

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.187 of 2013

1. Sunil Kumar Amar S/O Suresh Prasad Resident Of Sahu Colony, Meena Bazar, Gulzarbgh, P.S. Alamganj, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Govt. Of Bihar, Nirman Bhawan, Patna.
2. The Executive Engineer (South), Building Construction Department, Govt. Of Bihar, Patliputra Building Division, Near High Court, Patna.

.... Respondent/s

with

Civil Revision No. 45 of 2014

1. Bablu Kumar Singh Son of Late Suresh Singh R/O Mohalla-Dhakanpura, P.S. Gardanibagh, District Patna

.... Petitioner/s

Versus

1. The State Of Bihar & another

.... Respondent/s

with

Civil Revision No. 73 of 2014

Mithilesh Kumar son of Late Ram Tirath Singh resident of Mohalla Bairiya Kanpura P.S. Bairiya Dist. Patna

.... Petitioner/s

Versus

State of Bihar & Another

.... Respondent/s

Appearance:

For the Petitioners : Mr. Uma Shankar Tiwary
For the Respondents : Mr. Kundan Bhadur Singh

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 24-08-2017

1. All the above stated three revision petitions involve
common question of law and accordingly, common judgment is



passed in the above stated civil revision petitions.

2. Petitioners are contractors and they entered into an agreement with opposite parties to carry out allotted works to them. The petitioners completed their respective allotted works but payment was not made to them and, thereafter, they approached the Tribunal but the Tribunal refused to entertain the references made on behalf of the petitioners on the ground of limitation and accordingly, dismissed references being barred by limitation.

3. The petitioner in C.R. no. 187/2013 entered into an agreement with opposite party no.2 for execution of work for the year 2005-06 and he had executed work as per terms, conditions and specifications of the agreement to the satisfaction of the concerned authorities and the concerned Junior engineer took first account measurement on 29.3.2006 and valued the cost of the work at Rs 93773/-. The aforesaid measurement was approved by the Assistant engineer on 30.3.2006. The Executive engineer, too, approved the said work on the same day and memo for payment was prepared but before passing memo of payment, opposite party no.2 (Executive engineer) withheld item no.8 of the measurement and payment was refused to the tune of Rs 67061/- and payment order of remaining amount was made on the same day but payment was denied due to paucity of fund. Petitioner in C.R. no. 187/2013 claimed that he requested several times to the concerned authorities to make payment of, at least, admitted dues but except oral assurance nothing was paid to him and thereafter, he filed Reference petition no. 152/2010 before learned Tribunal and also interlocutory application for condonation of delay, if



any but learned Tribunal dismissed the aforesaid reference being time barred.

4. Similarly, petitioner in C.R. no. 45/2014 entered into an agreement with Executive engineer (opposite party no.2) for execution of work for the year 2003-04 and had executed work as per terms, conditions and specifications of the agreement but payment was not made. He gave representation to Executive engineer for payment of admitted amount at Rs 44317/- but payment was not made and thereafter, he gave notice to the Executive engineer for appointment of Arbitrator for settlement of the dispute but no Arbitrator was appointed and thereafter, he filed Request Case no. 17/2008 before this court. However, during the pendency of the aforesaid Request Case no. 17/2008, State Government constituted a Tribunal which became functional from 2010 and thereafter, on the prayer of the petitioner request case was disposed of as withdrawn vide order dated 29.1.2010 giving liberty to the petitioner to file fresh case before Tribunal and thereafter, petitioner filed Reference petition no. 09/2010 before the Tribunal. However, the Tribunal, suo motu, raised question of limitation and dismissed reference case being time barred.

