

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.1 of 2015

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Jitendra Kumar Singh son of Late Hari Narain Singh resident of Mohalla-
Gulzarbagh, P.S. Khajekalan, District Patna.

... .. Claimant/Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Government of Bihar, Vishweshwarraiya Bhawan, Bailey Road, Patna.
2. The Executive Engineer, Building Construction Department, Patna Division, North Gandhi Maidan , presently Fire Brigade Office, Near New Police Line, Patna.

... .. Respondents/Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Uma Shankar Tiwary, Advocate
For the State	:	Mr. Tripurari Nath Ambastha, AC to S.C.-26

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 06-11-2018

Heard Shri Uma Shankar Tiwary, the learned counsel appearing on behalf of the petitioner and Shri T.N. Ambastha, the learned AC to SC-26 for the State.

2. The petitioner has filed this civil revision petition to set aside the award dated 16.10.2012, passed by the Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna (hereinafter referred to as 'the Tribunal') in Reference Case No.91 of 2010 by which the Tribunal refused to grant interest on the principal amount holding that the same is barred by limitation.

3. The relevant facts can be summarized as follows:



The Executive Engineer, Building Construction Department, Patna Division, North Gandhi Maidan floated a tender for barricading work on the eve of visit of the Hon'ble President of India on 29.05.2003 to 31.05.2003 (Part II from Gaighat Bridge to Nawab Market, Patna City). The petitioner gave tender against the said work and the petitioner had the lowest bidder, the work was allotted to the petitioner by the Executive Engineer. Since the work was urgent, the opposite parties without going into the formalities of entering into the agreement, the Executive Engineer, opposite party no.2, issued work order to the petitioner on 29.05.2003 for taking up the barricading work. Since there was no agreement, the Executive Engineer, opposite party no.2, handed over a copy of the sanctioned estimate to the petitioner for completion of the work. The petitioner executed the said work within 24 hours. Junior Engineer took measurement on 30.05.2003 and recorded the same vide M.B. No.10256 and found that the petitioner has worked worth Rs.2,15,800/-. The Assistant Engineer approved the measurement on 01.06.2003 and the Executive Engineer thereupon passed the measurement on 01.06.2003 itself but no payment was made. The petitioner made several representations before the competent authority of the Building Department but of no avail. Ultimately the petitioner filed a reference petition before the



Arbitral Tribunal vide Reference Case No.91 of 2010 for making the award directing the opposite parties to make payment of outstanding dues with interest and statutory cost.

4. At the time of admission of the reference, the learned Tribunal raised two preliminary objections: (1) Whether the reference case is maintainable in absence of concluded contract without agreement? and (2) Whether the claim is barred by limitation? The reference was admitted with an order that both the point shall be considered at the time of hearing of the reference case. During the pendency of the arbitral proceeding, the formal agreement was executed between the petitioner and opposite party no.2 vide Agreement No.721 F2 of 2010-11. After execution of the agreement, the opposite parties paid the entire amount amounting to Rs.2,15,780/- on 15.04.2011. Thereafter the petitioner filed petition before the Tribunal to direct the opposite parties to pay interest on the principal amount from the date of cause of action, i.e., 30.05.2003 till the date of payment as well as to pay the statutory cost. The learned Tribunal vide award dated 16.10.2012 rejected the claim for payment of interest on the ground that the same is barred by limitation. The petitioner being aggrieved by the aforesaid award for non-payment of interest and the statutory cost assailed the same by filing the present Civil Revision.



5. Shri Uma Shankar Tiwary, the learned counsel appearing on behalf of the petitioner submits that the award is bad in law as well as on facts. The Tribunal has miserably failed to take into account the settled judicial procedure. It is further submitted that the payment of interest is not barred by law of limitation, if the payment of principal amount is not barred. The Tribunal has wrongly rejected the claim of the petitioner for payment of interest in view of the provisions of Articles 25 and 26 of the Limitation Act. It is submitted that admittedly during the pendency of the reference case, principal amount without interest was paid but the interest was not paid holding that the period for realizing the interest is three years under Article 25 of the Schedule of Limitation Act, 1963. It is submitted that Article 25 of the Schedule of Limitation Act is not applicable because the reference was filed for realization of principal amount with interest but during the pendency of the reference case only principal amount was paid to the petitioner. Even if the principal amount was paid during the pendency of the reference case, the claim of the petitioner for payment of interest is not barred. The learned counsel for the petitioner submits that in the case of Nripendra Nath Chatterji vs. Arun Chandra Chatterji, reported in AIR 1940 Patna 129, their lordships held that the ordinary rule is that the



cause of action for the recovery of principal and interest accruing thereon is a single cause of action and where the claim is a single claim for principal and interest, and is within time, no part of the claim in respect of interest is time barred.

