

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.32 of 2003

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1. The State of Bihar
2. The Secretary, Water Resources Development Department, Govt. of Bihar, Patna
3. the Engineer-in-Chief, Water Resources Department, Govt. of Bihar, Patna
4. The Superintending Engineer, Irrigation Circle, Batia, District- Jamui
5. The Executive Engineer, division Office, Water Resources Development Department, Sono, District- Jamui
6. The Junior Engineer, Sub-Division No. II, Water Resources Development Department, Sono, District- Jamui

.....Defendants.....Appellants.

Versus

Kunder Shramik Sahyog Samiti Ltd. Through its Executive member Upendra lal son of Late Bhikolal, R/o vilalge- Kunder, P.S.- Chanan, district- Lakhisarai, at present residing at Jamui Bazar, District- Jamui.....Plaintiff.....Respondent.

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Appearance :

For the Appellant/s : Mr. Randhir Kumar (AC To SC 18)
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 18-05-2018

The present appeal has been filed against the judgment dated 31.05.2002 and decree dated 17.06.2002 passed by Sri Tarkeshwar Pathak, the then Sub-Judge Ist, Jamui in Money Suit No. 1 of 2000 whereby and whereunder the suit filed by the plaintiff-respondent was decreed on contest with cost against the defendants no. 1 to 5 and decreed ex-parte against defendant no. 6 and accordingly, decree for Rs. 3,34,361/- was passed in favour of the plaintiff and further the plaintiff was found entitled to the interest at the rate of 16 % per annum from the date of institution



of the suit till the realization of the decretal amount. Advocate fee of Rs. 60/- and Advocate Clerk's fee of Rs. 5/- only was also allowed.

2. The defendants are the appellants.

3. Briefly stated, the case of the plaintiff is that the plaintiff in the capacity of executive member of Kunder Shramik Sahyog Samiti Limited entered into a contract with the defendant no. 5, the Executive Engineer, representing the Water Resources Department, State of Bihar, for construction of C.D. work at Ch. No. 506 of L.B. main canal under R.R. project and accordingly, agreement no. 2 F-2 85-86 was executed. The work was to start from 22.04.1985 and the date for completion of the same was 21.03.1986 as per S.B. letter no. 166 dated 15.02.1990, which was extended from time to time till 30.06.1989 and recommended up to 30.06.1990. As per agreement, the plaintiff completed the work and received payment in part from time to time but amount of Rs. 3,34,361/- was not paid, though the bill for the said amount was prepared and submitted by the Junior Engineer and Assistant Engineer which was checked and passed by the Executive Engineer on 10.12.1993 which is apparent from the measurement book no. 443. The plaintiff requested the Executive Engineer several times for the payment of said amount



but the defendants did not pay the same. When the amount was not paid, C.W.J.C. No. 2232 of 1996 was filed in the High Court Patna and vide order dated 27.02.1997., the defendant no. 3 was directed to pay the dues within 3 months on which day the copy of the order was produced before him and to communicate the reason for non-payment of balance and also directed that the defendants shall pay the interest at the rate of 16% per annum on the belated payment of admitted dues. The order of the High Court was produced before the defendant on 14.03.1997. The defendant no. 5 in the counter affidavit admitted regarding non-payment of the said amount but the defendants are evading and denying the payment due to the plaintiff on false and untenable ground. The defendants, in order to put the plaintiff in trouble and also with intention not to pay the dues of the plaintiff, formed a liability committee of their subordinates and the liability committee also without considering the papers on record, falsely and illegally submitted report against the plaintiff on 25.06.1997. The report submitted by the alleged committee is without application of mind and without considering the materials on record and mentioning wrong facts with malafide intention. The period of work was extended up to 30.06.1989, which finds support from letter no. 166 dated 15.02.1990 sent by the Executive Engineer to the Superintending



Engineer and similarly the original plan was subsequently modified by the State Government which would be evident from letter no. 324 dated 01.04.1986 sent by the Chief Engineer to the Superintending Engineer. The plaintiff sent notices under Section 80 of the C.P.C. to the defendant through post but of no effect and then the suit was filed for realization of money to the tune of Rs. 3,34,361/- along with interest at the rate of 16% per annum from 05.12.1990 till the realization of decretal amount and for cost of the suit and other reliefs.