5. Petitioner in C.R. no. 73/2014 entered into an agreement with Executive engineer (opposite party no.2) for execution of work for the year 2003-04 on 18.3.2004 and executed work in accordance with the terms, conditions and specifications of the agreement but no payment was made. Thereafter, he gave representation to the concerned Executive engineer for payment of admitted dues of Rs 1,05,244/- only and when payment was not made, he gave notice to



the opposite party no.2 on 23.5.2008 for appointment of Arbitrator and lastly, he filed Request Case no. 17/2008 when Arbitrator was not appointed. However, during the pendency of the aforesaid Request Case, State Government constituted a Tribunal which became functional from 2010 and this court vide order dated 29.1.2010 disposed of the aforesaid request case as withdrawn giving liberty to the petitioner in C.R. no. 73/2014 to file fresh case before Tribunal and also with direction to the Tribunal to decide the case on merit of the claim of respective parties giving liberty to the Tribunal to consider maintainability and legality of such claim in view of special provision of law as well as case laws.

6. Learned counsel appearing for the petitioners in all civil revision petitions submitted that the Tribunal committed error in dismissing references made to the Tribunal on behalf of the petitioners on the ground of technicality and failed to take note of this fact that in several decisions, it has been held by this court as well as Hon'ble Apex Court that genuine claim of a person can not be rejected only on the ground of technicality.

7. Learned counsel appearing for the petitioners relied upon several decisions such as **(2016) 2 Supreme Court Cases 123 (B.S. Shesagiri Setty & others vs State of Karnataka and others), (2011) 4 Supreme Court Cases 363(Lanka Venkateswarlu (Dead) vs. State of Andhra Pradesh and others, 2013 (11) Supreme Court Cases 341 (S. Ganesharaju (Dead) & another vs, Narasamma (Dead) & others, (2006) 4 Supreme Court Cases 658 (Hari Shankar Singhaniya & others vs. Gaur Hari Singhaniya &**



others, (2002), 3 Supreme Court Cases 195(Ram Nath Sao @ Ram Nath Sahu & others vs. Gobardhan Sao & others), 2016(I) PLJR 255 (Ranjan Vedasen vs. Union of India through Joint Secretary Ministry of Finance and others and lastly, unreported order passed by a coordinate bench of this court on 21.1.2013 in C.R. no. 154/2012 (Prem Singh vs. State and another).

8. Learned counsel for the petitioners further submitted in all the above stated cases that no final bill was prepared and it is well settled principle of law that period of limitation starts after preparation of final bill and, therefore, all the above stated three reference cases were filed within period of limitation but the learned Tribunal wrongly dismissed all reference cases on the ground of period of limitation.

9. On the other hand, learned counsel appearing for the opposite parties refuted the above stated submissions arguing that while exercising revisional jurisdiction this court can not disturb the finding of the Tribunal, particularly, in the circumstance when Tribunal, having taken into consideration materials available on the record, considered the point of law and, therefore, even if finding of the Tribunal is said to be incorrect, then also, the aforesaid finding can not be disturbed by exercising revisional jurisdiction. He further submitted that admittedly, work was completed and after completion of work, measurement was made and account bill was prepared and payment order was made and, therefore, the aforesaid fact goes to show that virtually final bill was prepared and near about after four years of preparation of the aforesaid bills, reference cases were filed and, therefore, Tribunal rightly dismissed reference cases on the



ground of limitation because there was limitation of only three years for filing reference case.

10. Having heard the rival contentions of both parties, I have gone through the record. It is an admitted position that the petitioners completed works within the time as stipulated in their respective agreements. Furthermore, I find that first account bill was prepared and approved by the Executive engineer though some amount of bill of petitioner in C.R. no. 187/2013 was reduced but in almost all three cases, opposite parties admitted regarding the fact of completion of work by the petitioners to their satisfaction and pendency of dues of their respective amount with them. It is also an admitted position that after completion of work, no certificate of completion of work was given by opposite party no.2 to the petitioners in accordance with clause 7 of the agreement and similarly, clause 8 of the agreement has also not been complied with. Petitioner in C.R. no. 187/2013 filed request case before this court in the year 2008 when payment was not made and this court by judicial order granted liberty to petitioner in C.R. no. 187/2013 to file reference case before the Tribunal with direction to Tribunal to decide the case on merit of the claim of respective parties and to consider maintainability and legality of such claim in view of special provision of law as well as case laws.

