

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.391 of 2001

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1. The State of Bihar through Collector, Siwan
2. The Commissioner-cum-Secretary, Water Resources Department, Bihar, Patna
3. The Engineer-in-Chief, North Water Resources Department, Bihar, Patna
4. The Chief Engineer, Water Resources Department, Siwan, -cum-Chairman, Special Liability Committee, Siwan
5. The Superintending Engineer, Saran Canal Circle, Siwan
6. the Executive Engineer, Saran Canal Division, Mairwa, District- Siwan
..... Appellants

Versus

M/S Unemployed Engineer, through Ram Pravesh Rai, Managing Partner, son of Kamla Rai, R/o village- Goharua, Guthani, P.S.- Guthani, District- Siwan..... Respondent

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Appearance :

For the Appellants	:	Mr. R. B. Prasad Yadav, AAG-11 Mr. Ramashray Roy, Advocate
For the Respondents	:	Mr. Binod Kumar Singh, Advocate Ms. Vagisha Pragya Vacaknavi, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
C.A.V. JUDGMENT

Date : 13-09-2017

The instant appeal has been preferred against the judgment dated 20.03.2001 and decree dated 11.04.2001 passed in Money Suit No. 12 of 2000 in the matter of M/s Unemployed Engineer Vs. The State of Bihar and Others, by Shri Damodar Pandey, the then learned Subordinate Judge Ist, Siwan, whereby and whereby the Money Suit No. 12 of 2000 was decreed.

2. The Money Suit No. 12 of 2000 was filed by the plaintiff-respondent on 21.07.2000. Briefly stated, the case of the plaintiff is that the plaintiff is an association of Engineers and Builders who were engaged in performance of civil works



in various governmental organization and the plaintiff is a registered contractor of the Water Resources Department. The Chief Engineer, Department of Water Resources, Siwan, as per the proposal of the Government, granted technical sanction for special repair of Hatwa Branch Canal from Kilometer 27.44 to 32.60 under National Water Management Project for sum of Rs. 08,92,000/- vide letter no. 2288 dated 30.11.1993, photo copy of that letter is annexed as annexure1 to the plaint. The Superintending Engineer, Saran Canal Circle, Siwan vide letter no. 1374 dated 29.08.1992 awarded the tender for the work mentioned above to the plaintiff for a sum of Rs. 5,13,660/- only at 5 % above the estimated and department State rates and annexure-2 is the copy of that letter attached with the plaint. On 08.04.1993 an agreement form F/2 bearing no. 1 of 1993-94 was entered into between the plaintiff and the defendant no. 6 for the work in question, the copy of the same is annexure-3 to the plaint. The defendant no. 6 issued work order to the plaintiff and work was to be completed by 08.05.1993 vide annexure-4. The work of the plaintiff was jointly inspected by defendant no. 5 and Sri Bhandari, Joint Secretary, the Department of Water Resources and some modifications were suggested and accordingly a revised estimate incorporating the modified



provisions were prepared and submitted for approval, the plaintiff continued with the work as per the modified provisions. On and from 20.04.1993 to 23.04.1993 the Junior Engineer Incharge of the work recorded the detailed section measurement of the work done up to 20.04.1993 from R.D.- 92 to R.D.- 107 in measurement book which was checked by Assistant Engineer incharge of work and found to be correct. On 26.04.1993 a detailed evaluation of quality of cutting filling work done from work cross Section by the Junior Engineer incharge of works and 100 % checked by the Assistant Engineer of incharge of works in measurement book no. 1366 page no. 61 to 72. Further on 30.04.1993 test check of measurement was done by Executive Engineer incharge of works and Bill for Rs. 3,31,347/- was passed as per measurement book no. 1366 page 74. The Account Officer AG, Bihar, Siwan scrutinized the Bill and relevant record and admitted the net payment of Rs. 2,91,584/-. The Executive Engineer passed the Bill of Rs. 3,31,347/- but made payment of Rs. 1,70,000/- only to the plaintiff for want of allotment of funds in the Division. On 02.05.1993 detailed measurement for further works done till 01.05.1993 were recorded in measurement book no. 1366 page 76 to 81 by Junior Engineer incharge of works and quantity of



cutting and filling works evaluated and recorded and on 03.05.1993 works were 100 % checked by Assistant Engineer incharge but no Bill was prepared as there was no fund. The Executive Engineer, Saran Canal Division, Mairwa checked the measurement on 03.05.1993 himself with the S.D.O. incharge of works vide measurement books no. 1366 pages 76 to 78 and 83. On 08.05.1993, the work was completed in time by the plaintiff and the final measurement of works was recorded by the Junior Engineer incharge of works in Measurement Book No. 1374 page 1 to 16 which was 100 % checked by the Assistant Engineer incharge of works in presence of Executive Engineer, Saran Canal Division, Mairwa which was also test checked by the Executive Engineer with the S.D.O. Incharge of work on 09.05.1993. On 07.07.1993 the Junior Engineer incharge and Assistant Engineer incharge prepared the Bill for Rs. 2,31,161/- in M.B. No. 1366 at page 88 to 89 for further work done till 01.05.1993. On 08.07.1993 the Assistant Engineer incharge ordered for payment of the second running Account Bill after discussion with the Executive Engineer who also had checked the final measurement on 09.05.1993. The same was checked by the Account Officer of AG, Bihar who admitted the payment of net Rs. 1,99,543/- only but the Executive Engineer again, for



want of funds, made a limited payment of Rs. 80,906/- only and thus, again payment of Rs. 1,50,255/- and the balance amount as per the final measurement remained pending for no fault of the plaintiff. On 30.01.1994 sanction of revised estimate vide detailed in annexure-1, the Junior Engineer and Assistant Engineer incharge prepared the the final Bill in Measurement Book No. 1374 page 16 and 17 for remaining amount as per the final measurement regarding MB No. 1374 page 1 to 16 amounting to Rs. 1,95,947/-. The same was again tested and checked by the Executive Engineer, who being satisfied ,passed the Bill for Rs. 1,95,947/- and according to the the Accounts Officer, AG, Bihar a sum of Rs. 1,82,231/- was admitted but due to non-availability of the funds no payment was made to the plaintiff. After the allotment of funds, on 30.03.1995, a cheque bearing no. 993505 for sum of Rs. 1,43,622/- was given to the plaintiff by the Executive Engineer but when it was presented for payment, the State Bank of India refused to clear the payment with objection that the payment was stopped by the drawer, Photostat copy of cheque is annexure-viii to the plaint. On inquiry it was learnt that the payment was stopped on the basis of order of the Minister, Department of Water Resources, Bihar vide department letter no. 387 dated 31.03.1995. The



plaintiff being aggrieved filed writ petition bearing C.W.J.C. No. 5968 of 1996. The then Superintendent Engineer came to know about the writ petition and out of annoyance referred the claim of the plaintiff under consideration by the Hon'ble Court to a Committee known as Liability Committee which consists of Departmental Officers and the Committee without notice and hearing and without visiting the works site did not recommend the payment of the plaintiff. In the writ petition, the defendant filed counter affidavit along with the report of the Liability Committee and then the Hon'ble High Court dismissed the writ petition of the plaintiff with observation that if the plaintiff filed representation before the Departmental authority, it may be considered and admitted dues lawfully and payment to the plaintiff should be paid. Thereafter, the plaintiff filed representation on 24.05.1997 and on 01.08.1997 but the grievance was not redressed, then, again 2nd writ petition bearing C.W.J.C. No. 6885 of 1998 was filed. Again the defendant appeared and filed counter affidavit denying and disputing the claim of the plaintiff and the Hon'ble court dismissed the writ petition on 02.02.1999 with the observation that it will be open for the plaintiff to claim appropriate relief in appropriate forum according to law. The plaintiff approached the defendant several



times to redress his grievance and to make payment but no payment was made, hence, the necessity of the suit. The amount payable is of commercial transactions and due to non-payment by the defendant the plaintiff has been put to paucity of funds for further business and contract works and the investment made by the plaintiff from the borrowings made from the friends and well wishers on interest, hence, the defendants are liable of payment of amount with interest at commercial rate fixed by the Reserve Bank of India time to time as the plaintiff has suffered a lot. The plaintiff sent legal notice under Section 80 of the C.P.C. to the defendant no. 1, 4, 5 and 6 respectively and then filed the suit.