4. Defendants no. 1 to 5 filed the written statement alleging that the suit as framed is not maintainable, the plaintiff has got no valid cause of action for the suit. The suit is bad for non-joinder and mis-joinder of the parties. The suit is barred by principal of waiver, estoppel and acquiescence and also barred by law of limitation. The plaintiff did not comply the mandatory provision of order 7 rule 14 of the C.P.C. It is further alleged that the plaintiff already received excess amount of Rs. 2,40,296/- from the defendants in lieu of the work and steps for recovery of excess amount has been taken, no amount is due to the plaintiff against the defendants. After passing of the order by this High Court in C.W.J.C. No. 2232 of 1996, the work of the plaintiff was scrutinized and it was found that the plaintiff got excess payment



of Rs. 2,40,296/-. The defendant no. 5 never admitted the due amount of the plaintiff in aforesaid C.W.J.C. No. 2232 of 1996. The question of payment of dues to the plaintiff does not arise. The stipulated period for completion of work was extended up to 30.08.1997. It was never agreed by the defendants to extend the time for completion of work up to 30.06.1990. The defendant no. 5 has no right to extend the time on account of non-completion of work. Agreement between the plaintiff and defendants which was closed by the Superintending Engineer's letter no. 267 dated 04.03.1990 and security money deposited by the plaintiff was returned. The plaintiff has agreed to complete the said work within the stipulated time but he did not complete the work within time and demanded extension of time for completion of work which was refused by the Superintending Engineer vide letter no. 267 dated 04.03.1990. On this ground it has been prayed to dismiss the suit with cost.

5. On the basis of the pleadings of the parties, the learned court below framed the following issues:

- (i) Is the suit as framed maintainable ?
- (ii) Has the plaintiff got valid cause of action for the suit ?
- (iii) Is the suit barred by law of limitation?



(iv) Has the plaintiff received an excess payment of Rs. 2,40,296/- from the defendants ?

(v) Is the plaintiff entitled to a decree as sought for in the plaint ?

6. The learned court below took up issue no. (iv) at first and came to the conclusion that the plaintiff did not receive the excess payment of Rs. 2,40,296/- from the defendants and accordingly, decided the same in favour of the plaintiff and against the defendants. Thereafter, issue no. (iii) was taken and it was held that the suit was not barred by law of limitation and decided the same in favour of the plaintiff and against the defendants. Issues no. (i) (ii) and (v) were taken together and it was held that the suit as framed is legal, maintainable, the plaintiff has got valid cause of action for the suit and he is entitled to a decree as sought for in the plaint and accordingly, decreed the suit as said above.

7. The defendants being aggrieved and dissatisfied with the said judgment and decree preferred this appeal challenging the maintainability of the same.

8. Sri Randhir Kumar, learned AC to SC 18 arguing in this appeal has submitted that the learned Sub-Judge Ist, Jamui has passed the judgment and decree without appreciating the pleadings of the parties and evidences adduced and available on the record.



No proper agreement between the defendants and plaintiff was placed on record. The evidences adduced on behalf of the defendants have not been considered properly and simply relied upon the evidences adduced on behalf of the respondent. The learned Sub-Judge failed to appreciate that the 17th and final Bill was prepared in compliance of the direction of this High Court passed in C.W.J.C. No. 2232 of 1996 for settlement of the claim and on the basis of which measurement and final order was issued vide letter no. 272 dated 16.06.1997 by the Engineer-in-Chief (Central) Water Resources Development Department and according to the said order, the claim of the plaintiff was rejected. The learned court below has decided all the issues wrongly. The suit is bad for non-joinder and mis-joinder of the parties and also barred by law of limitation. The claim of the plaintiff was refused and the defendants informed the plaintiff on 25.06.1997 but in spite of that the plaintiff is claiming the amount only with a view to harass the defendants. The suit of the plaintiff is fit to be dismissed and the appeal is fit to be allowed.

9. No one has turned up for the respondent to argue in this appeal.



10. The only point for consideration is as to whether the judgment and decree passed by the learned court below is sustainable ?

