

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.121 of 2013

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Kameshwar Prasad Singh, S/o Sri Ramanuj Singh, Resident of
Manikchand Talab, Anisabad, Police Station - Gardanibagh, District -
Patna.

.... Petitioner.

Versus

1. The State of Bihar through the Secretary, Building Construction
Department, Vishweshwarraya Bhawan, Bailey Road, Patna.
2. The Executive Engineer, Building Construction Department,
Gardanibagh Building Division, Patna.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Raj Shekhar, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 08-04-2016 Heard Mr. Raj Shekhar, learned counsel appearing

for the petitioner and Mr. Neeraj Kumar, learned counsel

appearing for the State-respondents.

The interlocutory application (I.A.No.5603/2013)

for condonation of delay in filing this revision application is

allowed and the delay in filing the revision application is

condoned.

The present revision application has been filed

under Section 13 of the Bihar Public Works Contract Disputes

Arbitration Tribunal Act, 2008 challenging the award dated

14.12.2012 passed in Reference Case No.73/2010 by the tribunal

under the aforesaid Act. From the perusal of the award in question



it appears that the claim of the petitioner related to altogether 5 agreements involving total amount of Rs.1,53,881.85. By the impugned award the tribunal has allowed only the claim of the petitioner which has arisen out of two agreements i.e. agreement no.322 of 2005-06 and agreement no.354 of 2005-06. The learned counsel for the parties have jointly submitted that the agreement no.322/2005-06 has been wrongly mentioned in the impugned award due to typing mistake as there was no such agreement with the said number and in fact it should have been agreement no.304/2005-06. The tribunal has rejected the remaining claim of the petitioner arising out of the three agreements as barred by limitation.

The learned counsel for the petitioner has submitted that the petitioner has filed an interlocutory application for condonation of delay wherein sufficient cause has been mentioned explaining away the delay but the said interlocutory application has not been considered on merits and no finding has been recorded in that regard by the tribunal before rejecting the claim of the petitioner in question as barred by limitation. The learned counsel has referred to page-4 of the impugned award and has submitted that the tribunal has taken into notice the said interlocutory application filed on behalf of the petitioner for

condonation of delay but subsequently failed to consider the same on merits. In this backdrop, it has been contended that the tribunal has committed error of jurisdiction and material irregularity in rejecting the claim of the petitioner based upon the remaining three agreements as barred by limitation.

The learned counsel for the State-respondents has accepted that though the reference of the interlocutory application filed on behalf of the petitioner for condonation of delay has been made by the tribunal at page-4 of the award but there is no consideration and findings recorded by the tribunal either accepting or rejecting the explanation of delay as made out in the interlocutory application.

After perusal of the impugned award and considering the submissions made on behalf of the parties, it is manifest that an interlocutory application for condonation of delay in raising the claim before the tribunal has been filed by the petitioner as is apparent from page -4 of the impugned award. It is, however, further also apparent that there is no consideration and finding by the tribunal on the pleas raised by the petitioner in his interlocutory application for condonation of delay. This Court is of the opinion that before rejecting the claim of the petitioner raised on the basis of the remaining three agreements as barred by

limitation, the tribunal was enjoined in law to consider and record a finding on the issue of limitation in view of the averments made in the interlocutory application which has been filed by the petitioner praying for condonation of delay. The tribunal has, therefore, failed to exercise the jurisdiction vested in it and has acted with material irregularity in rejecting the claim of the petitioner with regard to the remaining three agreements as barred by limitation.

In result, this revision application is allowed and the impugned award so far as it relates to the claim of the petitioner on the basis of three agreements i.e. agreement no.160/1996-97, agreement no.171/1998-99 and agreement no.185/2003-04 is set aside. The matter is remitted back to the tribunal for considering the claim of the petitioner based upon these three agreements in accordance with law afresh after considering the prayer for condonation of delay also as made out by the petitioner in the interlocutory application filed for the said purpose, in accordance with law.

(V. Nath, J)

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