

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.188 of 2013

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1. Sunil Kumar Amar Son Of Suersh Prasad Resident Of Sahu Colony, Meena Bazar, Gulzarbagh, P.S.-Alamganj, District-Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Executive Engineer, Building Construction Department, Central Division Near High Court, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Tiwary

For the Respondent/s : Mr. Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 23-11-2017

1. Heard learned counsel for the petitioner as well as learned counsel for opposite parties.

2. Petitioner has preferred this revision for setting aside partially award order dated 17.5.2013 passed in Reference Case no. 153/2010.

3. Petitioner, in pursuant to several agreements, executed several works in different years but only part payment of the aforesaid works was made to him and thereafter, when his entire payment was not made in the year 2010, he filed Reference Case no. 153/2010 before the Bihar Public Works Contracts Disputes Arbitration Tribunal. In the above stated reference case, altogether,



six agreements were in dispute. The tribunal ordered to make payment to the petitioner in respect of four agreements but refused to take note of rest two agreements on the ground that claim of the petitioner was time barred.

4. Admittedly, tribunal refused to entertain claim of the petitioner in respect of agreement no. 982 F2 2005-06 and agreement no. 952 F2 2005-06. It is admitted position that the petitioner was asked to execute the works under the aforesaid agreements and he completed the works. First unaccounted bill in respect of agreement no. 952 F2 2005-06 was prepared on 28.3.2006 whereas first unaccounted bill in respect of agreement no. 982 F2 2005-06 was prepared on 30.3.2006. Petitioner claims that no final bill was prepared and admittedly, opposite parties have not denied the above stated fact.

5. The Tribunal found claim of the petitioner time barred on the ground that he failed to make claim within three years from the date of preparation of unaccounted bill. The Tribunal, having relied upon several decisions, particularly, decision of **Delhi High**



Court reported in 2008 Arbitration weekly Journal

403 (Delhi) in which Delhi High Court has held that sleeping over the matter for a long time in expectation of preparation of final bills, even after completing the work is a fatal to the claimant, held that claimant should have filed application within 3 years after the expiry of period stipulated for final bill in the relevant clause of the contract but, in my view, the aforesaid decision is not applicable in the present case because in the present case, clause 6 of the agreement says that on completion of work a certificate shall be issued by Executive Engineer and after issuance of that certificate as per clause 8 of the agreement, final bill shall be prepared. However, it is admitted position that in the present case no final bill has been prepared and the concerned official has not issued any certificate regarding completion of works. Apart from the above stated circumstances, petitioner had specifically pleaded in limitation petition before the Tribunal that after completion of works, he requested the concerned official for preparation of final bill as well as for his payment but all went in deaf's ear and thereafter, he filed reference before the tribunal. Therefore, in my view,



delay caused in filing the reference case was not intentional rather the petitioner was prevented from filing the reference within the time on account of false assurance given by the concerned official.

6. In view of the aforesaid facts, this revision petition stands allowed and the award dated 17.5.2013 passed in Reference Case no. 153/2010 is partially quashed and the matter is remitted back to the tribunal to pass afresh order on merit in respect of agreement no. 982 F2 2005-06 and agreement no. 952 F2 2005-06 after condoning the delay in filing the reference case.

Shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

