

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.27 of 2015

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1. The State Of Bihar through The Secretary, Minor Irrigation Department, Vikas Bhawan, Balley Road, Patna. null null
 2. The Chief Engineer (Patna Zone), Minor Water Resources Department, New Secretariat, Patna.
 3. The Director, Ground Water Directorate, Mithapur, Patna. null null
 4. The Executive Engineer, Ground Water Investigation Division, Mithapur, Patna.

.... Petitioner/s

Versus

1. Shri Bijay Kumar Singh, son of Saryu Prasad Singh, resident of Atram Chak, Post Office- Ekangardih, Police Station- Ekangarsarai, District- Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamlesh Kumar Sharma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

14 28-07-2017 Heard learned counsel for the petitioners as well as learned counsel for the respondent on the point of limitation as well as admission matter.

I.A.No. 2943 of 2015 has been filed for condonation of delay of 253 days on the ground that the revision could not be filed in time due to office exigency as after passing the impugned order/ award, the matter was under process before various officers including legal expert.

Counter affidavit has been filed on behalf of the opposite parties opposing the condonation of delay in filing this revision petition.

The order dated 08.03.2016 of this Court goes to show



that this Court observed that the point of limitation shall be considered at the time of admission.

Admittedly, the impugned award was passed on 31.03.2014 and the present revision petition was filed on 07.04.2015. The delay in filing this revision is sought to be condoned on the ground that due to official procedure the revision petition could not be filed in time.

So far as the fact of the present case is concerned, some work was allotted to the opposite party and accordingly, the agreement between the parties were prepared on 15.03.2008 but due to defected estimate, again revised statement was prepared after execution of the agreement dated 15.03.2008 and the work could not be completed within time. Thereafter, the department rescinded the contract and forfeited the security amount as well as other amounts. The matter was referred to the tribunal and after that tribunal, having considered the materials, passed the impugned award directing the petitioners to make payment of work done by the opposite party and also ordered to release the forfeited amount of security deposit etc. with interest. The tribunal also held that the opposite party was not solely responsible for breach of contract rather there was reciprocal default by both the parties.

Learned counsel appearing for the petitioners submits that the delay in filing this revision petition should be condoned



because due to official excigency, the revision petition could not be filed in time. It is also submitted that the tribunal committed error in passing the award as the tribunal came to the conclusion that there was reciprocal default of both the parties but even then the tribunal granted all the reliefs as sought for by the opposite party.

I am not at all convinced with the aforesaid submissions because even if there was reciprocal default of both the parties, then also, before forfeiting any amount, of the opposite party, the department was bound to show the damage due to default of the opposite party but from the impugned award, it would appear that the department could not succeed to prove the aforesaid fact, meaning thereby, the department failed to prove that due to default of the opposite party, any damage was caused to the department.

On the basis of aforesaid discussions, this petition is not only liable to be dismissed on merit but also on the point of limitation.

Accordingly, this petition stands dismissed being time barred.

(Hemant Kumar Srivastava, J)

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