

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.63 of 2002

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1. The State of Bihar, through Collector, Siwan
 2. The Commissioner-cum-Secretary, Water Resources Department, Government of Bihar, Patna
 3. The Engineer-in-Chief (North), Water Resources Department, Govt. of Bihar, Patna
 4. The Superintending Engineer, Saran Canal Circle, Siwan
 5. The Superintending Engineer, Design & Monitoring Circle, Siwan cum-Convenor of Special Liability Committee
 6. The Superintending Engineer, Flying Squad Circle No.2, Water Resources-cum-Member of Special Liability Committee, Department of Irrigation (Sighat Bhawan), Patna
 7. The Executive Engineer, Saran Canal Division, Gandak Project Mairwa-cum-Invitee member of Special Liability Committee, Mairwa, P.S.- Mairwa, District- Siwan
 8. The Chief Engineer, Water Resources Department, Govt. of Bihar, Siwan-cum-Chairman, Special Liability Committee

... .. Appellants

Versus

1. Ram Pravesh Rai son of Sri Kamla Rai, R/o vilalge- Goharaiwa, P.S.- Goharaiwa, District- Siwan..... Plaintiff... Respondent Ist Set
2. Bihar State Construction Corporation, through its Managing Director, Anisabad, Patna.....Defendant..... Respondent 2nd Set

Appearance :

For the Appellants	:	Mr. Abbas Haidar, S.C.-6 Mr. Syed Hussain Majeed, Advocate Ranjay Kumar Singh, Advocate
For the Respondents	:	Mr. Binod Kumar Singh, Advocate Ms. Vagisha pragya V., Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 09-02-2018

The defendants no. 1 to 8 have filed this first appeal against the judgment and decree dated 27.11.2001 passed by Sri Damodar Pandey, the then learned Ist Sub-Judge, Siwan in Money Suit No. 14 of 2000 whereby the learned court below decreed the plaintiff respondent Ist set's Money Suit. The plaintiff respondent Ist set Ram Pravesh Rai filed the aforesaid Money Suit for recovery of



Rs. 09,07,603/- the principal amount with interest alleging that the plaintiff is a registered contractor under the Water Resources Department, Govt. of Bihar, Patna. The defendants no. 1 to 8 are the State Government and its officers and the defendant no. 9 is an agency of the State Government and all the defendants are State within the meaning of Article 12 of the Constitution of India. Under National Water Management for reclamation of the lost irrigation potential in different irrigation scheme of the country, the Government of India entered into an agreement with the World Bank under I.D.A. scheme in 1986-87. The State of Bihar participated in this project for special repair to remodeling and modernization of Hatwa Branch Canal, the estimated cost of which was nearly Rs. 20/- crores of rupees with an estimated irrigation of lost potential of nearly 70,000 hectares. The schedule time of the special repair works of Hatwa Branch Canal was 1993. As the progress of the work was very slow and on being approached by the State of Bihar and the Central Government, the World Bank was pleased to extend the schedule period of completion of this work of special repair up to March, 1995. The special repair work of Hatwa Branch Canal of R.D. No. 135 to R.D. No. 175 is a piece of project costing nearly 0.4% of the project costs. The work relating to special repair of Hatwa Branch Canal was allotted to



the Bihar State Construction Corporation, defendant no. 9, vide letter no. 57 dated 19.01.1993 by the State of Bihar for which State of Bihar entered into contract with the aforesaid Corporation in Form F-2 dated 30.11.1993. It is prevalent practice that the Executive Engineer Incharge of work will issue the work order to its contractor only when pre-section management has been taken in the level book and the same has been brought forward in the measurement book and thereafter, working cross section was drawn up on graph sheet. The presection management was done from 03.12.1993 to 15.12.1993 in the level book and the same was brought forward to the measurement book and thereafter, working cross-section were drawn up on the graph sheets. The aforesaid work was done jointly by Executive Engineer incharge of works along with the Junior Engineer, and S.D.O. Incharge of works with S.D.O. and Junior Engineer quality control which took a considerable time. The Executive Engineer Incharge of work vide letter no. 2095 dated 31.12.1993 issued work order in favour of Corporation and accordingly, he made correction in the bid of contract of the commencement of work as 31.12.1993 in place of 30.11.1993. On receipt of the aforesaid work order the Corporation allotted the work to the plaintiff who is a petty contractor under the forms of contract and it was agreed in between the parties that the



