

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.59 of 2014

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Rama Kant Singh

.... Petitioner/s

Versus

State of Bihar & Anr

.... Respondent/s

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with

Civil Revision No.70 of 2014

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The State Of Bihar

.... Petitioner/s

Versus

Ramakant Singh

.... Respondent/s

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with

Civil Revision No.74 of 2014

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The State Of Bihar

.... Petitioner/s

Versus

Ramakant Singh

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. J.S. Arora

Mr. L.B. Singh

For the Respondent/s : Mr. Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

15 13-12-2017

The above Civil Revision No. 70 of 2014 as well as

Civil Revision No. 59 of 2014 have arisen out of award dated

13.08.2012 passed by Bihar Public Works Contract Disputes

Arbitration Tribunal in Reference Case No. 22 of 2010 whereas

Civil Revision No. 74 of 2014 has been preferred against the

order dated 29.10.2013 passed by the above stated tribunal in



Review Case No. 06 of 2012 and accordingly, all the above stated Revision petitions are taken together and are being disposed of by this common order.

2. Heard the parties and perused the record.

3. Certain facts are admitted. It is an admitted position that petitioner in Civil Revision No. 59 of 2014 was allotted certain works by the State of Bihar and he had to complete the aforesaid work within certain period of time but in the midst of execution of work, the estimate and nature of the work was changed and time for completion of the work was extended. The contractor could complete the work only up to 47% and, subsequently, on 25.04.2008, the contract was rescinded and the security money as well as deduction made from the bills of the Contractor was forfeited.

4. The Contractor brought the dispute before the Tribunal and subsequently, the Tribunal by the impugned award dated 13.08.2012 directed to release the unpaid bills for an amount of Rs. 7,80,023/- to the petitioner, the deducted amount from bills of Rs. 26,74,263/- and also security deposit of Rs. 30,18,593/-. The Tribunal also ordered for imposing simple interest over the awarded amount w.e.f 23.04.2008 till realization of the awarded amount.



5. The State being dissatisfied with the findings of Tribunal preferred Civil Review Case no. 06 of 2012 but the aforesaid Civil Review Case no. 06 of 2012 was dismissed vide order dated 29.10.2013 which has been impugned in Civil Revision no. 74 of 2014.

6. The Contractor filed Civil Revision no. 59 of 2014 against the award dated 13.08.2012 only for release of remaining deducted amount from his running bills whereas the State file Civil Revision No. 70 of 2014 challenging the entire findings of the Tribunal given in award dated 13.08.2012 except the finding regarding the rescission of contract.

7. Learned counsel appearing for the petitioner in Civil Revision no.54 of 2014 submitted that the tribunal has, specifically, observed in the impugned award that the State had not suffered any loss due to none completion of work within the stipulated period and it is well settled principle of law that the security deposit could not be forfeited unless any loss is suffered due to none completion of the work. Learned counsel for the Contractor / petitioner in Civil Revision no. 59 of 2014 relied upon decision **of State of Bihar through the Chief Secretary, Bihar, Patna & Ors. v/s. M/s Kumar Construction Company through its Proprietor Narender Kumar Singh reported in**



2013(4) PLJR 239 wherein a co-ordinate Bench of this Court held that to forfeit the security deposit the condition precedent is loss suffered to the employer. A co-ordinate Bench also held in the aforesaid decision that unless there is a jurisdictional infraction by the Arbitral Tribunal in making of the award or the award suffers from manifest illegality or material irregularity, it is not to be interfered with, in a routine manner.

8. Learned counsel for the Contractor submits that it is an admitted position that Rs, 38,53,835/- were deducted from running bills of the Contractor and the Tribunal has only released Rs. 26,74,263 and refused to release the remaining amount taking note of clause 2 of the agreement but as a matter of fact, the Tribunal committed error in not releasing the aforesaid amount because Tribunal failed to notice that unless there is loss, the security deposit could not be forfeited.

9. Learned counsel for the Contractor/ petitioner in Civil Revision no. 59 of 2014 further submitted that admittedly, the progress of work was slow due to heavy rain and, subsequently, the department changed the estimate as well as nature of the work and that was the reason delay occurred in completion of the work. Moreover, the department has nowhere stated in order dated 25.04.2008 that any loss has been suffered by the State and,



therefore, in the aforesaid circumstance, no amount could have been forfeited

10. Learned counsel appearing for the State submits that admittedly, the State had filed counter claim raising this point that due to none completion of work, the estimate of work in question went up to Rs. 700/- lacs in place of Rs. 190 lacs and as a matter of fact, the estimate of the proposed work increased due to negligence of the Contractor because he failed to complete the work within stipulated period and on the basis of aforesaid pleading, the State claimed Rs. 500/- lacs from the petitioner but the tribunal while dealing with point no. 4 rejected the claim of the State arbitrarily without appreciating the evidence available on the record.

11. Having heard the contentions of both the parties, I have gone through the record along with lower court record. It is an admitted position that the Tribunal having heard the submissions and materials available on the record came to conclusion, that the State did not suffer any loss and from perusal of the impugned award, it appears to me that the Tribunal refused to release the deducted amount from bills on the impression that the aforesaid amount was deducted under Clause-2 of the Agreement but in my view, the Tribunal failed to take note of this



fact that the amount deducted under Clause -2 of the Agreement was only in form of security deposit amount and at the time of clearance of final bill, if it is found that no loss has been caused to the employer, in that event, the employer is bound to return the entire deducted amount of the bills. Therefore, in my view, the tribunal has committed error in refusing to release the remaining amount deducted under Clause-2 of the Agreement.

12. No doubt, the State had filed counter claim and stated that due to negligence of the contractor, the estimated cost of project increased to Rs. 700/- lacs in place of Rs. 190/- lacs but the Tribunal rejected the aforesaid counter claim of the State after discussing the material available on the record while dealing with point no. 4 of the impugned award.

13. It is well settled principle of law that unless there is jurisdictional error or perversity in the order, the revisional court cannot interfere into the order only with an object to modify or correct the error of the facts. Therefore, in the aforesaid circumstance, I am of the opinion, that Civil Revision no. 59 of 2014 is liable to be allowed whereas remaining two Civil Revision no. 70 of 2014 and Civil Revision no.74 of 2014 filed on behalf of the State are liable to be dismissed.

14. On the basis of aforesaid discussions, Civil Revision



no. 59 of 2014 is allowed and, accordingly, the opposite parties of the aforesaid Civil Revisions are directed to release the remaining amount of Rs. 11,79,572/- deducted from the running bills of the petitioner within three months from today, with simple interest of 8% per annum from its due date, till its realization.

(Hemant Kumar Srivastava, J)

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