

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 6 8-2018

Judgment delivered on 6-9-2018

FA No. 539 of 1998

- Dinesh Chandra Verma s/o. Vasudeo Verma, aged 60 years, Contractor, resident of Shanti Nagar Ward, Jagdalpur, District Bastar (MP) Now CG.

---- appellant/Plaintiff

Versus

1. The State of Madhya Pradesh (now CG) through the Collector, Bastar.
2. The Superintending Engineer, Jal Sansadhan, Jagdalpur Circle, Jagdalpur, Bastar.
3. The Executive Engineer, Tribal Development Pilot Project (TDPP), Irrigation Department, Jagdalpur, Dist. Bastar (MP) now CG.

---- Respondents

For appellant : Mr. B.D. Guru, Advocate.
For respondents/State : Mr. Sanjiv Pandey, Govt. Advocate

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 5-10-1998/9-10-1998 passed by the 2nd Additional District Judge, Bastar at Jagdalpur (CG) in Civil Suit No.1-A/95 wherein the said court dismissed the suit filed by the appellant/plaintiff for declaring the recovery proceeding for Rs.71,872/- by the respondents/defendants illegal and for restraining them to auction the land/house of the appellant for recovery of the same.

2. The appellant/plaintiff was given a contract No.7/DL/88-89 by the respondents on 29-9-1988 for construction of Dasapal tank i.e., for earth work, pitching etc. It was a contract for 11 months. The work was started by the appellant/plaintiff but it was obstructed by the Forest Officers on the ground that the village being in forest area, no excavation work could be done without permission of the Forest Department. Thereafter, the appellant requested for extension of time of contract and the period was extended upto 30-4-1990 but work was not completed. It was informed by the respondents that the work left by the appellant is completed by another contractor namely Shailender Singh and the Government suffered loss of Rs.90,900/- to which the appellant is liable to pay. For recovery of the said amount, the appellant's land/house was attached which is illegal that is why he filed the suit before the trial Court.

3. Learned counsel for the appellant submits as under:

- i) As the appellant is prevented to work by the Forest Department and as per the contract, the respondents could only retained the security deposit, therefore, claim for excess amount from the appellant after getting unfinished work completed by another contractor is not within the scope of contract.
- ii) Finding of the trial Court that remedy is available under Section 150 of the Chhattisgarh Land

Revenue Code, 1959 and Section 257 of the said Code bars jurisdiction of civil court is erroneous.

- iii) Respondents have not taken step immediately after termination of contract of the appellant, and therefore, the appellant is not liable to pay excess amount.

4. On the other hand, learned counsel for the respondents/State would submit that the appellant is liable to pay the excess amount for getting unfinished work completed by another contractor and the finding of the trial Court is based on proper appreciation of factual matrix and legal aspect of the matter and same is not liable to be reversed.
5. I have heard learned counsel for the parties and perused the record in which judgment and decree is passed by the trial Court.
6. From the evidence it is established that the work was not completed by the appellant as per time framed in the work order and again it was not completed within extended time, therefore, respondents had no option but to terminate his contract. From the evidence, it is established that work was completed by another contractor namely Shailender Singh. True it is that rate of cement, iron and other raw-materials is fluctuating but the fact remains that if the work is unfinished by the previous contractor, he is under obligation to make good the amount which is the

difference amount for completion of work by other contractor. Argument advanced on behalf of the appellant that the work was obstructed by the Forest Department is without substance as the subsequent contractor has completed the same work in same field. It is not the case that the recovery proceeding is initiated against the appellant for which he has no liability. Any amount due in favour the State Government is recovered as land revenue and the provisions of Chhattisgarh Land Revenue Code, 1959 are applicable. The trial Court has elaborately discussed all the issues and this Court has no reason to interfere with the finding recorded by the trial Court.

7. Accordingly, the decree is passed against the appellant and in favour of respondents as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of respondent through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju