

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.583 of 2014

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1. The State of Bihar through the Executive Engineer, Western Koshi Canal Division No.1, At and P.O. Jai Nagar, District- Madhubani.
 2. The Superintending Engineer, Western Koshi Canal Circle No.2, Birpur, Camp Jainagar, District- Madhubani.

.... Degree Debtors/ Appellants

Versus

Senbo Engineering Limited, a Company incorporated under the Companies Act, 1956 having its registered Office at 87, Lenin Sarasni, Kolkata 700013, West Bengal.

.... Decree Holder/Respondent.

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Appearance :

For the Appellant/s : Mr. Kundan Bahadur Singh, SC-22

For the Respondent/s : Mr. K.D.Chaterjee, Sr. Advocate.

Mr. Nand Kishore Singh, Advocate.

Mr. A.K. Verma, Advocate.

Mr. Amit Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 03-04-2015

I.A. No. 7242 of 2014:

Heard.

This Interlocutory Application has been filed on behalf of the appellants to condone the delay of about 93 days in filing the present miscellaneous appeal.

For the reasons detailed in the Interlocutory Application, the delay of 93 days in filing this present miscellaneous appeal is condoned and this Interlocutory Application is, accordingly, allowed.

Now I proceed to consider this miscellaneous appeal on its own merit.

2. This miscellaneous appeal has been filed, under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) by the appellants against the order dated 12.03.2014 passed in Miscellaneous Case No. 09 of 2012 whereunder the Sub-Judge-V, Madhubani, rejected the application of the appellant no.1, filed under Section 34 of the Arbitration and Conciliation Act, 1996, for setting aside the award dated 16.12.2011 passed by the sole Arbitrator, Sri Ram Bilash Choudhary, Chief Engineer, Water Resources Department, Patna.

3. The brief facts of the case is that for construction of canal siphon at R D 139.19 of Western Koshi Main Canal across river Kamla at Bhakura in the District of Madhubani, the tender was invited on 08.02.1997 and the same was finalized in favour of the respondent. The appellant no.2/Superintending Engineer, West Koshi Canal Circle Jay Nagar entered into an agreement with the respondent for execution of the said work worth of Rs.55,45,53,428/- within 24 months from the date of start of the work, i.e., 15.10.1997 excluding rainy season. The respondent deposited Rs.20,00,000/- as security money etc. Thereafter respondent was given Rs.2,76,00,000/- as



mobilization advance and Rs.1,33,00,000/- as machine advance with condition that the said advance shall be deducted with interest @ 16% from running on account bills of the respondent. In spite of the cooperation by the Water Resources Department, the respondent failed to complete the work within the stipulated period. Thereafter on the request of the respondent, time was extended twice till 30.06.2001 and 15.10.2002 but the respondent did not complete the work and left the work incomplete. Despite of requests and instructions issued by the concerned authorities of Water Resources Department, the respondent refused to complete work saying that unless and until dues are not cleared the work will not be completed. Due to delay tactic of the respondent and breach of the agreement dated 15.10.1997 by the respondent, the Water Resources Department took action against the respondent in terms of Clouse 3.40-2 of the General Conditions of contract and sent letter no. 152 dated 02.03.2002 to the respondent to pay compensation of Rs.110.92 lacs as liquidated damages but the respondent refused to pay the said mount and denied his liability. Thereafter the Water Resources Department took action to complete the remaining work and a fresh tender was invited and the said work was completed by another contractor, namely, M/S. Hardeo Construction Private Limited, Deogahar. Ultimately, the matter was



referred for arbitration by the Chief Engineer, Water Resources Department to sole arbitrator, who after hearing the parties passed the award on 16.12.2011, directing the appellant no.2/Superintendent Engineer, Western Koshi Canal Division No.1, Jai Nagar, District Madhubani to pay Rs.7,14,21,403/- to the respondent along with simple interest @ 12% per annum with effect from 01.06.2003 till the date of award. If the said amount is not paid to the respondent within a period of three months from the date of the award, further interest @ 15% on such award amount is to be paid by the appellant from the date of the award.