3. The defendants appeared and filed written statement raising objections of maintainability of the suit. The defendants have accepted the statements made by the plaintiff in the plaint from paragraphs 9 to 18 and have stated that the agreement of the works and checking of the Bill has been done under the guidelines and administrative control of the then Executive Engineer R. B. Prasad Singh, Junior Engineer Sri A. K. Singh and S. D. O., Gandak, M. N. Ansari. The statement made in paragraphs 11 to 22 of the plaint have been accepted by the defendants except the allegations that the authority



concerned were prejudiced on account of filing of the writ petition and the reference made to liability committee was not on account of prejudice against the plaintiff. There is no difference on the liability of the department which is legal and based on the departmental procedure and the departmental procedure are legal and valid and it has to be complied in toto. The Hon'ble Court has rejected the writ petition of the plaintiff filed earlier with observation that there is no difference on the point of law which is based on hard fact and it has to be proved by the plaintiff. On merit, the claim of the plaintiff was rejected by liability committee on 29.11.1996 and Engineer-in-Chief, Water Resources Department, Irrigation, Patna vide its memo no. 334 dated 30.01.1999 also rejected the claim on the basis of report of liability committee. The plaintiff had got no cause of action for the suit. Question of valuation has also been raised. The plaintiff is not entitled to any relief. The defendants have prayed to dismiss the suit of the plaintiff with cost.

4. On the basis of pleadings of the parties following issues have been framed on recast:-

“(I) Is the suit as framed maintainable ?

(II) Has the plaintiff valid cause of action for the suit ?

(III) Is the plaintiff entitled for a money



decree in the suit as claimed ?

(IV) Is the plaintiff entitled for a decree of interest as claimed ?

(V) is the plaintiff entitled for a decree in the suit as claimed ?

(VI) Is the plaintiff entitled to any relief or reliefs ?”

5. Learned trial judge took up the issue no. III at first and came to the conclusion that the amount of Rs. 1,95,947/- remained due to be paid to the plaintiff by the defendants for which the plaintiff is entitled for a decree in the suit and decided the issue in favour of the plaintiff. Thereafter, issue no. (IV) was taken and allowed the rate of interest of 10 % per annum for the amount claimed for the period for which the plaintiff is entitled for interest before the institution of the suit and 6 % per annum for the pendency of the suit till the realization of the amount and accordingly, decided the issue partly in favour of the plaintiff. Issue no. (I) was decided also in favour of the plaintiff and it was held that the suit as framed is maintainable. Issue No. (III) was also decided in faovur of the plaintiff holding that the plaintiff has got valid cause of action to institute the suit. Issue No. V and VI were taken up together and it was held that the plaintiff is entitled for Rs. 1,95,947/- and also for simple interest on the principal claim at the rate of 10 % per annum from the



date it became due as claimed in the plaint till the institution of the suit and also entitled at the rate of 6 % per annum for the period of pendency of the suit till its realization and accordingly, decreed the suit on contest with proportionate cost.

6. The defendants being aggrieved and dissatisfied with the said judgment and decree preferred this appeal challenging the legality, correctness and propriety of the same.

