

**HIGH COURT OF TRIPURA
AGARTALA**

Commercial Appeal No.03 of 2023

M/s Hindustan Steel Works Construction Ltd. (HSCL),

Registered Office at:

(A Government of India undertaking), 3rd Floor, NBCC Square, Plot No-III F/2, Action Area-III, New Town, Rajarhat, Kolkata 700135.

Represented by its General Manager (Engg) Tripura Unit at 3rd Floor, Jacson Gate Building, Lenin Sarani, Agartala, West Tripura.

.....Defendant No.1- Appellant(s)

V E R S U S

1. Smt. Kalyani Debnath & Ors.,

W/o Sri Rakhal Debnath, A resident of Sonia Road, Silchar, P.O Link Road, P.S Rangirkhari, District Cachar, Assam, PIN 788006.

..... Plaintiff-Respondent(s)

2. The State of Tripura,

Represented by its Secretary, Public Works Department, Government of Tripura, Agartala Civil Secretariat, New Capital Complex, P.O. Kunjaban, P.S. NCC, District West Tripura, PIN 799006.

3. The Empowered Officer,

PMGSY, Public Works Department, New Secretariat Complex, P.O Kunjaban, P.S NCC, District West Tripura, PIN 799006.

4. The Federal Bank Ltd.,

Silchar Branch, Shyama Prasad Road, Shillong Patty, P.S. Sadar, District Cachar, PIN 788001.

..... Proforma-Defendant-Respondent(s)

For Appellant(s)	:	Mr. S.M. Chakraborty, Senior Advocate. Ms. M. Chakraborty, Advocate.
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For Respondent(s)	:	Mr. D.S. Bhattacharya, Advocate. Mr. A. Sengupta, Advocate. Mr. K. De, Addl. G.A.
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Date of hearing	:	21st January, 2025.
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Date of Judgment	:	4th March, 2025.
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Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td>√</td><td></td></tr></table>	YES	NO	√	
YES	NO					
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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER

The appeal arises out of the judgment dated 04.11.2022 passed by learned Judge, District Commercial Court (Additional District Judge, Court No.2), West Tripura, Agartala in Commercial Suit No.17 of 2016 and related decree thereof whereby learned Trial Court granted money decree of Rs.2,77,25,189/- along with 8% interest per annum from the date of filing of the suit till realization in favour of the plaintiff-respondent No.1 directing the appellant to make such payment within 3 (three) months.

[2] The respondent No.1 (hereinafter referred as the plaintiff), a Class 1-A contractor under PWD, Assam and a Class-C contractor under project Pushpak under Border Roads Task Force instituted the suit alleging, inter alia, that in the month of December, 2007, the appellant (hereinafter referred as the defendant No.1) floated one NIT inviting bids for execution of the contractual work namely, 'Construction and Maintenance of rural roads under PMGSY at North Tripura District'. Such tender was for construction of rural roads and also for routine maintenance for 5 years thereof and total value of the construction works was Rs.12,36,80,000/- plus 4.5% above on the said amount and the value of maintenance works was Rs.1,07,58,000/- plus 4.5% above thereupon. The plaintiff in response to such NIT, submitted her bid and emerged as a lowest bidder and therefore, defendant No.1 awarded the following works to her:

Sl. No.	Description of work under NIT 28	Package no.
1.	Construction & Maintenance of road from Barahaldi to Falgunjoy Para	TR-03-69
2.	Construction & Maintenance of road	TR-03-70

	from Kashirampur to Daharam Para	
3.	Construction & Maintenance of road from Adhibarighat to Brikhsatal	TR-03-71
4.	Construction & Maintenance of road from Rabindra Nagar to Buiyacherra	TR-03-72
5.	Construction & Maintenance of road from Laljuri to Sadaihum Para	TR-03-74
6.	Construction & Maintenance of road from Daincherra to Ramchandra Para	TR-03-75
7.	Construction & Maintenance of road from Kanchanpur to Sukurmani Para	TR-03-79
8.	Construction & Maintenance of road from Dasdabazar to Khetramohan	