FINDINGS:

11. The plaintiff has examined altogether six witnesses in support of its case. The plaintiff has adduced documentary evidences also which have been marked Exhibits. On behalf of the defendants one witness namely, Bakim Chandra Mandal has been examined and documents filed by the defendants have also been exhibited which are properly dealt with in paragraph 8 of the impugned judgment and there is no need for further repetition. I have gone through the evidences available on the record and it is manifest that the learned Sub-Judge has properly dealt with the evidences available on the record. Ext. 11 is the counter affidavit filed by the defendants before the High Court in C.W.J.C. No.2232 of 1996 and the counter affidavit does not whisper any excess payment to the plaintiff and it confirms the 17th Bill prepared by the defendants in favour of the plaintiff which supports the claim of the plaintiff. From Ext. 11 it also reveals that the defendants admitted the dues amount of the plaintiff to the tune of Rs. 3,34,361/- and no case of excess payment has been made out therein. DW 1 Bakim Chandra Mandal has admitted in paragraph 3



of his evidence that 16th Bill of the plaintiff was prepared by the Junior Engineer which was checked by the Assistant Engineer and the amount was paid to the plaintiff for the 16th Bill. He has also stated in same chain that the department also prepared the 17th Bill for the payment to the plaintiff. He has admitted that the 17th Bill dated 05.12.1990 was checked by the two Executive Engineers on 04.04.1993 and 06.12.1993 respectively but the plaintiff was not paid the amount of the 17th Bill. He has also admitted that the plaintiff had filed writ petition in the High Court of Patna in respect of the 17th Bill which was prepared by the department. He has also admitted that prior to the order of Patna High Court passed in C.W.J.C. No. 2232 of 1996, the 17th Bill was not referred to the liability committee. He has also stated that he did not give in writing that the plaintiff withdrew the excess payment of Rs. 2 lakhs and odds. He has further admitted that there is no digital mistake in 17th Bill of the plaintiff. He has also admitted that the Executive Engineer wrongly extended the date of completion of the work of the Channel but from Ext. A it appears that in clause 5, the Executive Engineer has been vested with the power of extension of time for completion of the work. The plaintiff in paragraph 12 of the plaint has made out a case that defendant no. 5 in counter affidavit before the High Court has admitted that 17th



Bill of the plaintiff which was prepared on 20.06.1988 could not be paid to the plaintiff and that the Executive Engineer, the defendant no. 5, directed the Sub-Divisional officer vide letter no. 735 dated 31.07.1990 to prepare the final Bill and the S.D.O. prepared and submitted the 17th Bill for due amount of Rs. 3,34,361/- vide measurement book no. 443 page no. 69 to 92. The defendants in paragraph 15 of the written statement has stated that the statements made in paragraph 12 of the plaint is correct and need no comment. The claim of the plaintiff as alleged in paragraph 12 of the plaint is admitted by the defendants in paragraph 15 of the written statement and on this score alone, the plaintiff is entitled to a decree as sought for in the plaint. The defendants have made out a case in paragraph 14 of the written statement that the plaintiff got excess payment of Rs. 2,24,296/- but the defendants have not preferred any counter claim in the suit and no court fee has been paid. DW 1 has admitted that there is no digital mistake in 17th Bill of the plaintiff. The defendants have nowhere stated in the counter affidavit filed in C.W.J.C. No. 2232 of 1996 (Ext. 11) that the plaintiff withdrew the excess amount to the tune of Rs. 2,40,296/-.

12. The suit has been filed by the plaintiff on 07.04.2000., Ext. 4 is the order of this High Court passed in



C.W.J.C. No. 2232 of 1996 dated 27.02.1997 whereby three months time was given to the defendants for the payment of the dues to the plaintiff and if the three months time is calculated, it would come 27.05.1997 and from the said date the suit has been filed within three years. Thus, the suit is not barred by law of limitation. The learned Sub-Judge Ist, Jamui after considering the pleadings of the parties and evidences brought on the record by the parties, has rightly decided all the issues in favour of the plaintiff and against the defendants and I am in agreement with the findings of the learned Sub-Judge and accordingly, it is held that the judgment and decree passed by the learned Sub-Judge Ist, Jamui in Money Suit No. 01 of 2000 is fit to be maintained and there is no need of any interference of this Court.

13. In the result, finding no merit in this appeal, the same is hereby dismissed without contest and also without cost.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
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