Corporation will made payment for the work done to the plaintiff on the receipt of the money from the State Government. The plaintiff completed the work within stipulated period i.e. by 30.04.1994. The part section measurement was done in between 02.05.1994 to 12.05.1994 in which the Executive Engineer, Junior Engineer and S.D.O. participated. Thereafter, the same was brought forward in the measurement book and then cross section were prepared in the graph sheets. The S.D.O. incharge of the work prepared the Bill and sent the same to the Executive Engineer incharge of works Section. The Executive Engineer incharge sent the record to the Executive Engineer quality control who examined the correctness of the procedure of the measurement and being satisfied with the procedure of the measurement countersigned on the measurement book on 25.11.1994. The work of turfing on the bank of canal were done earlier but the measurement of the same could not be taken as there was no sufficient growth of grass. The measurement of turf was done on 20.07.1994 which was checked 100 % by the S.D.O. incharge of works who prepared the final Bill of Rs. 09,07,603/- and submitted the same to the Executive Engineer incharge of work for payment and the same was approved by the Superintending Engineer and Chief Engineer, Water Resources



Department, Govt. of Bihar. The Water Resources Department, Govt. of Bihar allotted funds to the Corporation for making payment to the petitioner but the same was stopped by the Chief Engineer Water Resources Department, Siwan vide its letter no. 251 dated 31.03.1995 in order to fulfill the wishes of the Minister Incharge of Water Resources Department, Govt. of Bihar. The plaintiff waited for about one year for payment of his Bill but when he did not receive the same, he filed C.W.J.C. No. 5909 of 1996 before the High Court, Patna which was disposed of vide order dated 05.08.1997 with a direction to the plaintiff to file a representation within one month to Secretary, Water Resources Department who was to make necessary inquiry from the office of Corporation. It was also observed that if any liability would be found, the State of Bihar will release the fund in favour of the Corporation and the Corporation will make the payment to the plaintiff within one month from the date of receipt of the fund. The plaintiff made representation to the Secretary Water Resources Department, Govt. of Bihar on 10.08.1997 and the Joint Secretary wrote a letter dated 28.08.1997 to the Chief Engineer Water Resources Department, Patna for his comment who after making inquiry recommended for making payment. The Managing Director of the Corporation also gave reply vide letter dated



11.09.1997 to the letter of Joint Secretary, Water Resources Department Govt. of Bihar admitting the claim of the plaintiff and requested to release the fund for making payment to the plaintiff. When the plaintiff did not receive money, he filed a contempt petition vide C.W.J.C. No. 3483 of 1997 for violating the order of the High Court passed in C.W.J.C. No. 5908 of 1996. The Secretary, Water Resources Department, Govt. of Bihar instead of releasing the fund constituted a special liability committee with its sole motive to deny the claim of the plaintiff which vide its recommendation dated 27.11.1997 rejected the claim of the plaintiff then the plaintiff filed C.W.J.C. No. 915 of 1998. The appointment of liability committee by the defendant was made against the terms of the contract and there was no terms in the contract that in case of dispute regarding payment liability committee will be constituted rather there was a term that in case of dispute the matter will be finally decided by the Superintending Engineer. The report of the liability committee is based on surmises and conjectures and against the report of Junior Engineer, S.D.O., Incharge of work, Executive Engineer, Superintending Engineer and Chief Engineer. There is no dispute that the plaintiff has not completed the work assigned to him by the Corporation as all concerned officer of the State Government as well as the