[3] It is also stated by the plaintiff that after receipt of letter of acceptance on 09.08.2008, the plaintiff submitted bank guarantee of Rs.70,24,400/- to the defendant No.1 and such bank guarantee was issued by proforma-defendant/respondent No.4. Thereafter, the agreement was executed between the parties on 18.07.2008 and the plaintiff accordingly, commenced the work of construction of such 8 Nos. of rural road links. As further alleged by the plaintiff, that the stipulated period of construction of road links were 18 months from the issue of work order dated 15.07.2008 but such work got delayed due to several reason including insurgency problem, non availability of forest clearance, non removal of electric post etc. and as such on consideration of above said hurdles, the defendant No.1 also granted extension of time to the plaintiff on her application and all the roads were completed by the plaintiff within the extended period of time. It is also stated that the works were executed under strict supervision of Engineers of defendant No.1 and pro-defendant/respondent No.2 and value of the work was also determined based on the measurement made by the Engineers of defendant No.1 and running bills were also drawn in accordance with the entries made in the measurement book.

According to the plaintiff, the fact of completion of construction of such 8 Nos. of road links was also mentioned in the letter dated 23.05.2014 issued by Head Project of defendant No.1 to the site Engineers and same was also published in the website of PMGSY but it is the grievance of the plaintiff that despite completion of such construction work, the final bills were not drawn by the defendant No.1 and the payment was also not made to the huge sufferance and loss of business and reputation of plaintiff. According to the plaintiff, the value of construction work of said roads is Rs.12,67,00,000/- out of which defendant No.1 paid Rs.11,41,18,000/- and further Rs.1,25,82,000/- is lying as outstanding against such construction work from defendant No.1.

[4] It is further stated by the plaintiff that after completing the construction work of the roads, she duly commenced the maintenance work of said roads on the impression that she would receive the payments in respect of such construction work as per agreement but defendant No.1 did not make such payment. In spite of the same, the plaintiff completed maintenance work of Rs.2,58,799/- in respect of 3 (three) road links and for the said work, the defendant No.1 paid an amount of Rs.2,16,323/- keeping an amount of Rs.42,476/- as outstanding dues. Though there is no provision for deduction of any amount from the bill due to extension of time for completion of the work, the plaintiff alleges, the defendant No.1 illegally withheld Rs.24,40,771/- in the name of deduction for time extension.

[5] According to the plaintiff, as per terms of the agreement, the payment pattern in respect of payment against construction work was segregated from the mode of payment against maintenance work and therefore,

the defendant No.1 was bound to make full payment of bills raised against such construction work and moreover, the defendant No.1 made payment of bills against maintenance work of two roads and bill against maintenance work of another road amounting to said Rs.42,476/- was withheld illegally.

[6] It is further allegation of the plaintiff that the original bank guarantee of Rs.70,24,400/- was also invoked by defendant No.1 to the serious prejudice of the plaintiff. Prior to that, one show cause notice was issued by the defendant No.1 to the plaintiff informing that NQM/SQM had detected certain defects in the work and such defects were also not rectified by the plaintiff and therefore, she was asked to show cause as to why the contract should not be terminated. According to the plaintiff, she gave reply of the said notice on 19.09.2014 by registered post A/D alleging that due to non-payment of final bills, she could not complete few maintenance works as indicated above. Thereafter, the defendant No.1 terminated the contract and communicated the same to the plaintiff vide a letter dated 30.09.2014. The defendant No.1 also deducted Rs.56,78,018/- from the running bills of the plaintiff as security deposit as per Clause No.43 of the agreement but despite several requests, same was also not refunded to her.

