HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 53 of 2005

1. State Of Chhattisgarh, through Collector, Korea, Post Baikunthpur, Dist. Korea (C.G.)

2. The Executive Engineer, Public Works Department, Manendragarh Dist. Korea

3. The Sub Divisional Officer, Public Works Department (B & R) Baikunthpur District Korea (C.G.)

---- Appellants

Versus

Keshav Khatik, S/o late Rambahadur Khatik resident of Bada Bazar, Chirrimiri, Police Station, Chirrimiri, Tahsil Manendragarh, District Korea (CG)

---- Respondent

For State/appellants- Shri Dilman Rati Minj, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

14/11/2018

Heard.

1. Instant appeal is against the order dated 26/12/2003 passed in Civil Suit No.27-A/2001 by the Additional District Judge, Manendragarh, District Koriya whereby the State was restrained to recover the amount of Rs.1,30,583/-. Further it was directed that the department may re-calculate the amount to be paid of 43 days by taking into interest payable on the TDR and thereafter may recover.

2. Facts of this case are that a suit was filed by Keshav Khatik that he was granted a contract to recover the toll tax of bridge constructed over the Jhumka Nala for a period from 1/04/96 to 31/03/97, bid amount was Rs.15,25,000/- and the plaintiff were the highest bidder. Subsequently, agreement was executed in between the erstwhile State of M.P. and the plaintiff and auction notice was of the recovery of toll tax for a period from 1/04/96 to 31/03/97. It was stated that the contractor however was given the authority to recover the toll tax from 14/05/96 and in between the period from

1/04/96 to 13/05/96 i.e. of 43 days recovery of the toll tax was made by the PWD department itself. It was pleaded that amount of Rs.15,25,000/- was to be paid in installment by the plaintiff and this fact also was not in dispute that an amount of Rs.1,21,324/- was set off which was recovered during the period run by the department from 1/04/96 to 13/05/96. Admittedly, the agreement was executed on 30/05/96 though the period of recovery of the toll tax was from 1/04/96 to 13/05/96 and the charge was handed over to recover the toll tax was on 14/05/96 yet in between installment was fixed to pay amount of Rs.15,25,000/- the ratable recovery of 43 days @ 4178 per day aggregating to Rs.1,79,654/- should have been set off. Plaintiff stated to have deposited total amount of Rs.10,18,750/- and in the said amount, further addition of Rs.1,79,654/- and the amount of two TDR of Rs.2,60,000/- further the interest thereof of Rs.26050/-, apart from the cost of stamp and interest on amount of Rs.1,79,654/- which works out to Rs.23,175/-, thereby total deposit was made of Rs.15,21,603/-. Therefore only amount of Rs.3,397/- was due from the plaintiff.

3. Plaintiff further pleaded that for late payment of the installment amount of Rs.18,893/- interest was levied which was wrong since toll tax barrier was handed over to the plaintiff was on 14/05/96. Plaintiff further pleaded that interest of Rs.26050/- which was of the TDR period recovery of 43 days of Rs.1,79,654/- and excess stamp duty of Rs.13,474/- should have been set off. Plaintiff also stated that interest on 43 days period which was because of the delay to hand over the toll tax barrier works out to Rs.23,174/- but the defendant started recovery of Rs.1,30,583/- and recovery started on the basis of the revenue recovery certificate. Plaintiff served notice to the State under Section 80 of CPC however same did not yield any result. Eventually recovery proceeding was started by the State for Rs.1,30,573/- for stopping the same suit was filed.

4. The defendant/State denied the averment of the plaint. It was stated that the agreement was executed on 13/05/96 and it was at the behest of the

contractor on the ground that stamp were not available agreement was signed late. It was further stated that the contractor did not deposit payment of installment within stipulated time as agreed which was from 1/04/96 to 31/03/97, therefore interest was levied on that. It was further stated that the department had already deducted amount of Rs.1,21,334/- which was recovered by the department in between 1/04/96 to 13/05/96. It was stated that as claimed by the plaintiff Rs.1,79,654/- cannot be calculated to have recovered amount since it was not actual amount recovered. It was further stated that the plaintiff himself has failed to pay the amount within stipulated time as agreed, therefore even after set off of the interest because of the late payment Rs.1,30,000/- became due for which RRC was issued.

5. On the basis of the pleading learned court below framed 9 issues and decreed the suit by holding that recovery of Rs.1,30,583/- by the State is bad and further directed that the authorities of the department to re-calculate the amount and interest by taking into fact handing over of the toll tax barrier was delayed by 43 days and ordered after calculating the interest on the TDR further recovery may be made.

6. Being aggrieved by the such judgment State is on appeal.

7. Learned State counsel would submit that as per annexure P-6 plaintiff himself has failed to pay the installment of Rs.15,25,000/- within the stipulated time and as such the interest was levied for late payment. It is stated that the period for which department made recovery of toll tax in between the period from 1/04/96 to 13/05/96 actual recovery was deducted and even if such interest was levied and calculated loss of Rs.1,30,000/- was caused to the State. Therefore, recovery so proposed by the State was well merited which do not call for any interference.

8. No representation is made on behalf of the respondent despite repeated call and pass over.

9. Perused the document and the evidence. Ex.P-1 is the covering letter which shows the fact that agreement was entered in between the parties and

it is not disputed. Admittedly, the plaintiff was given contract for recovery of toll tax and the contract amount was of Rs.15,25,000/-. This is also not disputed by the evidence that contract was for the period from 1/04/96 to 31/03/97 but handing over of the site of the toll tax was made after 43 days. Perusal of Ex.P-6 would reveal that amount of Rs.15,25,000/- was to be paid in 7 installments. First installment was required to be made on 28/05/96. Ex.P-6 which shows the period and the time of the installment to be paid at different time do not reflect that period for which the department had run the site the installment was deffered or was adjusted whereas as per Ex.P-16 terms of the contract clause-16 says that if the delay occurs to hand over the site in respect of the toll tax the ratable deduction of the amount would be done in the amount of installment itself. The ratable installment if of Rs.15,25,000/- qua 43 days the period of delay if is calculated it works out to Rs.1,79,654/-. Therefore as per clause-16 when admittedly the site was handed over with delay the said amount should have been ratably set off towards the payable installment of Rs.15,25,000/-.

10. The statement of the plaintiff is further evaluated. He deposed that there has been some delay in payment of the installment within time which is also evident from the Ex.P-6. Perusal of Ex.P-6 would show that for delayed payment of installment on six occasions interest was levied by the State which works out to Rs.11818/-. According to the statement of the plaintiff he had deposited TDR of Rs.2,60,000/- in favour of the State which is also exhibited in Ex.P-6. Interest in such amount was also received by the State. According to DW-1 B.R. Bhagat an amount of Rs.13,326/- was set off by way of interest whereas even if interest is calculated @ 10% it works out to Rs.26,000/- whereas interest as per Ex.P-6 Rs.13,326/- was adjusted which the State received and at what rate it was levied it was not clear. If TDR was on the bank then naturally interest received on such which was actual should have been deducted, therefore by calculating the figures as shown in Ex.P-6 it shows that ratable recovery for delay which works out to Rs.1,79,654/- has

not been properly adjusted instead Rs.1,21,234/- was adjusted and interest payable on the TDR was not adjusted.

11. Consequently, before issuing recovery of RRC for Rs.1,30,583/- the State authority were bound to calculate the same as to how much actual amount was recoverable which the State has received by way of interest and ratable amount which should have been set off as against actual quantum of the installment to be paid. Learned court below evaluating those facts has directed that State was entitled to calculate the actual amount payable and thereafter may recover the amount by calculating and adjusting the interest and till then unilateral recovery of Rs.1,30,583/- was not allowed cannot be faulted. Decree further specifies that State would be entitled to calculate the interest payable and thereafter may proceed for recovery if any. Therefore, under the circumstances of this case, I do not find any interference is required in the order. Accordingly, the appeal has no merit and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE

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