Corporation have confirmed and thereafter, a cheque was issued in favour of the Corporation for payment to the plaintiff which was stopped in order to fulfill the wishes of the concerned Minister, even after the order passed by the High Court in C.W.J.C. No. 5909 of 1996, the concerned authorities of the State Government as well as Corporation have admitted the claim of the plaintiff and approved the payment of the said amount to him. C.W.J.C. No. 915 of 1996 was also disposed of on 23.02.1999 with observation. The plaintiff again moved L.P.A. No. 1451 of 1999 wherein vide order dated 10.04.2000 it was observed that the proper remedy is to pursue the matter before the Civil court. Thereafter, within the time allowed in L. P.A. No. 1451 of 1999 the plaintiff sent the notices under Section 80 C.P.C. and thereafter, filed the suit. The plaintiff has prayed that the amount invested by the plaintiff is for business purpose, the amount payable by the defendants to the plaintiff is of commercial transaction, hence, the defendants are liable for payment of amount with interest at commercial rate as fixed by the Reserve Bank of India.

2. The defendants no. 1 to 8 filed joint written statement stating therein that the suit is not maintainable, court fee paid is not sufficient and the suit is not properly valued. The plaintiff of the suit has no concern directly with these defendants. The



defendant no. 9 has filed the suit which ought to have been filed by the Corporation defendant no. 9 as the agreement is not executed directly in between the plaintiff and the defendants no. 1 to 8. The Bihar State Construction Corporation entered into an agreement to execute special repair work of Hatwa Branch Canal on 28.11.1993 and the Executive Engineer, Saran Canal Division Mairwa issued work order vide no. 2095 dated 31.12.1993 with a target to complete the work by 30.04.1994. The pre-level of the Canal was taken from 03.12.1993 to 15.12.1993. The department entered into the contract with the Construction Corporation only and the Department is not concerned whether the Corporation executed the work with the help of any petty contractor. The liability committee constituted was special one for examining the claim of the plaintiff only, hence, the question of plan and non-plan does not arise. The Department within the competency has constituted the committee to examine the genuineness of the claim before the payment. The Committee was constituted by Government of Bihar vide letter no. 291 M. B. 81-154-97-1223 dated 25.09.1997 which comprises Chief Engineer, Siwan, Superintending Engineer, Design Circle Siwan, flying squad circle no. 2 Patna and the Executive Engineer was also the invitee. The Committee has not given finding on surmises and conjectures. The Committee within his power



examined the full fact with the relevant records and did not recommend for payment. The High Court has not given any positive direction for payment and as such the suit is fit to be dismissed with cost.

3. On behalf of defendant no. 9 separate written statement has been filed challenging the jurisdiction of the court as there was terms and conditions of the agreement entered in between plaintiff and defendant no. 9 with the jurisdiction to decide any dispute is vested to Civil Court, Patna. The plaintiff is entitled for a sum of Rs. 08,15,963/- out of the claim amount. The rest amount is the amount of Corporation overhead. The claim of the plaintiff has been admitted by this defendant. The plaintiff has done the work under the allotment made by this defendant as petty contractor. The Government of Bihar allotted the fund to Saran Canal Division, Mairwa for which a cheque was issued for the amount in the name of Corporation but ultimately the payment of cheque to Corporation was ordered to be stopped by the Government of Bihar, thus, no payment was made to Corporation, though the Corporation by writing letter requested for release of the amount mentioned above. The Managing Director vide letter no. 56 dated 11.09.1997 has requested the Joint Secretary, Water Resources Department, Patna for the payment which had been stopped. The



claim of the plaintiff was denied by the Secretary, Water Resources Department, Patna. Other facts have been admitted by this defendant. This defendant has prayed to decree the suit.

4. 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 valid cause of action for the suit ?

(iii) Is the Court fee paid sufficient?

(iv) Is the plaintiff entitled for a money decree along with interest in the suit as claimed ?

(v) Is the plaintiff entitled for any other relief or reliefs ?

5. The learned court below took up the issue no. (iv) at first and came to the conclusion that the plaintiff is entitled for a money decree in this case along with interest at the rate of 10 % per annum from the date of completion of the work i.e. 30.04.1994 till the realization of the amount and accordingly, decided this issue in favour of the plaintiff and thereafter, issue no. (iii) was taken which has been decided in favour of the plaintiff as the same was not pressed by the defendants. Thereafter, issue no. (i) and (ii) were taken and it was held that the suit as framed is maintainable and the plaintiff has got cause of action for the suit. Thereafter, issue no. (v) was decided and it was held that the plaintiff is



entitled for a decree in the suit and accordingly, the suit was decreed with cost.