11. Tribunal came to the conclusion in Reference Case no. 152/2010 that the aforesaid reference case was filed after delay of one year and six months and Tribunal noticed that cause of action in the aforesaid case arose after preparation of account bill dated 30.3.2006 as the same was only bill which was final bill because except the



aforesaid first bill, no final bill was prepared and therefore cause of action arose in the year 2006 whereas reference case was made in the year 2010. The Tribunal also noticed that as per clauses 7 and 8 of the agreement final payment was to be made in the month of completion of work itself and admittedly, work in question was completed in the year 2006 but petitioner in C.R. no. 187/2013 did not take any step and slept over the matter for near about four years. Tribunal relied upon decision of Delhi High Court reported in 2008 Arb.W.L.J. 403 Delhi in which Hon'ble Delhi High court held that even if no information regarding preparation of final bill was given to contractor, the contractor could not wait indefinitely on the belief that limitation has not started to run and the contractor was bound to file application within three years and the expiry of period stipulated for final bill in relevant clause of the contract. Tribunal also relied upon several judgments of this court as well as Apex court of this country mentioned in the judgment itself and held that courts do not enjoy the unlimited discretionary power to condone the delay and all discretionary powers, specially, judicial powers have to be exercised with reasonable bound known to the law.

12. Almost similar view was expressed by the Tribunal in Reference Case no. 09/2010 as well as Reference Case no. 08/2010.

13. In the case of B.S. Shesagiri Setty (supra), it has been held by the Apex Court of this country that when justice is at stake, technical or pedantic approach should not be adopted by courts to do justice when there is miscarriage of justice caused to public litigants. In the aforesaid case, revision petition was filed after long delay but



no specific period of limitation was provided in Statute under which the aforesaid revision petition was filed. Moreover, ratio of the aforesaid judgment is that the court has to do justice and genuine claim of the litigants can not be rejected only on the ground of technicality because rejection of a genuine claim on technical ground amounts to miscarriage of justice.

14. In the case of Lanka Venkateswarlu (supra), the Apex Court of this country held that discretion while considering point of limitation should be exercised systematically informed by reason and liberal approach in considering sufficiency of cause for delay should not override substantial law of limitation, especially when the court finds no justification for delay. In the aforesaid case, an appeal was pending before High court and the sole respondent died during the pendency of the appeal and information regarding death of the sole respondent was given to the court and even after consistent direction given by the court, no step for substitution of legal representative of sole respondent was taken by the appellants. Consequently, there upon appeal stood abated and dismissed in terms of court's order. However, an application was filed for condonation of 883 days delay in filing petition to set aside dismissal order and for condonation of 3703 days in bringing legal representative of the deceased respondent of the said case. The Hon'ble high court, although found absence of any explanation to justify delay as well as negligence on the part of the appellants and observed that in normal course, it would have dismissed applications but, even then, allowed those applications taking view that delay was due to inefficiency, ineptitude and



negligence of government pleader concerned. In the aforesaid backdrop, the Apex Court of this country held that High court failed to exercise its discretionary power to condone delay in reasonable, impartial and objective manner, particularly, in the circumstance when the High court himself held that there was no sufficient explanation to justify the above stated delay and that was the reason the Apex Court held that while exercising discretionary power the court has to make balance between both parties and discretionary power can not be exercised in arbitrary manner.

15. In the case of S. Ganesharaju (supra), the Apex Court held that unless respondents are able to show malafide in not approaching the court within the period of limitation, generally as a normal rule delay should be condoned and further held that rules of limitation are not meant to destroy or foreclose the right of parties rather they are meant to see that parties do not resort to dilatory tactic but seek their remedy from him.

16. In the case of Hari Shankar Singhaniya (supra), the Apex Court of this country concluded that for filing the arbitration agreement in the court and for reference of the disputes to Arbitration in accordance therewith is required to be filed within the period of three years when right to apply accrues and right to apply accrues when cause of action arose between the parties to arbitration agreement and therefore, in each and every case, it is necessary to find out as to when right to apply accrued.