7. Learned counsel for the appellants arguing in this appeal has submitted that in the agreement there was no provision for interest and as such the interest awarded is against the terms of the contract. The claim of the plaintiff was dismissed in writ petition bearing C.W.J.C. No. 6985 of 1998. Earlier also the plaintiff has filed C.W.J.C. No. 5968 of 1996 with the prayer to direct the respondents to pay the admitted dues with 18 % interest to the plaintiff but that writ was also dismissed as the liability committee has rejected the claim of the plaintiff. The Engineer-in-Chief, Water Resources Department, Irrigation, Patna also rejected the claim of the plaintiff on the basis of the report of Liability Committee and as such the plaintiff-respondent had got no cause of action for the suit and he is not entitled for any relief. The suit of the plaintiff is fit to be dismissed.



8. On the other hand, learned counsel for the respondent has contended that interest was awarded as per the provision of the Civil Procedure Code. The interest awarded is not excessive rather it should be enhanced. The plaintiff has been harassed from pillar to post. In C.W.J.C. No. 5968 of 1996 there was observation that if the plaintiff filed representation before the departments authority, it may be considered and admitted dues lawfully payable to the plaintiff should be paid. In C.W.J.C. No. 6885 of 1998 also there was observation that it will be open for the plaintiff to claim appropriate relief in appropriate forum according to law and then, after serving notice under Section 80 C.P.C. the suit was filed. In writ petition, disputed question of facts cannot be decided and for that competent court is the Civil court. The judgment and decree passed by the court below is quite legal, proper and correct and further in accordance with the evidence available on the record and as such the same does not require any interference of this Court.

9. On the basis of rival contentions of the parties, the following points are for consideration in this appeal :-

- “(I) Is the respondent entitled for a money decree in the suit as claimed ?
- (II) Whether the interest awarded is legal ?”



FINDINGS:

10. Point No. 1:- It is an admitted case that the plaintiff was given a contract by the defendants and for that the amount was sanctioned and again the revised estimate along with its revised amount was also sanctioned. Bill was passed in favour of the plaintiff after checking the same under the guidelines and administrative control of the then Executive Engineer Sri R. B. Prasad Singh, Junior Engineer Sri A. K. Singh and S.D.O., Gandak, M. N. Ansari. It is also an admitted fact that a cheque bearing no. 993505 for a sum of Rs. 1,43,622/- was given to the plaintiff by the then Executive Engineer but the payment was not cleared and was stopped on the basis of order of the Minister, Department of Water of Resources, Bihar.

11. Both parties have adduced oral and documentary evidences. On behalf of plaintiff-respondent, the plaintiff Ram Parvesh Rai has been examined who has proved his case. Besides the oral evidence, Ext. 1 is the notice under Section 80 of the C.P.C., Ext. 2 is power for sending notice under Section 80 C.P.C., Ext. 3 is the letter no. 539 dated 16.05.2000 issued by the Executive Engineer, Saran Canal, Ext. 4 is the photocopy of the letter no. 2288 dated 30.11.1993 issued by the State of Bihar,



Ext. 4/A is the copy of letter no. 1374 dated 29.08.1982, Ext. 5 is the photocopy of agreement, Ext. 4/B is the photocopy of letter no. 576 dated 08.04.1993, Ext. 4/C is the photocopy of letter no. 1495 dated 06.09.1994, Ext. 4/D is the photocopy of cheque dated 30.03.1995, Ext. 6/A is the photocopy of letter no. 9935 dated 31.02.1995, Ext. 4/E photocopy of order of C.W.J.C.No. 5968 of 1996 dated 14.05.1997, Ext. 4/F is the photocopy of letter no. 2 dated 01.08.1997, Ext. 4/G is the photocopy of letter no. 12 Ext.8 to 8/A is the measurement book, Ext. 4/H is the carbon copy of letter no. 1041 dated 14.08.1994, Ext. 4/I is the carbon copy of letter no. 1495 dated 06.09.1994.

12. From perusal of the judgment of the learned trial Judge it reveals that the documents which are photocopy and carbon copy have been marked Exhibits on the basis of admissions made by the defendants-appellants.

