

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1240 of 2015

IN

Civil Writ Jurisdiction Case No. 6032 of 2007

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Asha Construction Pvt. Ltd., office at Get Together, Vivekanand Complex, Vidyapati Marg, P.S.- Kotwali, District and Town- Patna through its Director Anup Kumar, Son of Sri Pashupati Kumar, Resident of M.I.G.-51, Hanuman Nagar, P.S.- Patrakarnagar, Kankerbagh, Patna-800020.

.... Appellant/s

Versus

1. Bharat Heavy Electricals Ltd. BHEL House, Siri Fort Road, New Delhi through its Chairman and Managing Director.
2. Sr. Deputy General Manager (Contat Management), Bharat Heavy Electrical Ltd., Transmission Business Group, Block-VI, Annexe, Central Wing, 1st Floor, Bhopal- 462021.
3. Regional Head, Bharat Heavy Electricals Ltd., Transmission Business Group, CE-106, Sector-1, Salt Lake, Kolkata- 700064.
4. Deputy General Manager and Site Incharge, Bharat Heavy Electrical Ltd., Naya Tola, Chandralok Chowk, Near Income Tax Office, Muzaffarpur.
5. Shring Construction Company Pvt. Ltd., E- 245, Nehru Colony, Haridwar Road, Dehradun- 248001 (Uttarancha) through its Chairman-Cum-Managing Director.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravi Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 21-02-2017

Heard learned counsel for the appellant and learned counsel representing the Respondent Nos. 1 to 4, i.e., BHEL (Bharat Heavy Electricals Limited) and its functionaries.

For the reasons indicated in the condonation application, delay of 85 days is condoned.

I. A. No. 5274 of 2015 is allowed.

The matter is thereafter taken up on merits.



The present appellant was a sub-contractor of private-respondent no. 5. The contract was entered between BHEL and private-respondent no. 5 for construction of a sub-station at Muzaffarpur.

After the execution of the contract between BHEL and private-respondent no. 5, it seems that work was outsourced by the present appellant by respondent no. 5 and not by BHEL. Now, the dispute has arisen with regard to payment and obligation arising out of completion of the work.

Learned counsel representing the appellant submits that all the works was done by the appellant company. There are instances where payments have also been made directly by BHEL to this appellant company and, therefore, now to shy away from responsibility of payments of all left over bills under the garb that there is no lis or relationship between the appellant and BHEL, should not be allowed to be entertained.

The Learned Single Judge has gone into the dispute rather extensively. He has taken note of the various correspondences as well as agreement entered between the parties. It emerges therefrom that payments had been made by BHEL with regard to work, which was taken by BHEL and done by the appellant, since private-respondent no. 5 virtually withdrew from the work at one point of time. However, there is an arbitration going on between private-respondent no. 5 and BHEL for the earlier period for



settlement of the bills and by nature of such dispute the Learned Single Judge refused to pass any order in favour of the appellant and left the parties to explore whatever avenues, which may be available legally, including arbitration.

The law being what it is and the facts being what it is, the Learned Single Judge has no option but to dismiss the writ application and leave the parties to do what is permissible within the framework of law.

A summary proceeding under Article 226 of the Constitution of India may not be the answer for the appellant. In fact the Learned Single Judge has put an extra effort to find out the ways and means in this regard, but the rigidity of law, extending any kind of benefit or relief to the appellant, even this Court is of the opinion that nothing more can be done by way of relief, by interfering with the order of the Learned Single Judge.

Appeal has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

SKM/-

AFR/NAFR	N.A.F.R.
CAV DATE	
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