

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.561 of 2000

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1.Union of India through General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta-7
2. The Divisional Railway Manager, Eastern Railway, Danapur, P.O. & P.S.- Khagaul, District- Patna
3. The Senior Divisional Accounts Officer, Eastern Railway, Danapur, P.O. & P.S.- Khagaul, District- Patna

... .. Appellants

Versus

Rajesh Kumar son of Satyanarain Prasad, R/o Mohalla- Jairam Bazar, P.O. & P.S.- Khagaul, District- Patna

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. Ashok Kumar Keshri, Advocate
For the Respondent/s	:	Mr. Umakant Shukla, Advocate
		Mr. Shakti Suman Kumar, Advocate
		Mr. Atul Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 15-11-2017

The instant appeal has been preferred against the judgment and decree dated 02.06.2000 passed by Sri Munilal Paswan the then Sub-Judge-II, Danapur in Money Suit No. 37 of 1994 whereby and whereunder the suit filed by the plaintiff was decreed on contest without cost.

2. The defendants are the appellants and the plaintiff is the respondent.

3. The plaintiff has filed the suit for a decree for Rs. 2,33,915.49/- with interest pendente lite and future and cost of the



suit. Briefly stated, the case of the plaintiff is that he is a contractor and he submitted his tender for Coal and Ash Handling works at Jhajha Loco Group of the Eastern Railway. His tender amount being lowest was accepted by the defendants for the period from 21.05.1992 to 20.05.1993. The monthly value of Coal Ash Handling work was Rs. 1,95,335/-. According to the precedence and customs prevailing, the plaintiff had to carry on extra works over and above being the tendered works. The plaintiff had duly deposited the security money with the Railway Administration and after issuance of letters and verbal orders, the plaintiff started his works as per terms from 21.05.1993. The plaintiff carried on the tendered works besides extra works simultaneously to the best satisfaction of the defendants and their agents. It is said that the plaintiff submitted his Bills for the aforesaid work from 21.05.1992 to 20.05.1993. The Bills of extra works were also submitted along with the works of tendered works duly endorsed by Loco Foreman and other subordinate staffs of the defendants. The Bills for the tendered amount were paid to the plaintiff on 22.02.1993 but for the extra works the amount has not been paid, although the Bills were passed, and hence, the plaintiff is entitled to get damages and interest at 12 % per annum over the amounts remained unpaid. The plaintiff is entitled to get Rs. 2,03,318.49/-



as principal amount due from the defendants plus Rs. 36,597/- as interest from 01.08.1993 to 31.10.1994 total Rs. 2,39,915.40/-. The plaintiff served registered notice on the defendants under Section 80 of the C.P.C. dated 09.08.1994 wherein the defendants were called upon to make payment within two months of the receipt of the notice. The said notices were duly served but the defendants have failed to pay and hence, the plaintiff filed the present suit.

4. The cause of action for the suit arose in between June, 1992 to April, 1993 when extra works were carried on by the plaintiff on the orders of the defendants and Bills along with the tendered works were submitted to the defendants and although the Bills were passed but the amount in suit has been illegally withhold by the defendants and were not paid and also on the date of last demand through registered notice under Section 80 of the C.P.C. and failure of the defendants to comply.

5. The defendants appeared, filed written statement and contested the suit. Shortly stated, the case of the defendants is that the suit as framed is not maintainable and is barred under Section 34 of the Specific Relief Act, Limitation Act and under the Contract Act. Further the suit is barred under Section 80 of the C.P.C., The plaintiff has got no valid cause of action for the suit.