[7] Thereafter, the plaintiff filed WP(C) No.91 of 2015 before the High Court which was dismissed by the Court giving liberty to the plaintiff to institute suit in the Court of competent jurisdiction and then, the instant suit was filed by the plaintiff with the following prayers:

- (i) Pass a decree declaring that the defendant No.1 has committed breach of contract with the plaintiff;
- (ii) Pass a decree declaring that the defendant No.1 did not pay the final bill to the plaintiff as per stipulation in the contract;

- (iii) Pass a decree declaring that termination of contract by defendant No.1 by its communication dated 30.09.2014 is illegal, arbitrary, unreasonable and liable to be cancelled;
- (iv) Pass a decree declaring that invocation of Bank guarantee by the defendant No.1 on 02.06.2014 is illegal, arbitrary and liable to be declared void;
- (v) Pass a decree declaring that the plaintiff is entitled to get an amount of Rs.1,25,82,000/- (rupees one crore twenty five lacs eighty two thousand only) from the defendant No.1 for construction of 8 numbers of roads with interest @12% from the date of completion of the roads till the date of payment;
- (vi) Pass a decree declaring that the plaintiff is entitled to get an amount of Rs.42,476/- (forty two thousand four hundred and seventy six only) from the defendant No.1 for maintenance cost done against the road namely Kanchanpur to Sukurmani Para with interest @12% from the date of completion of said maintenance till the date of payment;
- (vii) Pass an order directing the defendant No.1 to refund the bank guarantee amounting to Rs.70,24,400/- (rupees seventy lacs twenty four thousand four hundred only) to the plaintiff with 12% interest per annum from the date of invocation of Bank guarantee till the date of payment;
- (viii) Pass an order directing the defendant No.1 to refund the security deposit amounting to Rs.56,78,018/- (rupees fifty six lac seventy eight thousand and eighteen only), deducted by the defendant No.1 from the running bills of the plaintiff, to the plaintiff with interest @12% per annum from the date of filing of this suit till the date of payment;
- (ix) Pass a decree declaring that the deduction of amount Rs.24,40,771/- (rupees twenty four lac forty thousand seven hundred and seventy one only) in the name of extension of time is totally illegal and violative of bilateral contract between the parties;
- (x) Pass a decree directing the defendant No.1 to refund the said amount of Rs.24,40,771/- (rupees twenty four lac forty thousand seven hundred and seventy one only) with 12% interest per annum from the date of deduction of said amount till the date of payment;
- (xi) Pass a decree of perpetual injunction restraining the defendant No.1 from taking any action pursuant to the illegal order of termination dated 30.09.2014 by way of awarding the work in question to any third agency;
- (xii) Pass any other order/orders as your honour deem fit and proper.

[8] The basic contention of defendant No.1 in their pleading is that out of 8(eight) construction works, the plaintiff completed works of construction of 7(seven) numbers of roads. The extension of time of work due to non availability of land and hindrance by local people is admitted by defendant No.1, however, it is also stated by them that construction of 2(two) numbers of such roads were completed by the plaintiff within 2010 and period for construction of other 6(six) numbers of roads were extended upto 31.12.2011

but the plaintiff completed work of only 5(five) numbers of such link roads leaving the road namely, Kashirampur to Daharam Para under package No.TR-03-70 incomplete. The defendant No.1 also asserts that at the time of taking measurement in the measurement book, the plaintiff despite request was not present on the site rather she sent one person there who had no technical qualification to take part in the said measurement process. Thereafter, further opportunity was also given to her for deputing another person but she failed to do so and ultimately ex-parte measurement was taken by the defendant No.1.

[9] According to defendant No.1, regarding said incomplete work of construction of road from Kashirampur to Daharam Para, the awarded value of the work was Rs.2,97,35,000/- but the plaintiff executed the work only for an amount of Rs.1,60,96,622/- but despite the same, the plaintiff was paid Rs.2,27,59,476/- on that count. Apart from that work, plaintiff executed works for an amount of Rs.9,18,42,269/- out of which an amount of Rs.9,13,60,367/- was paid to her and an amount of Rs.4,81,929/- was kept for unexecuted portion of the work of NIT No.28 which had to be executed through another agency at the cost of the plaintiff. They also alleges that the NQM/SQM pointed out some defects in the roads constructed by the plaintiff and accordingly, she was requested to rectify the same but she failed in doing so and for that reason some amount was withheld from her bill by the defendant No.1.

