

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.42 of 2014

1. Manoj Kumar Son of Sri Sugamber Prasad Resident of Mohalla Raghunath Tola, Police Station- Gardanibagh, District- Patna.

.... Petitioner/s

Versus

- 1. The State of Bihar through the Secretary, Building Construction Department Vishwashwaraiya Bhawan, Bailey Road, Patna.
- 2. The Chief Engineer (South) Building Construction Deptt., Vishwasharaiya Bhawan Baeily Road, Patna.
- 3. The Superintending Engineer, Building Construction Department, South Bihar, Circle Punaichak, Patna.
- 4. The Executive Engineer, Building Construction Department, Gardanibagh Building Division, Behind Officers' Flats, Bailey Road, Patna.

.... Respondent/s

with

Civil Revision No. 43 of 2014

1. Nawal Prasad Singh Son of Rajo Singh Resident of Mohalla Beur, Police Station- Beur, District- Patna.

.... Petitioner/s

Versus

- 1. The State of Bihar, & ors

.... Respondent/s

with

Civil Revision No. 155 of 2014

1. Nagendra Prasad Singh son of Sri Pahari Rai, resident of Old Panapur, P.S.- Danapur, District- Patna

.... Petitioner/s

Versus

- 1. The State of Bihar & ors

.... Respondent/s

Appearance :

For the Petitioners : Mr. Uma Shankar Tiwary
(In all cases)
For the Respondent/s Mr. Binod Kumar
Mr. Sheo Shankar Prasad



Mr. Kundan Bhadur Singh

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 09-05-2017

1. Civil Revision no. 42/2014 and Civil Revision no. 43/2014 were heard together on 16.3.2017 whereas Civil Revision no. 155/2014 was heard on 28.4.2017 as common question of law was involved in all the above civil revision petitions and accordingly, a common judgment is passed in the aforesaid civil revision petitions.

2. In Civil Revision no. 42/2014, three agreements for barricading of road were allotted to the petitioner by three separate agreements on the occasion of arrival of Hon'ble President of India on three different dates. Petitioner did his allotted works but his payment was not made and accordingly, matter was referred to Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna under section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008. During the pendency of the aforesaid reference, the principal amount was paid by the concerned department but no interest was paid and the Tribunal passed the impugned award dated 04.11.2013 holding that petitioner shall be entitled to simple interest at the rate of 10% per annum from 30.03.2008 till 30.03.2011 over an amount of Rs 92,674/- under agreement no. 495 F2/2010-11 and simple interest at the rate of 10% per annum from 16.02.2008 till 30.03.2011 over an amount of Rs 40,197/- under agreement no. 496 F2/2010-11 and simple interest at the rate of 10% per annum with



effect from 16.02.2008 till 30.03.2011 over an amount of Rs 2, 57,234/- under agreement no. 494 F2/2010-11.

3. The Tribunal refused to give interest to the petitioner from the date of completion of work on the ground that Article 25 of the schedule of Limitation Act, 1963 says that to recover interest, there is a period of limitation of three years which runs when the interest becomes due.

4. Likewise, in Civil Revision no. 43/2014, petitioner of the aforesaid civil revision was allotted some works vide agreement no. 469 F2/2010-11, agreement no. 468 F2/2010-11 and agreement no. 467 F2/2010-11 and he completed his work within the time as fixed by the department but payment was not made to him and thereafter, matter was referred to Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna under section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008. The principal amount without interest was paid to the petitioner during the pendency of the aforesaid reference case. The Tribunal vide impugned award dated 04.11.2013 held that the petitioner shall be entitled to payment with simple interest at the rate of 10 % per annum on all dues from 26.3.2008 to 26.3.2011 and the Tribunal refused to make payment interest to the petitioner prior to 26.3.2008 on the ground of period of limitation as mentioned under Article 25 of the schedule of Limitation Act, 1963.

5. Similarly, in Civil Revision no. 155/2014, petitioner of



the aforesaid civil revision was allotted some works vide agreement no. 168 dated 28.02.2000, agreement no. 224 dated 24.03.2000, agreement no. 225 dated 24.03.2000, agreement no. 226 dated 24.03.2000, agreement no. 227 dated 24.03.2000 and agreement no. 294 dated 17.03.1999 and he completed his work within the time as fixed by the department but payment was not made to him and thereafter, he came to this court by filing writ petition i.e. C.W.J.C. no. 6134/2004 which was disposed of on 09.11.2005 and when the order of this court was not complied with, petitioner filed MJC no. 2389/2007 and the same was dismissed in absence of the petitioner assuming that his grievance had been redressed. Thereafter, petitioner went to Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna under section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 by filing Reference Case no. 31 of 2013 and the learned Tribunal vide impugned award dated 03.07.2014 held that the petitioner shall be entitled to payment of Rs. 1, 10, 426.33/- with simple interest at the rate of 10 % per annum with effect from 01.04.2010 till realization.

6. Sri Uma Shankar Tiwary, learned counsel appearing in the above civil revision petitions would submit that reference cases were filed for principal amount with interest but during the pendency of reference cases, principal amount without interest was paid to the petitioners. He would further submit that the learned Tribunal committed error to debar the petitioners from realizing the interest on



dues amount beyond the period of three years on the ground of Article 25 of the schedule of Limitation Act, 1963. He would further submit that Article 25 of the schedule of Limitation Act, 1963 is not applicable in the present dispute because admittedly, reference cases were filed for realization of principal dues amount with interest but during the pendency of the aforesaid reference cases, only principal amount was paid to the petitioners. He would further submit that mere paying principal dues amount, during the pendency of reference case does not make any difference in respect of claim of interest and the Tribunal committed error in applying Article 25 of the schedule of Limitation Act, 1963. In support of his contention, he cited decision of **Nripendra Nath Chatterji vs. Arun Chandra Chatterji reported in AIR 1940 Patna, 129** in which their lordships held that the ordinary rule is that the cause of action for the recovery of principal and interest accruing due on it is a single cause of action and where the claim is a single claim for principal and interest, and is within time, no part of the claim in respect of interest is time barred.