The plaintiff has not carried out work as per terms and condition of the agreement, if any delay in execution of the agreement it was on the part of the plaintiff and not due to the defendants. The plaintiff did not carry out the work as per the terms and clauses of the agreement and for violation of the terms and clauses panel action was taken by the defendants and the competent authority, but the plaintiff placed it otherwise. The payment has been made by the plaintiff for the work which was properly carried out, according to the terms and clauses of the agreement, and if the Loco Foreman, Jhajha has certified the quality of work which is matter of record and evidence and hence, the claim of Rs. 2,03,318.49/- or any other claim given in schedule I for the period from June, 1992 to April, 1993 or for any other period are only imagination of the plaintiff and not accepted by the defendants. The plaintiff is not entitled to get Rs. 2,03,318.49/- as principal amount or Rs. 36,697/- as interest at the rate of 12 % or at any rate as detailed in schedule I of the plaint and the defendants are not liable for the same. The defendants have got no knowledge about the notice served under Section 80 of the C.P.C. and the plaintiff is not entitled to get any relief as sought for and the suit is fit to be dismissed with cost.



6. On the basis of the pleadings of the parties, the learned Sub-Judge framed following issues for consideration:

(I) Is the suit as framed maintainable ?

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

(III) Is the suit barred under Section 34 of the Specific Relief Act and is the suit barred by estoppel, waiver and acquiescence ?

(IV) Is the plaintiff entitled for a decree for cost as well as the interest as claimed in the suit ?

(V) Is the plaintiff entitled for a decree for the sum of Rs. 2,39,915.49/- as claimed in the schedule I of the plaint ?

7. Learned Sub-Judge took up issues no. IV and V together at first and decided the same in favour of the plaintiff and against the defendants holding that the plaintiff has performed extra work and he is entitled to receive the amount of Rs. 2,03,318.49/- which was due. The learned Sub-Judge took up issue no. II and III thereafter, but as those issues were not pressed, resulting, the same were accordingly, decided. Issue no. I was thereafter, considered and it was held that the plaintiff has proved his case against the defendants for realization of the amount of Rs. 2,03,318.49/- on account of extra works done and accordingly, the suit was decreed on contest without cost for a sum of Rs. 2,03,319.49/- as principal



amount with interest at the rate of 5 % per annum simple from the date of filing of the suit till realization.

8. The defendants being aggrieved and dissatisfied with the said judgment and decree preferred this appeal challenging the maintainability of the same on the grounds that the judgment and decree under appeal is bad in law and on facts. The court below has not considered the evidence in its true perspective. The judgment has been passed in gross violation of rules and evidence and in clear violation of judicial norms and propriety. Oral and documentary evidences as produced on behalf of the defendants have not been considered. Payment has already been made to the plaintiff for the work which was properly carried out according to the terms and conditions of the agreement. There is no evidence either documentary or oral produced by the plaintiff to establish that any extra works beyond the tendered work from 21.05.1992 to 20.05.1993 was done for which payment has to be made extra. The suit being barred by law of estoppel and acquiescence was fit to be dismissed.

9. Learned counsel for the appellants arguing in this appeal has submitted that there is no contract for doing extra works and no written order was given to the plaintiff to do extra works. Under Article 299 of the Constitution of India all Contracts made in the



exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorize. Further as per Section 10 of the Contract Act all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Under Section 23 of the Contract Act the consideration or object of an agreement is lawful unless it is forbidden by law or is of such a nature that, if permitted, it would defeat the provisions of any law or is fraudulent or involves or implies injury to the person or property of another or the court regards it as immoral or opposed to public policy. In each of these cases, the consideration or approach of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

10. Here there is no written agreement in between the plaintiff and the defendants to do extra works. It has not come either in the pleading or in the evidence as to on whose verbal order the plaintiff did the extra works and as such the claim of the



plaintiff regarding payment for extra works is not sustainable in law. The plaintiff has given no claim certificate at the time of payment, so no kind of any dues is due against the defendants. Agreement which is Ext. 2 there is clauses 24 and 25 and as per those clauses, the plaintiff is not entitled to claim the amount for doing extra works. In agreement there is no such clause for doing extra work on verbal direction of anyone. The burden lies on the plaintiff to prove his case but the plaintiff has not succeeded in proving his case but inspite of that the suit has been decreed, hence, the judgment and decree are fit to be set aside.