[10] Regarding maintenance work of a road running from Laljuri to Sadaihum Para, according to the defendant No.1, out of awarded value of the work of Rs.16,33,400/-, the plaintiff executed the maintenance part of the work

for an amount of Rs.1,15,330/- and said amount was also paid to her. Regarding maintenance work of another road from Dasda Bazar to Khetramohan Para, out of awarded value of Rs.7,22,100/-, plaintiff completed maintenance work for an amount of Rs.1,00,993/- and said amount was also paid to her. The defendant No.1 admits that they have withheld the sum of Rs.24,70,769/- as liquidated damages due to extension of time. It is also stated by defendant No.1 that out of total awarded amount of Rs.12,92,46,000/- for construction of 8(eight) numbers of road, the plaintiff executed the work for an amount of Rs.10,79,38,918/- but an amount of Rs.11,41,19,843/- was paid to her and out of awarded value of maintenance work of total Rs.1,12,42,000/-, the plaintiff executed the maintenance work for an amount of Rs.2,16,323/- and the defendant No.1 made payment for said entire executed portion of the maintenance work and there is no outstanding bill/amount lying with the answering defendant towards the plaintiff. According to the defendant No.1, as the plaintiff failed to execute the entire work within the extended period of time, the work order was terminated and the security deposit was forfeited. They also raises the plea that the suit was barred by limitation.

[11] Learned Trial Court on consideration of pleadings of the parties framed 4(four) numbers of issues. The plaintiff during hearing did not appear in person rather her constituted attorney namely, Rajesh Debnath was examined as PW-1 and he also proved 15(fifteen) numbers of documents marked as Exbt.1 to Exbt.15 respectively. From the side of defendant No.1, one Sudipta Paul was examined as DW-1 and he also proved many documents in support of their pleading which were marked as Exbt.A to Exbt.F.

[12] Finally, learned Trial Court decreed the suit mainly with the observations that as per the provision of Order VIII Rule 3 CPC, the denial of the asserted facts in the plaint should be specific in the written statement of the defendant and there was no specific denial by defendant No.1 regarding the outstanding dues towards construction work and therefore, learned Trial Court came to the conclusion that for absence of any specific denial by the defendant No.1, the fact of non-payment of outstanding bills remained undisputed and therefore, termination of agreement was arbitrary and consequently, learned Trial Court decided that plaintiff was entitled to get refund of the bank guarantee and security deposit along with said alleged outstanding amount of Rs.1,25,82,000/- along with 8% interest thereupon. Regarding withholding of Rs.24,40,771/- from the bills of the plaintiff on the ground of extension of time was also held illegal by the learned Trial Court referring to Clause 27.1 and Clause 27.2 of the standard bid document observing that there was no such Clause in the document authorizing the defendant No.1 for such deduction on the ground of extension of time.

[13] During hearing, Mr. S.M. Chakraborty, learned senior counsel appearing for the defendant No.1 argues that the suit was not maintainable inasmuch as in the plaint nowhere it was stated that the attorney of the plaintiff had performed any act as attorney and therefore, he had no *locus standi* to represent the plaintiff in the suit. Mr. Chakraborty, learned senior counsel also argues that the plaint was not signed by the plaintiff herself and even she did not appear in the witness box to prove her case. Though the attorney, learned senior counsel submits, in his evidence stated that he had performed such work

as attorney in execution of such contract works but said evidence was out of pleading. The deed of power of attorney dated 17.09.2016 was taken into evidence as Exbt.15(i) to 15(iv) but no formal marking was done on the document itself. Referring to said document, Mr. Chakraborty, learned senior counsel also argues that as per said deed, the power was given to the attorney by the plaintiff to represent her before the High Court of Tripura only and to file Writ Petition (Civil) etc. there and therefore, the attorney had no authority to institute the suit before the learned Commercial Court. In support of his contention, Mr. Chakraborty, learned senior counsel also relies on a decision of the Apex Court in the case of ***Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. and others, (2005) 2 SCC 217***, wherein at Para 13, the following were observed by the Apex Court:

“13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to in respect of "acts" done by the power-of-attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.”

