

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.314 of 2005

Against the judgment and decree dated 31.10.2005 passed by Subordinate Judge-VI, Gaya in Money Suit No.05 of 2002/34 of 2002

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Jitendra Prasad Singh

.... Plaintiff-Appellant

Versus

The State of Bihar & Ors.

.... Defendants-Respondents

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Appearance :

For the Appellant : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Ajay Kumar Sharma, Advocate with him.
For the Respondents : None.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 25-04-2017

The plaintiff has filed this first appeal against the judgment and decree dated 31.10.2005 passed by learned Subordinate Judge-VI, Gaya in Money Suit No.05 of 2002/34 of 2002 dismissing the plaintiff's money suit.

2. The plaintiff filed the aforesaid money suit for realisation of Rs.10, 51, 430/- with interest at the rate of 9% per annum *pendente lite*.

3. Plaintiff's case, in short, is that he is a registered government contractor in R.C.D. Pursuant to the tender notice, the plaintiff filed tender which was accepted by defendant no.6 and agreement dated 16.04.1995 and 22.04.1995 was signed by the Executive Engineer. Thereafter defendant issued work order on



16.04.1995 and 22.04.1995 for repairing Gaya-Khizersarai-Islampur Road and for repairing of Khizersarai Road. The plaintiff completed the work within the time fixed in the agreement. The defendants from time to time inspected the work and measurements were done. The Measurements Books were checked and verified by superior authority. The bill for the work done by the plaintiff was Rs.6, 39, 169/-. The dependants always assured to make payment as soon as the amount would be available. The defendants also wrote letters to the authority. Several notices were also sent ranging from 1996-1998. 9% interest comes to Rs.4, 11, 880/- which the plaintiff is entitled to. Thereafter when no payment was made, the plaintiff filed C.W.J.C. No.2927 of 1998 and C.W.J.C. No.2919 of 1998 before the High Court. The High Court directed the defendant to dispose of the claim of the plaintiff within fixed time. When the defendant did not dispose of his claim within time, the plaintiff filed contempt application in 2001 and during the pendency of the contempt application the Liability Committee rejected the claim of the plaintiff.

4. The State-defendant did not appear to contest the suit and the suit was taken up for hearing under Order 8 Rule 10 CPC. The learned trial court formulated the issue to the effect that whether the plaintiff is entitled to a decree as claimed with *pendente lite* interest.

5. On the basis of materials available on record the learned trial court recorded finding that although the plaintiff orally supported



his case but the documents do not support his claim. Ext.2 i.e. tender notice was never published in newspaper and, therefore, the other registered contractors were denied their right to file tender and, accordingly, dismissed the plaintiff's suit.

6. The learned Senior Counsel Mr. Ganpati Trivedi for the appellant submitted that there is no contrary case pleaded by the defendants. All the allegations and evidences produced by the plaintiff-appellant are unrebutted but the learned trial court dismissed the suit on flimsy ground. In fact the tender notice was published in the newspaper. Since there was no contrary case pleaded by defendants, the plaintiff did not produce the publication of tender notice. Moreover on this ground alone the plaintiff's case could not have been rejected. The evidences oral as well as documentary clearly prove that the plaintiff completed the work within the time fixed. The defendants did not pay the bill of the plaintiff and were giving only assurance. Lastly the plaintiff seeing no option was compelled to file writ applications before the High Court. Liability Committee was constituted according to the direction of the High Court but without giving notice to the plaintiff, the Liability Committee rejected the claim of the plaintiff on the ground that there is no proof of the work done by the plaintiff. The report of the Liability Committee is unfounded.

7. The learned Senior Counsel further submitted that



although the work was completed in the year 1995 itself but because assurances were given by the defendants and the plaintiff was bonafidely prosecuting the civil proceeding i.e. writ applications before the High Court, the money suit has been filed in the year 2002. As such, the suit is within limitation period.

8. Although on the first day of argument the learned State Counsel was present but when the argument of appellant was concluded, nobody appeared to argue the case on behalf of the State-respondent.