11. On behalf of respondents it is submitted that in paragraph 4 and 14 of the plaint it is specifically pleaded regarding doing extra works. In paragraphs 11 and 15 of the written statement there is no specific denial that the plaintiff has not performed any extra works and as such in absence of specific denial the facts pleaded in plaint must be taken to be admitted one. At the time of payment no claim certificate was filed by the plaintiff as per the direction of the defendants and at that time the Bill for extra work was also pending but inspite of passing of the Bills including the Bill for doing extra works the payment was not done. The plaintiff vide petition dated 05.02.1996 has prayed to direct the defendants to produce those final Bills which were



passed by the defendants and the court was pleased to direct the defendants to produce those documents which are in their custody and possession but, inspite of the order of the court, the defendants did not produce those documents which were in their custody and as such the learned court below has rightly taken adverse inference against the defendants. By order dated 20.09.1996 the defendants were directed to produce the said documents. The plaintiff has filed the photocopy of the Bills showing that the defendants have withhold the amount claimed by the plaintiff in the suit but the defendants did not produce those Bills which are in their custody. Those papers were very relevant to ascertain the defence of the defendants but the defendants in arbitrary manner did not comply the order of the court and withheld those documents. The defendants neither explained nor submitted any cogent reasons for not filing those required documents. The extra works along with tendered works were done on verbal order of the authority concern. Bills for the period i.e. 21.05.1992 to 20.05.1993 for the tendered works as well as extra works were submitted with the endorsement and certificate given by the Loco Foreman, Jhajha and were passed by the authority. Tendered work amount has been paid but the extra work amount has been withheld saying that it requires sanction from the higher authority. At the time of last



payment the plaintiff, as per precedent, has to give no claim certificate and then the plaintiff, to receive his amount and in order to carry on his business, has given no claim certificate. No claim certificate given by the plaintiff does not mean that there was no dues. The defendants have not come in the witness box to depose and the witnesses examined on behalf of the defendants are not trustworthy and competent. The learned counsel for the respondent further argued that as there is no specific denial in the written statement regarding the extra work done by the plaintiff and as such the learned court below has rightly decreed the suit after discussing the pleadings and evidences of the parties which were available on the record. The judgment and decree passed by the learned court below is maintainable and there is no need of any interference by this Court.

12. On the basis of rival contentions of the parties, the points for consideration in this appeal are as follows:-

(I) Whether the plaintiff did extra works along with the tendered works and whether the Bills for tendered works and extra works were filed simultaneously and those Bills were certified and verified by the Loco Foreman, Jhaja and whether the same were passed by the authority ?



(II) Whether no claim certificate granted by the plaintiff respondent debars him from claiming the amount for doing extra works ?

(III) Whether the judgment and decree passed by the learned court below are fit to be sustained ?

13. Point No. (I) :- The plaintiff in paragraph 4 of the plaint has stated that the plaintiff carried on the tendered works besides extra works simultaneously to the best satisfaction of the defendants and their agents. In paragraph 5 it is stated that the plaintiff submitted his Bills for the aforesaid work from 21.05.1992 to 20.05.1993. No extra works were done in May 1992 and in May 1993. The Bills for extra works also were submitted along with the works of tendered works duly endorsed by Loco Foreman and other subordinate Staffs of the defendants. In paragraph 6 it is stated that the extra works were done by the plaintiff for the period from June 1992 to April, 1993 were for total sum of Rs. 2,03,318.49/- as detailed in schedule I of the plaint. In paragraph 7 it is stated that the Bills for the entire works done by the plaintiff were properly certified by the Loco Foreman, Jhajha who is the competent authority. In paragraph 8 it is stated that the Bills for tender amount had been paid but for the extra works done, for the amount given in schedule of the plaint, although