13. On behalf of the defendants only one witness Jai Prakash Jha, Executive Engineer has been examined. He has stated that if the payment of a contractor was not made within one year, it is known as liability and it comes under the jurisdiction of liability committee and the liability committee has rejected the claim of the plaintiff. The letter concerning to the cancellation of the claim has been marked as Ext. A. This



witness during cross-examination has admitted that on perusal of measurement book it appears that the Bill of the plaintiff was passed, this witness has also admitted that in the agreement of the plaintiff there was no provision for liability committee.

14. On behalf of the defendants Ext. A series is a letter from the Government, Ext. B is the original Bill, Ext. C is the original agreement and Ext. D is photocopy of cheque.

15. From oral and documentary evidences adduced on behalf of both the parties it appears that the plaintiff was a contractor and he completed the work in time and his final Bill was passed even by the Chief Engineer. It also appears that the measurement of the work was made by the Junior Engineer which was checked by the Assistant Engineer, Executive Engineer and Superintending Engineer and all okayed the work, accordingly, final Bill of the plaintiff was passed amounting to Rs. 5,97,108/- out of which Rs. 4,01,061/- was paid and Rs. 01,95,947/- remained unpaid due to the paucity of funds. It also appears that when the allotment was received, the cheque was issued to the plaintiff for his remaining amount, that was not cleared and the payment was stopped. It appears that the liability committee had found some signature missing in the measurement book, that fault cannot be fastened upon the



plaintiff as the same was the work of the department and not of the plaintiff. If some signature was to be made by the officers on the measurement book and it was not made, it is the defect on the part of the officer and department and not on the part of the plaintiff. It is not the case of the defendants-appellants that the work was not properly done or there was any defect in the work. From the evidences adduced by the defendants it appears that there is a liability committee in the department and if the payment is not made in a year in which the work is completed, for clearance, it is referred to the liability committee and the liability committee ordered for payment of the Bill and accordingly, the allotment is received but here the case is something otherwise. Here, when the allotment was received for payment on the recommendation of letter of Executive Engineer and the Superintending Engineer, what was the necessity to refer the matter to the liability committee. Referring the matter to the liability committee, after four years of the completion of the work, appears not genuine and this reflects the malafide intention on the part of the department. Moreover, if the matter was referred before the liability committee what was the need to give allotment for the payment of the Bill as claimed by the plaintiff and as such it shows contradictory behaviour of the



department. The plaintiff had completed the work according to the agreement in time and his Bill was passed, no defect in the work was shown or pointed out by any of the officer of the department. It also appears that finally Rs. 5,97,108/- was passed out of which Rs. 04,01,161/- was only paid to the plaintiff and the amount of Rs. 1,95,947/- was remained to be unpaid for which the plaintiff is entitled for a decree in the suit. Learned trial court has rightly decided the issue no. (III) in this regard in favour of the plaintiff. I am also in agreement with the findings of the learned trial court. In the result, this point is decided in favour of the respondent and against the appellants.

16. Point No. II:- In this regard the learned trial court has decided the issue no. (IV) which appears quite correct and proper. The plaintiff has claimed interest at commercial rate at the rate of 18 % per annum. In the written statement of the defendants and also in the evidence of the defendants nothing has been stated on the point of rate of interest. The claim of the plaintiff has not been denied by the defendants in their written statement and also in the evidence and as such it amounts to acceptance.

17. Learned trial court, as per the provision of Section 34 of the C.P.C., has granted interest at the rate of 10 % per



annum for the amount claimed for the period for which the plaintiff is entitled for interest before institution of the suit and further as per section 34 of the C.P.C., the interest has been awarded at the rate of 6 % per annum for the pendency of the suit till its realization. The interest awarded is quite proper, legal and correct and further it is not excessive and as such this point is also decided in favour of the respondent and against the appellants.

18. The judgment and decree passed by the learned trial Judge appears quite proper, legal and correct and there is no need for any interference by this Court.

19. In the result, the impugned judgment and decree are hereby confirmed. Accordingly, finding no merit, in this appeal, the same is hereby dismissed on contest but under the circumstances without cost.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
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