[14] As the plaintiff herself did not appear to depose in the case, Mr. Chakraborty, learned senior counsel also argues that adverse inference is required to be drawn against her and to buttress his submission learned senior counsel also relies on a decision of the Apex Court in the case of ***Vidhyadhar vs. Mankikrao and another, AIR 1999 SC 1441*** wherein at Para 16 it was observed by the Apex Court that where a party to the suit does not appear into

the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. Learned senior counsel further relies on another decision of the Apex Court in the case of ***Man Kaur (Dead) by Lrs. vs. Hartar Singh Sangha, (2010) 10 SCC 512*** wherein similar principle was reiterated by the Apex Court.

[15] The next point as argued by Mr. S.M. Chakraborty, learned senior counsel that the work was of the Central Government and fund was of them and therefore, Union of India was also a necessary party. Learned senior counsel further argues that the suit was for declaration of some rights and for directions towards defendant No.1 but no prayer was made for passing any money decree in the plaint and therefore, no money decree could be passed against defendant No.1 by the learned Trial Court. Mr. Chakraborty, learned senior counsel also strongly challenges the impugned judgment submitting that no proper reasoning was given by learned Trial Court while deciding the said 4(four) issues in favour of the plaintiff and no discussion was also made by the learned Trial Court as to how the plaintiff become entitled to compensation on different heads as reflected in the operative portion of the judgment.

[16] Mr. Dhruvendu Sekhar Bhattacharya, learned counsel representing the plaintiff, in reply, refers to a letter dated 31.12.2011 addressed to defendant No.1 by the plaintiff wherein she herself categorically stated in respect of construction of link road from Adhibarighat to Brikhsatal (package No.TR-03-71) that after completion of construction work of one bailey bridge when they wanted to commence the construction work, she and her helping hands got

threat from insurgent people and her son, Mr. Rajesh Debnath, the present attorney, had also got such threat over phone. According to Mr. Bhattacharya, learned counsel, said letter itself reflects that the attorney personally was engaged in the execution of the contract work and therefore, he has *locus standi* to represent the plaintiff in the suit.

[17] Learned counsel also relies on a decision of the Apex Court rendered in the case of ***Manisha Mahendra Gala and others vs. Shalini Bhagwan Avatramani and others*, (2024) 6 SCC 130** and relevant Para No.28 is extracted hereunder:

“28. The law as understood earlier was that a general power-of-attorney holder though can appear, plead and act on behalf of a party he represents but he cannot become a witness on behalf of the party represented by him as no one can delegate his power to appear in the witness box to another party. However, subsequently in *Janki Vashdeo Bhojwani vs. Indusind Bank Ltd.*(2005) 2 SCC 217, this Court held that the power-of- attorney holder can maintain a plaint on behalf of the person he represents provided he has personal knowledge of the transaction in question. It was opined that the power-of- attorney holder or the legal representative should have knowledge about the transaction in question so as to bring on record the truth in relation to the grievance or the offence. However, to resolve the controversy with regard to the powers of the general power-of- attorney holder to depose on behalf of the person he represents, this Court upon consideration of all previous relevant decisions on the aspect including that of *Janki Vashdeo Bhojwani* (2005) 2 SCC 217 in *A.C. Narayanan vs. State of Maharashtra* (2014) 11 SCC 790 concluded by upholding the principle of law laid down in *Janki Vashdeo Bhojwani* (2005) 2 SCC 217 and clarified that power-of- attorney holder can depose and verify on oath before the court but he must have witnessed the transaction as an agent and must have due knowledge about it. The power-of- attorney holder who has no knowledge regarding the transaction cannot be examined as a witness. The functions of the general power-of- attorney holder cannot be delegated to any other person without there being a specific clause permitting such delegation in the power of attorney; meaning thereby ordinarily there cannot be any sub-delegation.”

