purchaser from him, that is to say, the person who suffers when the damage is discovered. In respect of what defect is the duty owed? In respect of what kinds or heads of damage is the

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1. M.A. Sujan, *Law Relating to Building Contracts* (1990).

2. [1974] A.C. 727.

3. [1977] A.C. 405.

4. [1978] A.C. 728.



duty owed? All these are subjects which are still being discussed giving a new dimension to this law. A new field of discussion has thus opened in this branch of law. The problems arising in it are still not finally settled.

Within the settled boundaries of the subject of building contracts, the discussion by the author is systematic and clear. He gives as the benefit of having drawn upon all the standard English authors on the subject—Hudson, Keating, Emdon and also the general authors such as Chitty and others. What makes the book particularly valuable for the Indian readers is that due account is taken of the judicial decisions in India, particularly those of the Supreme Court. The obligations of the employer, contractor, architects and others are explained. The peculiarities of breaches of contracts and of the provisions for damages both under the contract and the law are fully treated. The reading of the book becomes pleasant because of the flowing style of the author and his interest over and above the technicalities of the subject into the general law of contract which makes it entertaining and a pleasure to read.

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