7. Learned counsel appearing for the opposite parties refuted the above stated submissions, submitting that at the time of agreement, it was made clear that payment would be made to him after availability of fund and the aforesaid fact is evident from annexure annexed with the counter affidavit. He would further submit that as soon as fund was made available, payment was made to the petitioners and moreover, there was no agreement to pay interest on



dues amount. He would further submit that the reference in connection with some agreements was made after more than seven years but even then learned Tribunal condoned the delay. He would further submit that even if it assumed that the petitioners were entitled for interest, then also, their claim for interest beyond the period of three years was clearly barred by Article 25 of the schedule of Limitation Act, 1963 and, therefore, learned Tribunal rightly refused to give interest to the petitioners beyond the period of three years.

8. It is an admitted position that petitioners made reference before the Tribunal for grant of principal dues amount with interest and during the pendency of reference cases, principal amount was paid to the petitioners but no interest was paid on dues amount beyond the period of three years. The Tribunal refused to pay the interest on principal dues amount beyond the period of three years after taking note of Article 25 of the schedule of Limitation Act, 1963. Article 25 of the schedule of Limitation Act, 1963 says that for money payable for the interest upon money due from the defendant to the plaintiff, period of limitation is three years and period of limitation begins to run when the interest becomes due. The aforesaid provision goes to show that if only claim of interest is made, then Article 25 of the schedule of Limitation Act, 1963 comes into play. In the present case, admittedly, petitioners made reference for realization of dues principal amount with interest and, therefore, it is obvious that the petitioners had not claimed only interest rather they had claimed principal dues



amount with interest, though during the pendency of the reference cases, principal amount was paid but mere paying principal dues amount during the pendency of reference cases does not make any difference in respect of claim of interest because cause of action for recovery of principal amount and interest was single and the learned Tribunal had got no right to say that the reference was made only for payment of interest. Therefore, I do agree with the submissions of learned counsel for the petitioners that Article 25 of the schedule of Limitation Act, 1963 is not applicable in the present case and appropriate provision of limitation appears to be Article 18 of the schedule of Limitation Act, 1963. The Article 18 of the schedule of Limitation Act, 1963 says that for price of work done by the plaintiff for defendant at his request the limitation is three years and where no time has been fixed for payment, the limitation begins to run when the work is done.

9. In the present case, works were done by the petitioners much prior to the period as fixed by the concerned authorities as it is evident from perusal of the record that in Civil Revision no. 42/2014, petitioner completed work of agreement no. 495 F2/2010-11 on 10.10.2003, in agreement no. 496 F2/2010-11 work was completed on 16.02.2008 and in agreement no. 494 F2/2010-11 work was completed on 16.02.2008. In Civil Revision no. 43/2014 work allotted under agreement no. 469 F2/2010-11 was completed on 10.10.2003, work allotted under agreement no. 468 F2/2010-11 was completed on



10.10.2003 and work allotted under agreement no. 467 F2/2010-11 was completed on 10.10.2003. Since Article 18 of the schedule of Limitation Act, 1963 says that limitation begins to run when the work is done. Admittedly, the work of agreement no. 495 F2/2010-11 was completed on 10.10.2003 and similarly, in Civil Revision no. 43/2014, work of some agreements was completed in 2003 whereas reference cases were filed in 2011. So far as the petitioner in Civil Revision no. 155/2014 is concerned, reference case was filed in the year 2013, although the work had been done in terms of the contract but the Liability committee did not take into consideration dues in respect of five agreements. Admittedly, tribunal allowed the claim of petitioners partly and only refused to make payment of interest beyond the period of three years from the date of making reference and, therefore, even if some claims of the petitioners were time barred, then also, by entertaining their claims, the Tribunal supposed to have condoned the delay in making the aforesaid claims.

10. In course of hearing, it was argued on behalf of the opposite parties that cause of action arose when bills were prepared but learned counsel appearing for the petitioners refuted the aforesaid submissions submitting that cause of action arose after measurement of the work. In my view, cause of action arose after measurement of the work because measurement of the work decides this fact as to whether work has been completed or not? Article 18 of the schedule of Limitation Act, 1963 specially says that limitation for claim of



work starts when the work is done. Therefore, it is obvious that in the present case when the final measurement was done, cause of action to the petitioners arose and it would be presumed that work was completed by the petitioners on the date of final measurement.

11. On the basis of the aforesaid discussions, in my view, the above stated revision petitions have merit and accordingly, the impugned award dated 04.11.2013 passed in Reference Case no. 32 of 2011 as well as Reference Case no. 33 of 2011 and the impugned award dated 03.07.2014 passed in Reference Case no. 31 of 2013 stand quashed and accordingly, it is ordered that petitioners are entitled to get interest on their principal amount from the date of completion of works in question and accordingly, opposite parties/ concerned department are directed to ensure the payment of interest to the petitioners within three months from the date of receipt of production of a copy of this order.

shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	16.3.2017
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