17. In the case of Ranjan Vedasen (supra), a coordinate bench of this court held that construction of agreement must be read as



a whole in order to ascertain the true meaning of the several clauses and words of each clause should be interpreted so as to bring them into harmony with other provisions, if that interpretation does no violence to the meaning of which they are naturally susceptible.

18. In the case of Ram Nath Sahu (supra), the Apex Court of this country again, reiterated that expression of “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done and whether or not sufficient cause has been furnished can be decided on the fact of a particular case.

19. As I have already stated that in the present cases, dues of the petitioners is admitted fact and it is also an admitted fact that State Government constituted Tribunal which became functional some time in the year 2009-10. It is also an admitted position that prior to functional of the Tribunal, petitioners except petitioner in C.R. no. 187/2013 had filed request case before this court against opposite parties and those request cases were disposed of as withdrawn when Tribunal started functioning and liberty was granted by this court in those request cases to petitioners except petitioner in C.R. no. 187/2013 to file reference case. It is also obvious from the pleadings available on the record that before filing request cases as well as before filing of C.R. no. 187/2013 all the petitioners approached the concerned authorities for payment of their dues and the aforesaid fact is admitted by opposite parties before the Tribunal. Therefore, the aforesaid fact goes to show that the petitioners were consistently pursuing their claim before the concerned authorities under bonafide belief that their dues shall be cleared by the concerned authorities who



had been assuring the petitioners to clear their respective dues after availability of the fund and the concerned authorities never specifically, denied to make payment of dues of the petitioners. However, it is an admitted position that opposite party no.2 executed agreement with the petitioners on behalf of the State of Bihar and the aforesaid contract/ agreement was not made between two private persons rather there was one side a private person and another side was State and the petitioners committed only mistake to repose on the word of government officials who later on, failed to fulfil their promises. Therefore, in the aforesaid circumstances, it can not be said that petitioners with mala fide intention committed delay in making their respective claims.

20. No doubt, while exercising revisional power, the revisional court could not interfere into the order of subordinate court unless finding is illegal and perverse but in the present cases, I find that relevant circumstances and facts were not considered by the Tribunal while passing award/order on the point of limitation. Therefore, in my view, if the claim of the petitioners is rejected only on the ground of point of limitation, then in that event, there shall be miscarriage of justice because legitimate claim of the petitioners shall be thrown into basket without being considered by the competent authority.

21. No doubt, it is well settled principle of law that cause of action arises when final bill is prepared but even if it assumed that final bill is prepared and payment is delayed on the assurance of the concerned authorities without refusing to make payment, in that



circumstance, in my view, cause of action will arise when the concerned authorities refused to make payment and period of limitation will start from the date of refusal of the aforesaid payment. In the present cases, admittedly, only first account bill was prepared and no final bill was prepared nor opposite parties complied with the provision of clauses 7 and 8 of the agreement. Admittedly, till pendency of the request cases, the opposite parties accepted dues of the petitioners and furthermore, they did not deny admitted dues of the petitioners even before Tribunal and they raised objection only regarding the period of limitation. Therefore, in my view, the claims of the petitioners have wrongly been treated as time barred by the Tribunal and therefore, this revisional court has every right to interfere into the finding of the Tribunal.

22. On the basis of the aforesaid discussions, all the above stated three revision petitions are allowed and impugned award dated 8.8.2013 passed in Request Case no. 152/2010, award dated 10.12.2013 passed in Review petition no. 03/2011 arising out of Request Case no. 09/2010 and award dated 20.8.2013 passed in Review petition no. 01/2011 arising out of Request Case no. 08/2010 are, hereby, set aside and matter is sent back to learned Tribunal to pass a fresh order in accordance with law in all the above stated three cases.

shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	AFR
CAV DATE	6.4.2017
Uploading Date	28.8.2017
Transmission Date	28.8.2017

