IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.112 of 2015

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1. The State Of Bihar Through Secretary Road Construction Department, Vishweshwarraiya Bhawan, Bailey Road Patna.
2. The Chief Engineer, N.H. Wing, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.
3. The Superintending Engineer, Road Construction Department, N.H. Circle, Muzaffarpur.
4. The Executive Engineer, Road Construction Department, N.H. Division, Muzaffarpur.

... ... Petitioner/s

Versus

Fulchand Kumar Singh S/o Sri Lalit Kumar Singh R/o Deodha, P.O. Mohanandpur, P.S. - Deep Nagar, District - Nalanda.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Kumar Prasad, Ac to AAG2

For the Respondent/s : Mr. L. B. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 09-05-2019

<u>I.A. No. 8999 of 2015</u>

Heard learned counsel for the parties.

This interlocutory application has been filed for condoning the delay in preferring the present revision petition.

For the reasons mentioned in this interlocutory application, this Court is satisfied that the appellant was prevented for sufficient cause from preferring this revision petition within time.

As a result, this interlocutory application is allowed and the delay in filing this revision petition is condoned.

C.R. No. 112 of 2015

1. The present revision petition has been filed by the State of Bihar and its authorities against the award dated 26.06.2014 passed by Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna, in Reference Case No. 53 of 2012, by which the tribunal has partly allowed the claim of claimant-respondent.

2. Sole claimant/respondent had filed the claim case before the Bihar Public Works Contracts Disputes Arbitration Tribunal (hereinafter referred to as the 'Tribunal') on reference in respect of work I.R.Q.P Work in Kilometer 1 to 25 except 8 and 22 of Hajipur-Muzaffarpur of N.H. 77 for the year 2008-09 vide Agreement No. 49SBD/2008-09.

3. It was submitted by the claimant before the Tribunal that the date of commencement of work was 28.02.2009 and date of completion was 27.10.2009 i.e. eight months, however, agreement was executed on 17.03.2009, but claimant was prevented from carrying out the work by creating hurdles by

changing the specification of work which hindered the progress of work and after arranging the workforce and machinery at the work site, when work was progressing satisfactorily, suddenly on 30.09.2009 the Executive Engineer rescinded the agreement and forfeited security on allegation of slow progress. Claimant-respondents executed entire work as per direction of respondent-petitioner and thereafter final bill was prepared after agreement was closed, Executive Engineer deducted the amount of 10 per cent from the running on account bill in the name of extension of time. Security amount was forfeited and penalty was also imposed against the terms of agreement.

4. Petitioners made claim before the Tribunal against penalty of deduction made in R/A Bills amounting to Rs.3,44,000/-, deduction made for extension of time of Rs.1,46,083/- as well as under different heads of price escalation Rs.30,00,000/-, compensation on account of closure of the agreement Rs. 68,88,315/-, hire charges of departmental hot mix plant Rs.2,01,297/-, site expenses Rs.10,00,000/- and loss and profit Rs.40,00,000/-, litigation expenses Rs.2,00,000/- and prospective loss and profit Rs.3,00,000/- and the total claim made before the Tribunal was of Rs.1,60,79,695/-.

5. In the counter affidavit filed by the respondents-petitioners they have taken stand that claimant-respondent had not taken any interest in completion of work within time and after expiration of seven months the total work done by the respondent-claimant was 10 per cent and meanwhile the road was transferred to N.H.A.I. for four laning and project was awarded to Gammon Infrastructure Project Pvt. Ltd.

6. It has been submitted that the work was rescinded under Clause-3 of the S.B.D. letter no.964 dated 30.09.2009 by the Executive Engineer. It was further submitted that before the Tribunal that due to delay in starting work, the quality and condition of work deteriorated and the agreement was re-validated by Engineer-in-Chief, Road Construction Department, Bihar vide letter no.4692 (E) dated 09.12.2009.

7. The respondent stated that he submitted the work programme to complete the said work by 31.03.2009 and respondent-petitioner was asked by letter dated 19.07.2010 to expedite the work but seeing no progress, the project was reviewed by State Level Review Committee and it was decided to close the agreement after making the final measurement. The agreement was closed on 07.05.2010 and the final measurement was made on

12.05.2010 and thereafter the road was transferred to National Highway Authority of India on 14.09.2010.

8. It has been submitted on behalf of the respondent-petitioners that for slow progress of work penalty was imposed of Rs.3,44,000/- for which deduction was made and further deduction of Rs.1,44,814/- was made on account of extension of time in terms of contract.

9. On the basis of pleadings of the parties the Tribunal framed four issues for adjudication. The Tribunal has denied the claim of respondent-petitioners under other heads for which claim was made. However, it has dealt separately in respect of claim of the penalty of deduction from R/A Bill and deduction in the name of extension of time as Issue No. 3.

10. The Tribunal after consideration has held that the deduction of Rs.3,44,000/- as penalty from R/A Bill is contrary to the terms of contract. The Tribunal has found Petitioners-respondents entitled for re-fund of Rs.3,44,000/- and has also directed for re-fund of deduction made in the name of extension of time of Rs.1,44,814/- as the contract was re-validated by respondents themselves and there was no application for extension of time and has held that petitioner is entitled for re-fund of the deducted amount of Rs.1,44,814/- .

11. Finally, the Tribunal has held that claimant-respondent is entitled for refund of amounts deducted in these two heads and since the final bill was prepared on 12.05.2010, it has directed to re-fund all the aforesaid amount along with interest at the rate of 10 per cent per annum and has rejected the other claim preferred by the petitioner-respondent before the Tribunal.

12. After going through the award passed by the Tribunal, this Court does not find any error or infirmity in the award passed by the Tribunal, accordingly, the present Civil Revision is dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.06.2019
Transmission Date	NA