

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

RSA No.40 of 2006

Shri Lakshmi Kanta Bhattacharjee,
S/o Shri Paresh Nath Bhattacharjee,
Proprietor of M/s. B C Construction,
North Nayapara, P.S. Dharmanagar,
District - North Tripura.

..... Appellant.

- Vs -

- 1. The D.M & Collector,**
North Tripura, Kailashahar,
P.O & P.S. Kailashahar,
North Tripura.
- 2. The Chief Engineer, P.H.E.,**
Government of Tripura, Kumarghat,
Agartala, P.O & P.S. Agartala,
District - West Tripura.
- 3. The Superintending Engineer**
P.H.E. Circle No.II, Ambassa,
P.O. & P.S. Ambassa, Dhalai.
- 4. The Executive Engineer,**
P.H.E. Division No.11, Kumarghat,
P.O. & P.S. Kumarghat
District - North Tripura.
- 5. The State of Tripura,**
(to be represented by the Secretary, P.H.E. Deptt.)
Govt. of Tripura, Agartala,
P.O. & P.S. Agartala, Dist. - West Tripura,
(Summons to be served upon the Addl. G.P., Dharmanagar).

..... Respondents.

_B_E_F_O_R_E_
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. S M Chakraborty, Sr. Advocate,
 Ms. B Chakraborty, Advocate.

For the respondents : Mr. A Ghosh, Public Prosecutor.

Date of hearing and : 13.1.2015.
 delivery of judgment.

Whether fit for reporting: No.

JUDGMENT & ORDER (ORAL)

This regular second appeal is directed against the judgment & decree dated 3rd August, 2006 passed by the learned Additional District Judge, North Tripura, Dharmanagar in Title Appeal No.3 of 2006 whereby he dismissed the appeal of the plaintiff-appellant and upheld the judgment & decree dated 12th December, 2005 passed by the learned Civil Judge(Junior Division), Dharmanagar in Title Suit 36 of 2004.

2. The undisputed facts are that the plaintiff contractor was awarded a contract by the department for laying of a pipe line from the Dharmanagar water works to the tank at Office Tilla, Dharmanagar. It is also not disputed that the pipes used were supplied by the department. As per the terms of the contract entered into between the parties, the CI pipes of 300 mm. and 400 mm. diameter were to be supplied by the department to the contractor and he was liable to return the unutilized material, if any. The bitumen to be used was to be supplied by the department, if available, otherwise the contractor was to arrange the bitumen at his own risk and cost. The other material including pig-lead

and cement was to be arranged by the contractor and not to be supplied by the department.

3. It is not disputed that the plaintiff laid the pipes and raised a bill and after entries were made in the Measurement Book the amount as claimed by him for laying the pipes was paid to him. Thereafter, when the pipes were actually put to use some of the pipes cracked. The plaintiff contractor was asked to replace the cracked pipes. The new pipes were again given by the department and the contractor re-laid those pipes. He filed a suit claiming an amount of Rs.33,254/- as the amount payable to him on account of relaying of the pipes. This suit was contested by the defendants on the ground that the plaintiff in terms of the contract especially Clause 4 thereof was liable to change the pipes free of costs.

“4. If there is any defect or leakage is found during testing of pipe line Contractor shall rectify the same without any delay at his own risk and cost. The pipe line shall be tested by the contractor in presence of the Engineer-in-Charge or his authorized representative after completion of pipe line work as per specification of relevant code.”

4. According to the plaintiff, who appeared in the witness box as PW.1, at the time when the testing was done no defect was found. He has in his statement stated that after completion of work the pipe line was ready for handing over. The department inspected the pipe line including the CI pipes and found the same in good condition and so the work was recorded in the Measurement Book. These were test checked and payment for the work was made by the department to the contractor.

This fact is not denied by the department. On behalf of the department one witness namely Sri Somesh Ch. Das was examined. His entire reliance is on Clause 4 of the agreement. He also states that since the pipes developed defects it must be because of the mishandling of the pipes by the plaintiff.

5. There is no dispute that the pipes which were delivered to the plaintiff by the department did not have any cracks. They did not develop any cracks at the time of testing also otherwise no payment would have been made to the contractor. It appears that when water at high pressure was sent through the pipes some of the pipes developed cracks and had to be replaced. This was not a defect attributable to the contractor.

6. Normally, in an appeal under Section 100 of the C.P.C in case of current findings of fact this Court does not interfere in the matter. However, in the present case the finding arrived at by the learned trial Court has been upheld by the learned lower appellate Court without giving any independent reasoning whatsoever. The first appellate Court is the final Court of fact. It must re-examine the evidence and arrive at its own finding and because the first Court of fact has not done its duty it falls upon the High Court even in the course of a second appeal to correct such a perverse finding of fact.

7. It is common sense that the contractor could have been held liable only for any fault on his part. If the pipes which were supplied by the department were defective how could the contractor be asked to

relay the same without payment of any charges to it? In case the pipes had cracked due to fault of the contractor then the department would not only have asked the contractor to relay the pipes but would have also asked him for the cost of the pipes. No amount would have been paid to the contractor by way of final payment in case these leaks had developed during testing due to fault of the contractor. All these facts clearly indicate that the pipes developed cracks after they were put to use and after testing was complete. This could only happen if the pipes were defective. No evidence has been led by the department to show that the pipes developed cracks due to the faulty laying of the pipe line.

8. Therefore, I have no hesitation in coming to the conclusion that the findings of fact arrived at by both the Courts below is a perverse finding of fact based on no evidence and a total misreading of condition No.4 quoted hereinabove. As such the appeal filed by the plaintiff contractor is allowed. The suit filed by him is decreed and a decree for a sum of Rs.33,254/- be prepared along with costs of the litigation throughout and interest @ 6% from the date of filing of the suit till payment of the amount.

The appeal is disposed of.

CHIEF JUSTICE

Sukhendu