6. The defendants no. 1 to 8 being aggrieved and dissatisfied with the judgment and decree have preferred this appeal challenging the maintainability of the same. Shri Abbass Haidar, SC 6, arguing this appeal on behalf of the appellants has submitted that the State has unnecessarily been made party. The plaintiff has got no locus standi to file the suit. The Court of Siwan has got no jurisdiction and further the suit is barred by law of limitation. It has been submitted that there was no agreement between the plaintiff and the State to execute the work rather there was agreement between the State and Bihar State Construction Corporation but Bihar State Construction Corporation has not filed the suit and as such the plaintiff has got no right to file the suit. The State has got no liability to make any payment. Clause 9 of the Ext. 2 specifically prescribes that any dispute between the plaintiff and Bihar State Construction Corporation will lie in the Court at Patna. So the Court of Siwan has got no jurisdiction. Further the plaintiff's suit is hopelessly barred by law of limitation in view of Article 18 of the Limitation Act as the suit has been filed in the year 2000 whereas payment to the plaintiff was stopped by the Chief Engineer, Water Resources Department, Siwan vide its letter



no. 251 dated 31.03.1995 and there is no acknowledgment for payment of the Bill by the appellants at any time, thereafter, but the court below without considering the provision as contained in Article 18 of the Limitation Act, did not frame the issue in this regard and as such there is no finding to this effect. According to the Standing Counsel, the observation of the High Court in either writ or in L.P.A. will not extend the statutory period of limitation for filing the suit and as such the suit being time barred, the judgment and decree is fit to be set aside. The learned Standing Counsel has relied upon a decision of this Court rendered in First Appeal No. 255 of 2004.

7. Mr. Binod Kumar Singh, learned counsel appearing for the plaintiff respondent, has submitted that the payment was stopped to fulfill the wishes of Minister Water Resources Department. The plaintiff has completed the work, his Bill was passed, fund was also released for payment but later on the same was stopped and as such the State was necessary party and the plaintiff has got every right to file the suit. Further in Ext. 2 in Clause 9 there is no ouster clause and the State has got no right to raise the issue of jurisdiction. The Bihar State Construction Corporation has pleaded in the written statement regarding jurisdiction but later on has pleaded to decree the suit. Here, the



Corporation has not raised the issue of jurisdiction, further at appellate stage question of jurisdiction cannot be raised as per Section 21 of C.P.C. Learned counsel has placed reliance upon a ruling reported in **AIR 1989 Supreme Court page 1239** (paragraph 3, 20, 21 and 22) in the matter of **A.B.C. Leminart Pvt. Ltd and Anr. Vs. AP Agencies Salem**. In that case Clause 11 of the agreement provided as follows: “Any dispute arising out of sale shall be subject to Kaira jurisdiction.” The Apex court considering the clause and various aspects came to the conclusion that while connecting factor with Kaira jurisdiction was ensured by fixing the situs of the contract within Kaira, other jurisdiction having connecting factors were not clearly, unambiguously and explicitly excluded. That being the position it could not be said that the jurisdiction of the court at Salem which court otherwise had jurisdiction under law through connecting factor of delivery of goods thereat was expressly excluded. In the present case also in clause 9 of Ext. 2 there is no ouster clause rather only it has been agreed that the dispute between the parties will lie in the court at Patna. The aforesaid ruling is fully applicable in the present case and as such the court of Siwan in the present case has also got jurisdiction.