4. The State of Bihar through the appellant no.1/Executive Engineer, Western Koshi Canal Division No. 1, Jai Nagar, District Madhubani, filed an application numbered as Miscellaneous Case No. 09 of 2012 under Section 34 of the Arbitration and Conciliation Act, 1996, for setting aside the award dated 16.12.2011 passed by the sole Arbitrator, Sri Ram Bilash Choudhary, Chief Engineer, Water Resources Department, Patna. The learned Sub-Judge-V, Madhubani, through the impugned order dated 12.03.2014 rejected the aforesaid application. Thereafter the appellants have preferred the present miscellaneous appeal.

5. Learned counsel for the appellants submits that



the award dated 16.12.2011 passed by the Arbitrator, Sri Ram Bilash Choudhary, Chief Engineer, Water Resources Department, Patna is against the terms of Clause 3.48 of the agreement entered into between the Superintending Engineer, Western Kosi Canal Circle No.2, Birpur Camp, Jainagar, District- Madhubani and respondent. Learned counsel for the appellants further submits that it would appear from the award that sole arbitrator appointed by the Chief Engineer, Water Resources Department, Darbhanga, withdrew to office then Sri Ram Bilash Choudhary, Superintending Engineer, Water Resources Department, was appointed as sole arbitrator, who passed the award. While according to Section 11(6) (c) of the Arbitration and Conciliation Act, 1996 after withdrawing to the office of arbitrator appointed by the Chief Engineer further the sole arbitrator should be appointed by the Chief Justice. On the other hand, learned counsel appearing on behalf of the respondent submits that according to Clause 3.48.2 in respect to the dispute or difference regarding which decision has not been final and conclusive the Chief Engineer, Water Resources Department, Darbhanga, is empowered to appoint the sole arbitrator to the Officer of the rank of Superintending Engineer or higher, who have not connected with the work. As such, there is no illegality in appointment of arbitrator, who was at that time of



Superintending Engineer. He further submits that it would appear from award itself that after withdrawing to the office by arbitrator earlier appointed by the Chief Engineer, Water Resources Department, Darbhanga, he again appointed to Sri Ram Vilash Choudhary as arbitrator vide letter dated 20.05.2008 and he proceed on the agreement of parties to decide to dispute as such no question arise to request the Chief Justice or any person or institution for appointment of Arbitrator by the parties.

6. The award dated 16.12.2011 passed by the sole arbitrator, Sri Ram Bilash Choudhary, Chief Engineer, Water Resources Department, shows that after withdrawing to the office by sole arbitrator appointed earlier by the Chief Engineer, Water Resources Department, Darbhanga, the Chief Engineer, vide letter dated 20.05.2008 appointed to Sri Ram Bilash Choudhary as arbitrator for arbitration and on request parties appeared, thereafter he passed the award on 16.12.2011. Clause 3.48.2 of agreement is related to arbitration under which the Chief Engineer, Water Resources Department, Darbhanga is authorized to appoint sole arbitrator to the officer of the rank of Superintending Engineer or higher if the dispute/difference has not been decided finally and conclusively. As such, the Chief Engineer, Water Resources Department, Darbhanga

was competent to appoint the sole arbitrator. As far as application of Section 11(6)(c) of the Arbitration Act is concerned, after withdrawing of the office of arbitrator by Superintendent Engineer appointed earlier by the Chief Engineer, Water Resources Department, Darbhanga, he again appointed to Sri Ram Bilash Choudhary, the then Superintending Engineer, who passed the award on 16.12.2011. As such, there was no occasion to the respondent to make prayer to the Chief Justice or any person or institution designated by him for appointment of arbitrator. As such, I find no substance in the submission of the learned counsel for the appellants.

7. The leaned Sub-Judge has discussed all issues decided by the arbitrator under Award dated 16.12.2011 in the impugned order in detail and arrived at conclusion that there is no infirmity in the Award in the purview of Section 34 of the Arbitration Act for interference.

8. Under the facts and circumstances as discussed above, I find no infirmity in the impugned order passed by the Sub-Judge-V, Madhubani in Miscellaneous Case No. 09 of 2012. Accordingly, this miscellaneous appeal is dismissed.

(Rajendra Kumar Mishra, J)

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