9. In view of the above contentions of the learned Senior Counsel for the appellant, the point arises for consideration is as to whether the plaintiff's suit is barred by law of limitation and whether the plaintiff is entitled for the relief claimed in the suit.

10. Article 18 of the Limitation Act provides that the suit for the price of the work done by the plaintiff for the defendant at his request where no time has been fixed for payment should be filed within three years from the work is done. Admittedly in the present case, the agreement is dated 16.04.1995 and 22.04.1995. The time fixed for completion of the work is one month only. Admittedly according to the plaintiff's case itself as pleaded in the plaint, the work order was given on 16.04.1995 and 22.04.1995. According to the plaintiff himself, he completed the work within the time fixed i.e. within one month which comes to 15.05.1995 and 21.05.1995. Since



there is no time fixed for payment of the price, the period of limitation started running from 16.05.1995 and 22.05.1995. Three years will be completed on 15.05.1998 and 21.05.1998 respectively with respect to both the work order and agreement. The suit has been filed on 29.06.2002.

11. The argument of the learned Senior Counsel that the plaintiff was prosecuting writ application bonafidely before the High Court is a civil proceeding, therefore, the period for which the plaintiff was prosecuting bonfidely before the High Court should be excluded under Section 14 of the Limitation Act. It may be mentioned here that the writ applications were filed on 01.04.1998 i.e. just before fifty days of expiry of limitation. Therefore, the period of limitation which was running from the date of the work done as stated above will stop running from 01.04.1998 till the writ applications were disposed of and/or Liability Committee rejected the claim of the plaintiff. In other words, the period of limitation from 01.04.1998 till the rejection of claim of the plaintiff by Liability Committee will not be counted.

12. It is the case of the plaintiff himself that both the writ applications were disposed of on 17.01.2000 and 20.01.2000. On the date of disposal of the writ applications the period which has stopped running will again start running. Therefore, the plaintiff had only fifty days for presenting the plaint as the writ applications were filed prior



to fifty days of expiry of limitation. From the date of disposal of the writ applications fifty days comes to 12.03.2000 which was the last date of filing the suit but the suit has been filed on 29.06.2002. Therefore, it is barred by law of limitation.

13. The learned Senior Counsel submitted that the rejection of the plaintiff's claim by the Liability Committee was communicated to the plaintiff on 21.02.2002. Therefore, according to the learned Senior Counsel, the limitation will start from this date. So far this submission is concerned, in my opinion, it is not acceptable because the plaintiff was prosecuting a civil proceeding bonafidely before the High Court i.e. from 01.04.1998 to 20.01.2000 during which the writ applications were pending. The proceeding before the Liability Committee cannot be termed as a civil proceeding before a competent court within the meaning of Section 14 of the Limitation Act. Moreover, even if fifty days are calculated from 21.02.2002 then also fifty days will expire on 13.04.2002 which was the last date for presenting the plaint but admittedly the suit has been filed on 29.06.2002, which is beyond period prescribed.

14. Section 3 of the Limitation Act provides that even if no defence is taken by the defendant regarding limitation, the court shall dismiss the suit if it is barred by law of limitation.

15. In view of the above discussion, it appears that although no defence has been taken by the defendants. The suit filed by the



plaintiff is barred by law of limitation, as such, on this ground alone the plaintiff's suit is liable to be dismissed.

16. The learned Senior counsel for the appellant submitted that this point was never raised before the trial court or before the High Court also. In my opinion, there cannot be estoppel against statute. The law will take its own course irrespective of the fact that it is raised by the defendant or not. Application of law is not dependent upon the argument advanced or defence taken by the parties.

17. In view of my above discussion, I find that the plaintiff's suit is itself barred by law of limitation. Therefore, court cannot grant any relief to the plaintiff whose claim is barred by law of limitation.

18. In the result, this first appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	08.03.2017
Uploading Date	25.04.2017
Transmission Date	