[18] Mr. Bhattacharya, learned counsel refers to relevant Clause 38.2 and also Clause 50.3 of the agreement which contains the payment method of making payment to the contractor. Mr. Bhattacharya, learned counsel further

takes us to an office order dated 23.05.2014 wherein one Head (Project) of defendant No.1 observed that as per the record, many roads were already completed but till date bills were not finalized and therefore, all concerned Engineers were advised to prepare the final bill on top priority for financial closure of completed road after necessary grade improvement upon an inspection of SQM/NQM. Mr. Bhattacharya, learned counsel submits that the works were completed in 2010 by the plaintiff but the payment was not completely made till date to the serious financial loss of the plaintiff. Mr. Bhattacharya, learned counsel also argues that false statement was made in the written statement by the defendant No.1 alleging non-completion of construction of all the 8(eight) numbers of road. Learned counsel also relies on some documents containing 8(eight) numbers of monthly progress report to show that all the 8(eight) works were recorded to be completed by the authority themselves. According to Mr. Bhattacharya, learned counsel, the claim of the plaintiff was established satisfactorily by leading both oral and documentary evidences and there was no infirmity in the judgment passed by learned Trial Court in decreeing the suit in favour of the plaintiff.

[19] We have given our thoughtful consideration to the submissions made by learned counsel of both sides and also have taken note of the materials placed on record.

[20] As discussed earlier, learned Trial Court while decreeing the suit mainly observed that the denials given in Para No.15 of the written statement were evasive and therefore, same were otherwise admitted by the defendant and ultimately, held that non-payment of bills remained undisputed and as such the

situation for not taking up maintenance work due to such non-payment of the bills were reasonable and termination of agreement was, therefore, arbitrary. With such observations, learned Trial Court also held that the plaintiff was entitled to get refund of bank guarantee and security deposit along with the outstanding dues. However, on perusal of Para 15 of the written statement, it appears that specific sentence wise denials were given by the answering defendant in the written statement against such allegations and assertions of the plaintiff, but learned Trial Court completely misconstrued the same leading to an erroneous decision. It is also surprising to us that except Clause 27 of the standard bid document, learned Trial Court even did not take into consideration and discuss any of the documentary evidences as proved by the parties, notwithstanding the fact that several documentary evidences were led by both the parties. In such a situation, we find no other way except to set aside the entire impugned judgment and decree. The matter is required to be considered afresh by the learned Trial Court taking into consideration both the pleadings and the evidences led by the parties.

[21] We also take note of the fact that several documents were proved into evidence by PW-1 and DW-1 as reflected in their respective deposition sheets and were marked as Exhibits but many of such exhibited documents are lying in the record without having any marking by the learned Trial Court. Such irregularities are also required to be removed at the earliest.

[22] In view of above discussion, the impugned judgment and decree are set aside and the matter is remanded to the learned Trial Court with a direction to regularize first the marking of exhibits of the documents proved by

the parties as indicated above resorting to Section 151 CPC, and then to hear the arguments of the parties at length and to decide the suit on all issues taking into consideration the pleadings as well as the evidences of both the parties strictly in accordance with law.

As the suit is being remanded for fresh decision, all the points as raised by the parties in this appeal are kept open. Learned Trial Court will take endeavour to dispose of the case at the earliest not later than by 3(three) months from the date of receipt of the record and the judgment.

The appeal is, accordingly, disposed of.

As the suit is being remanded by us for fresh decision by the learned Trial Court, the Registrar (Judicial) will issue a certificate under Section 13 of the Court Fees Act, 1870 as in force in Tripura, to the appellant to enable him to get back the full amount of court fees paid in this appeal from the concerned Collector of the District.

Return the Trial Court record with copy of the judgment.

Pending application(s), if any, shall also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