

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.921 of 2017

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M/s Balaji Enterprises (An ISO 9001/2008 certified Firm Affiliated with Bihar Industries Association) through its Proprietor, Shadab Anwar, son of S.M. Alimuddin, having its office at Babu Bazar, Ara, Post Office- Ara, Police Station Ara Sadar, District - Ara, Bhojpur.

... .. Appellant/s

Versus

1. The South Bihar Power Distribution Company Ltd. through its Managing Director, Vidyut Bhawan, Bailey Road, Patna.
2. The Chief Engineer (Store & Purchase), South Bihar Power Distribution Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
3. Electrical Superintending Engineer, South Bihar Power Distribution Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
4. Accountant General, Birchand Patel Path, R - Block, Patna.
5. Accountant General (Audit), Patna, Bihar, Birchand Patel Path, R - Block, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Apurva Kumar, Adv. Mr. Sumeet Garodia, Adv. Mr. Naveen Kumar, Adv.
For SBPDCL	:	Mr. Vinay Kirti Singh, Sr. Adv.
For Respondent Nos.1 to 3		Mr. Vijay Kumar Verma, Adv. Mr. Akhileshwar Singh, Adv.
For Acctt. General		Mr. Raghwanand, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-11-2017

Seeking exception to an order dated 28.3.2017 passed by the learned Writ Court in C.W.J.C. No.2113 of 2016, this appeal has been filed under Clause 10 of the Letters Patent.



Having heard learned counsel for the parties, we find that the appellant and the South Bihar Power Distribution Company Limited, respondent No.1, had entered into a contract for the work in question after finalization of the contract, a bill to the tune of Rs.1,45,13,301.35 crores was raised by the appellant with the respondent Company on 9.10.2014. Prior to 30th of January, 2016, a sum of more than Rs.25 crores was paid to the petitioner and on 30th of January, 2016 even though it was found that the petitioners for the contract in question are entitled to further payment of Rs.1,19 crores, but in view of certain audit objection raised by the Accountant General, Audit, Bihar, with regard to execution of another contract entered into between the petitioner and the company, the amount of Rs.1.19 crores had become payable after conclusion of the 1st award was withheld.

Challenging the withholding of this amount on the ground that an amount due in one contract cannot be withheld for the purpose of recovery of dues from another contract, the writ petition was filed and the learned Writ Court having refused to interfere into the matter, this appeal has been filed.

Having heard learned counsel for the parties, we find that the legal question with regard to the issue in question as to whether an amount due in one contract can be withheld from



another contract, is no more res integra. It has already been decided in a catena of cases and such an action has been prohibited in the case of Gangotri Enterprises Limited Vs. Union of India & Ors., (2016) 11 SCC 720, decided in May, 2016, the issue has been decided and after placing reliance on the earlier judgment of the Supreme Court in the case of Union of India vs. Raman Iron Foundry, (1974) 2 SCC 231, it has been held that an amount payable in one contract cannot be withheld even found due on account of breach of another contract or violation in execution of another contract.

Taking note of the aforesaid, we are of the considered view that the amount of 1.19 crores has to be paid to the petitioner.

Accordingly, we direct for release of the aforesaid amount, quash the order dated 30th of January, 2016 and direct for payment of the amount within a period of 60 days. Even though interest on this amount was claimed by the appellant, we are of the considered view that, in the facts and circumstances of the case, exercising our extra ordinary jurisdiction in this proceeding, which arises out of an order passed in a writ petition, we are not inclined to go into the said question which is kept open to be raised by the appellant according to the terms and conditions of the contract and



taking recourse to the common law or the remedy as may be available under the statutory provision.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	
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