passed, but were kept pending, awaiting sanction of the competent authority. In paragraph 10 it is stated that the Bills for the tendered amount has been paid to the plaintiff on 22.02.1993 but for the extra works the amount have not been paid although the Bills were passed. In paragraph 14 it is stated that the cause of action for the suit arose in between June, 1992 to April, 1993 when extra works were carried by the plaintiff on the orders of the defendants and Bills along with tendered works were submitted to the defendants and although the Bills were passed but the amount in suit has illegally been withheld by the defendants. Thus, it is the definite case of the plaintiff that extra works were done simultaneously with tendered works and Bills were submitted which were duly certified by Loco Foreman, Jhajha and were passed. Thus, in the suit, Bills are the important documents to adjudge the dispute between the parties. On the other hand, the defendants in their written statements have stated that the plaintiff has not carried out work as per terms and conditions of the agreement. The plaintiff did not carry out the work as per terms and clauses of the agreement and for violation of the terms and clauses penal action were taken up by the defendants and the competent authority but the plaintiff placed it otherwise in paragraph 4 of the plaint, thus, the statement made in paragraph 4 of the plaint has not been



specifically denied. In paragraph 12 the defendants have stated that the payment has been made to the plaintiff for the work which was properly carried out, according to the terms and clauses of the agreement and if the Loco Foreman, Jhajha has certified, he certified the quality of work, which is matter of records. Thus, certification of the Bills of the extra works as well as tendered works by Loco Foreman, Jhajha is not denied and further the defendants inspite of the order passed by the court did not produce the original Bills and suppressed the same. Thus, it can safely be inferred that the Bills for tendered works as well as extra works were passed by the competent authority. The statement as alleged in paragraph 14 of the plaint has been replied in paragraph 15 of the written statement and only it has been stated that no valid cause of action arose between June, 1992 to April, 1993 or any other date or days as alleged in paragraph 14 of the plaint. Thus, there is no specific denial. The plaintiff has examined 4 witnesses. PW 1 is Rajeshwar Singh a formal witness, PW 2 Surendra Nath Tirpathi, Retired Railway Employee, PW 3 is Rakesh Kumar, Manager, PW 4 is Rajesh Kumar the plaintiff himself. Besides that Ext. 1 is the legal notice under Section 80 of the C.P.C. and Ext. 2 is the agreement which is an admitted document between the parties. On the other hand, the defendants have examined 6



witnesses. DW 1 is Surya Kant Mishra a formal witness, DW 2 is Patwari Hansda, Office Superintendent, Loco shed, Jhajha, DW 3 is Asharfi Yadav, Head Clerk, office of the Senior Section Engineer, DW 4 Satya Narayan Singh, serving in Railway, DW 5 is Brajesh Singh sender Clerk Power. Account Section DRM Office, Danapur. DW 6 is Nityanand Vijay, retired office superintendent Power Account Section, DRM office, Danapur.

14. It is an admitted fact that the tender of the plaintiff was accepted being the lowest for the period of 21.05.1992 to 20.05.1993 and agreement was accordingly, signed. The plaintiff started carrying on the tendered works as well as extra works on issuance of verbal order. Though the defendants denied. It is also not denied that the Bills for the extra works was submitted along with tendered work which was certified by Loco Foreman, Jhajha and was passed by the authority concern. The plaintiff, as per precedent, has to give no claim certificate then, the plaintiff, to receive his amount and in order to carry on his business, has given no claim certificate.

15. On behalf of the appellant it has been argued that when the plaintiff has already given no claim certificate and specifically contended that in certificate no kind of any dues is due against the Bills. Photostat copy of Bills were filed by the plaintiff respondent