6. As per contra, the learned counsel appearing on behalf of the opposite parties refuting the submissions of the learned counsel for the petitioner submits that the work order was issued for barricading the road on the eve of visit of Hon'ble the President of India on 29.05.2003 and in the work order itself, there was condition that the payment shall be made on availability of fund. The petitioner accepted that condition and executed the work. On availability of fund, the entire payment was made to the petitioner and the petitioner is not entitled to get any interest. It is further submitted that the petitioner cannot approbate and reprobate the conditions for execution of the work allotted to the petitioner. The petitioner accepted the condition while executing the work that the payment shall be made when the fund is made available but the petitioner cannot reprobate that condition. No party can accept and reject the condition. If a person accepts the condition and got the work order, later on he cannot be entitled to turn around the condition saying that the payment should be made immediately and thus, the petitioner is not entitled to get any



interest. It is submitted that it is not in dispute that the claim for paying the principal amount and the interest arose by one cause of action but if the cause of action arose on 01.06.2003 when the measurement was done and the competent authority sanctioned the work done, the limitation for realizing the principal amount as well as the interest is for three years but the petitioner did not file the reference case within three years. It is further submitted that if the limitation starts from the date of execution of the agreement, i.e., 28.03.2011 (15.04.2011), the payment of the principal amount was made on the date of agreement itself and, therefore, the petitioner is not entitled to get any interest thereon. The Tribunal has rightly rejected the claim of the petitioner for payment of interest holding that the same is barred by limitation.

7. Having considered the submissions of both sides and on perusal of the records, the one and only question arises for consideration is whether the realization of interest amount is barred by limitation? The facts are admitted that the petitioner being the lowest bidder was given work order on 29.05.2003 for barricading on the eve of visit of the Hon'ble the President of India on 29.05.2003 to 31.05.2003. The petitioner did the work of barricading before the arrival of the Hon'ble President on 29.05.2003. The Junior Engineer measured the work done by the



petitioner on 30.05.2003 and found that the petitioner worked worth Rs.2,15,800/- and accordingly, entered into the Measurement Book. The Assistant Engineer approved the measurement on 01.06.2003 and the Executive Engineer passed the work on 01.06.2003 itself and, therefore, the cause of action arose on 01.06.2003. The petitioner demanded and claimed for payment of the amount on 27.04.2005, 28.09.2006, 25.05.2007 and 07.06.2008. The Tribunal held that on completion of the measurement and sanction of the amount, the petitioner got cause of action on 01.06.2003 but the petitioner did not file any reference within three years, the period prescribed for realization of the principal amount and interest thereon is three years. The Tribunal further held that if the cause of action arises on the date of execution of the agreement, i.e., 28.03.2011, the petitioner is not entitled to get any interest because on the date of agreement itself, the principal amount was paid and no interest is payable. The learned Tribunal held that the condonation of delay shall not be a matter of judicial generosity as held by the Apex Court in (1996) 2 SCC 8585 and the Court should not come to aid of a party where there was unwarranted delay in seeking the statutory remedy. The Bihar Public Works Contracts Disputes Arbitration Tribunal Act (hereinafter referred to as 'the Act of 2008) came into force in the



year 2008. Section 9 of the Act of 2008 says that if any dispute arises between the parties to the contract, either party to such contract shall refer the matter to the Tribunal within one year from the date of which the dispute has arisen. The learned counsel for the petitioner contended that in view of the provisions as contained in Section 8 of the Act, which provides that the present Act is in addition to Arbitration and Conciliation Act, 1996 and there is no period for limitation in the Arbitration and Conciliation Act, 1996, therefore, the period for presenting the reference shall be three years from the date of cause of action. The cause of action arose on 01.06.2003 when the petitioner lastly filed representation before the competent authority for payment of the amount with interest but I find that the submissions of the petitioner cannot be accepted. Mere filing of the representations after representations will not be a good ground for condonation of delay in filing the reference case. Section 18 of the Act of 2008 vests power in the Tribunal to entertain the reference or review even after the period of limitation laid down under sub section (1) of Section 9 of the Act if the Tribunal is satisfied about the sufficiency of cause for not making such reference within time but I find that the petitioner could not able to satisfy the Tribunal that he did not present the reference case on account of sufficient cause for such delay and



under unavoidable circumstances beyond his control and the learned Tribunal has rightly held that in any view of the matter, the petitioner is not entitled to get any interest because if the cause of action arose on 01.06.2003, the prayer for realization of interest as well as the principal amount is barred since the reference itself was made after seven years from the cause of action and if the cause of action is considered to have arisen on the date of agreement, which was signed by both parties, the petitioner is not entitled to get any interest because the principal amount was itself paid on the date of agreement, therefore, I do not find any reason to interfere in the order impugned.

8. Accordingly, this civil revision petition is dismissed as de void of any merit.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.12.2018
Transmission Date	NA

