

Mr. Virendra owned a large tract of land near Pune. He got plans prepared for construction and then invited Mercury Builders, a reputed contracting firm with twenty completed large projects to its credit, to submit a bid for erecting a large building complex on the land. Mercury Builders could do all the work itself, except excavation of 40 ft depth, for which it would be required to engage another person specialized in excavation work. Mercury Builders needed to know the cost of excavation before it prepared the bid documents. Hence it sent plans to Earth Movers, who specialized in excavation. Mercury Builders and Earth Movers had earlier worked together successfully on many projects.

Janak, the proprietor of Earth Movers, studied the plan, calculated their own cost at Rs 80 lakhs (1 lakh = 100,000), added 10 % profit (customary rate), and submitted a bid of Rs 88 lakhs to Mercury Builders along with calculations. When Janak prepared these documents, he was preoccupied in an employees' strike in his office and works, and had no assistance of the staff which usually did the calculations. He had therefore made wrong calculations of Rs 80 lakhs, when the cost would actually be Rs 140 lakhs.

Based on calculations of Earth Movers, Mercury Builders submitted its bid to Mr. Virendra of Rs 80 crores (1 crore = 10,000,000), which was the lowest bid Rs 1 Crores less than the next lowest bid. Mr. Virendra appointed a committee of an architect, RCC consultant and civil engineer to scrutinize all the bids invited, which approved the bid of Mercury Builders. Mr. Virendra awarded the contract to Mercury Builders. Like some of the earlier projects completed by Earth Movers for Mercury Builders, Mercury Builders did not give Earth Movers a formal acceptance letter.

A few days later, Janak reviewed the bid and found his mistake. The mistake meant that not only he would not earn a profit, but he would suffer a loss of Rs 88 lakhs, a loss which he might not be able to absorb, and which was likely to put him out of business. He immediately called up Mercury Builders, explained this fact and withdrew his bid. Mercury Builders told Janak that it would regard this as a repudiation amounting to refusal to perform, and hold him liable for damages.

Mercury Builders then sought other bids for excavation work, and accepted the lowest one of Zameendaari for Rs 152 lakhs. Mercury Builders thus had to pay Rs 72 lakhs more than expected. It lost 25 per cent of the profit it had anticipated on the project with Mr. Virendra.

Mercury Builders has filed a suit before civil court for recovery of Rs 1 Crores from Earth Movers, being Rs 72 lakhs paid extra for the contract with Zameendaari, and for its profit lost.

Argue for Mercury Builders and Earth Movers.