8. The State has accepted its liability to make payment before the Apex Court. The State complied the order partly passed by Apex Court dated 19.12.2003 arising out of SLP (c) 23317 of 2003 and as such now the State cannot argue that he has got no liability and the State has unnecessarily been made party and as such the argument has got no leg to stand. So far as the point of limitation is concerned, there is Ext. 3/M dated 02.02.1998 whereby Secretary, Water Resources Department has rejected the claim of the plaintiff and the suit has been filed on 21.08.2000 i.e. within 3 years and as such on this ground alone the suit is not time barred, further when the payment was stopped by the Chief Engineer, Water Resources Department, Siwan vide its letter no. 251 dated 31.03.1995, as per the direction and wishes of the Minister Incharge of Water Resources Department, Govt. of Bihar. The plaintiff waited for about one year for payment of his Bill but when he did not receive the same, he filed C.W.J.C. No. 5909 of 1996 which was disposed of vide order dated 05.08.1997 with direction to the plaintiff to file a representation within one month to Secretary Water Resources Department and accordingly, the plaintiff filed representation but when the plaintiff did not receive the money, he filed C.W.J.C. No. 3483 of 1997 but the Secretary, Water Resources Department, Govt. of Bihar, instead of releasing



the fund, constituted a special liability committee with its sole motive to deny the claim of the plaintiff which vide its recommendation dated 27.11.1997 rejected the claim of the plaintiff and then, the plaintiff filed C.W.J.C. No. 915 of 1998 and again the plaintiff filed L.P.A. No. 1451 of 1999 which was disposed of by their Lordships on 11.04.2000 wherein the plaintiff was directed to file the suit within three months and then notices under Section 80 C.P.C. were given on 11.05.2000 and as such under Section 15 (2) of Limitation Act period of notice will be excluded and the suit was filed on 21.08.2000.

9. Learned counsel for the respondent has relied upon a decision reported in **AIR 1989 Patna page 272** in the case of **Union of India Vs. Tata Engineering and Locomotive Company Ltd.** wherein it has been held that where a suit was instituted against Railway for short delivery of goods after a period of three years and 2 months from the date of short delivery, the suit would not be barred by limitation in view of Section 15 (2) of the Limitation Act as for institution of the such suit against Railway a notice under Section 80 C.P.C. is a condition precedent and in view of Section 15(2) of the Limitation Act, the two months of such notice under Section 80 C.P.C. would have to be excluded while computing 3 years period of limitation for such suit. Further



reliance has been placed upon **AIR 2012 Supreme Court page 1769** in the case of **M/s Disha Construction and Ors. vs. State of Goa and Anr.** wherein it has been held that while computing period of limitation, the period of notice has to be excluded. It has been held that when notice was given within limitation period, period of two months required by Section 80 C.P.C. has to be excluded. Here, in the present case also, the order was passed in L. P.A. on 11.04.2000 wherein their Lordships had directed to file the suit within three months and the plaintiff sent the notices under Section 80 C.P.C. on 11.05.2000 itself and as such the period of notice will be excluded and the suit filed on 21.08.2000 is not time barred. Reliance placed by learned Standing Counsel on the judgment of First Appeal No. 255 of 2004 is not applicable in the present case. Here the facts of the case is on quite different footing. Further the State has not raised the question of limitation before the learned trial court and for the first time this issue was raised here which is not sustainable.

10. Learned court below has held that the plaintiff has completed the work within stipulated period and the department has found the same satisfactory and further finding the work done satisfactory the Bill was passed and cheque was issued. The claim of the plaintiff is genuine and he is entitled to get this claim along



with interest. The learned court below has held that the money of the plaintiff has been held up by the Government defendants no. 1 to 8 without any fault either on the part of the plaintiff or on the part of the defendant no. 9 by which the plaintiff has suffered loss for which he is entitled to be compensated. The learned court below rightly awarded interest on the amount at the rate of Rs. 10 % per annum which appears quite appropriate and legal.

11. Learned court below has rightly decreed the suit with cost for Rs. 9,07,603/- along with interest at the rate of Rs. 10 % per annum from the date of completion of work till the realization of the amount. The defendants no. 1 to 8 were rightly directed to make payment out of the decretal amount a sum of Rs. 8,15,983/- along with interest as stated above to the plaintiff and the rest amount which at 10 % of the claim amount to be paid to the defendant no. 9.

12. In the result, finding no merit in this appeal the same is hereby dismissed on contest but under the circumstances without cost.

avin/-

(Jitendra Mohan Sharma, J)

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