and prayer was made to direct the defendants appellants to produce the original bills and vide order dated 20.09.1996 the defendants appellants were directed to produce the said documents but the said documents were not produced and the defendants appellants did not comply the order of the learned court below and withhold those documents. The defendants appellants neither explained nor submitted any cogent reason for not filing those required documents and, as such, adverse inference must be drawn against the defendants appellants and it can be safely held that the Bills for extra works were passed simultaneously with Bills for tendered works and then to take payment no claim certificate was filed by the plaintiff respondent but only for tendered works the payment was made and for Bills of extra works which was passed for which payment was withheld. DW 1 is a formal witness. DW 2 has stated that there was agreement between the parties and as per work Bills have been paid and for the payment of Bills the contractor gives no claim certificate then, the payments are made. In cross-examination he has stated that he knows nothing about the case nor he has got any concern either with the tender or agreement or payment. He has simply stated that whatever statement he has given he has heard those things. Further in paragraph 12 he has stated that the contractor has to give no claim certificate then the



bills are paid, meaning thereby, no claim certificate was obtained under pressure. DW 3 has admitted in his evidence, vide paragraph 15, 17 and 28, about the existence of aforesaid documents. DW 4 has also admitted in paragraphs 11, 12, 18 and 21 of his evidence about the existence of the said documents. DW 5 has proved the no claim certificate which has been marked 'X' for identification. DW 6 simply stated that the plaintiff has not done any extra works, hence, payment has not been made but in paragraph 3 of his examination in chief he admitted that the Bills are produced before the Loco Foreman who after verification grants the certificate for the quantum of work done but he being a person from the accounts side does not know as to how much payment was made against the Bills submitted by the plaintiff nor he has got any paper. He has specifically stated in paragraph 16 that the work done extra then the tender value is binding and is withhold by the account office for want of sanction. The defendants themselves have not been examined in the suit nor their agents on their behalf have been examined and as such the pleadings of the defendants have been left unproved. Further the pleadings is not itself a proof unless it is proved by cogent documents and evidences. The defendants have filed no claim certificate which is marked 'X' of which relevancy has already been discussed above.



16. On the other hand, the plaintiff has filed Ext. 1 legal notice, Ext. 2 agreement. Besides that PW 1 is a formal witness, PW 2 is a retired railway employee ,who has fully supported the case of the plaintiff, PW 3 is the Manager of the plaintiff, he has also fully supported the case of the plaintiff in examination-in-chief and in cross-examination also. PW 4 is the plaintiff himself and he has fully supported his own case.

17. From the discussions made above, it is clear that the plaintiff has performed extra works along with the tendered works. The Bills were submitted for both the works simultaneously. The Bills were certified and passed by the defendants authority but payment was made only for the Bills of tendered works and payment for Bills of extra works was withhold on the plea of want of sanction but inspite of Ext. 1, legal notice, the payments were not made to the plaintiff by the defendants. Thus point no. 1 is decided in favour of the respondents and against the appellants.

18. Point No. II:- PW 2 in paragraph 3 has stated that for payment of Bills the contractor has to give no claim certificate then payments are made. In paragraph 12 during cross-examination he has specifically stated that the contractor has to give no claim certificate first and then the Bills are paid. Meaning thereby, no claim certificate is obtained under pressure and hence,



no claim certificate obtained from the plaintiff respondent does not debar him from claiming the withhold amount in suit. Accordingly, this point is decided against the appellant and in favour of the respondent.

19. Point No. III:- From the discussions made above, it is manifest that the judgment and decree has been rightly passed by the learned court below. The argument of the learned counsel for the appellants appears not convincing. Here, as per precedents, the extra works were done along with the tendered works and for those works Bills were submitted which were certified by Loco Foreman, Jhajha and were passed by the authority concerned. The plaintiff has filed photocopy of those Bills and filed petition to direct the defendants to produce the original bills of the same but inspite of the order passed by the learned court below, vide order dated 20.09.1996, the defendants did not file the original Bills nor submitted any cogent reason for not filing those required documents. Learned court below has rightly drawn adverse interference against the defendants. Learned court below after proper discussions of the pleadings and evidences available on the record has passed the judgment and decree and as such the judgment and decree passed by the learned court below is fit to be



sustained. Accordingly, this point is decided against the appellants and in favour of the respondent.

20. In the result, this appeal is hereby dismissed but under the circumstances without cost.

(Jitendra Mohan Sharma, J)

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