

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.591 of 2009
IN
Civil Writ Jurisdiction Case No. 2848 of 2009**

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M/s Vijeta Construction Limited, West Morawadi Maidan, Ranchi through its
Power of Attorney Holder Baban Sharma, son of Shri Ambika Sharma, resident of
2-B, Ganga Tower, Mainpura, Patna, Police Station Pataliputra, District- Patna.

.... Appellant

Versus

1. The State of Bihar, through the Chief Secretary, Old Secretariat Building, Patna.
2. The Principal Secretary, Road Construction Department, Visheshwaraiya Bhawan, Patna.
3. The Engineer-in-Chief, Road Construction Department, Visheshwaraiya Bhawan, Patna.
4. The Chief Engineer, South Bihar, Road Construction Department, Visheshwaraiya Bhawan, Patna.
5. The Executive Engineer, Road Construction Department, Road Division, Munger.

.... Respondents

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Appearance :

For the Appellant : Mr. S.N.Singh, Advocate.
Mr. Sheo Narayan Singh I, Advocate.

For the State : Mr. J.P. Karn, A.A.G. 4
Mr. Ashok Kumar Dubey, A.C. to A.A.G. 4.

**CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 09-07-2015

Heard learned counsel for the appellant
and the State.

2. Appellant is aggrieved by the order of



the learned Single Judge dated 03.03.2009 passed in C.W.J.C. No. 2848 of 2009, whereunder writ petition has been dismissed affirming the order dated 08.12.2008 passed by the Executive Engineer rescinding the contract for laying of the road as the appellant did not execute the contract within the time stipulated in the agreement.

3. During the pendency of the appeal Executive Engineer further proceeded to invoke Performance Guarantee No. 0210021/182/2007 dated 01.08.2007 issued by the Allahabad Bank, Main Branch, Main Road, Ranchi. Invocation of the Bank Guarantee was also challenged by the appellant by filing Interlocutory Application No. 4148 of 2009. This Court considered the request made in the aforesaid Interlocutory Application on 07.08.2009 and having noticed the fact that after acceptance of the bid by the petitioner Firm, execution of the agreement, the Executive Engineer obtained aforesaid Performance Guarantee dated 01.08.2007, Annexure-P but close perusal of the same would indicate that it is not a Performance Guarantee rather a Bid Security Document. Petitioner having not given any Bank

Guarantee to execute the contract within a specific period, the Bank Guarantee dated 01.08.2007 could not have been invoked for his failure not to execute the contract within the time frame indicated in the agreement.

4. Even after dismissal of the writ petition assailing order rescinding the contract, the respondent authorities, in our opinion, are not empowered to invoke the Bank Guarantee dated 01.08.2007 as thereunder petitioner has never undertaken to execute the contract within the time frame. Appreciating such contention, this Court had stayed the invocation of the Bank Guarantee under order dated 07.08.2009 passed in this appeal. In the light of the said interim order the Bank Guarantee has been extended from time to time and it is presently valid until 31.07.2016. The order dated 09.06.2009 passed by the Executive Engineer *de hors* the terms of the Guarantee, cannot be sustained, is accordingly, quashed. Executive Engineer may not be entitled to invoke the Bank Guarantee but he is certainly entitled to recover the amount of loss for failure of the petitioner to execute the contract within

the stipulated time indicated in the agreement in accordance with law.

5. With the aforesaid observation, the appeal is disposed of.

(V.N. Sinha, J)

(Nilu Agrawal, J)

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