

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.144 of 2016

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- 1.The State Of Bihar Through The Principal Secretary Rural works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.
 - 2.The Chief Engineer (South), Rural works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.
 - 3.The Superintending Engineer, Rural Works Department, Works Circle, Sasaram.
 - 4.The Executive Engineer, Rural Works Department, Works Division, Sasaram.

... .. Petitioner/s

Versus

M/s Sona Construction Through Its Managing Director , Mr. Manish Bhushan Ojha, son of Shri Indu Bhushan Ojha, r/o Punaichak, PS Shastri Nagar, District Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kamlesh Kumar Sharma, Adv
For the Respondent/s : Mr. Uma Shankar Tiwary, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 18-04-2019

I.A. No. 5566 of 2016

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 petitioners were
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. 144 of 2016

1. The present revision petition has been filed by the State of Bihar and its authorities against the award dated 21.11.2013 passed by Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna (hence referred as 'Tribunal') in Reference Case No. 71 of 2012, by which the Tribunal has allowed the claim of claimant-respondent.

2. An agreement was entered between petitioner and claimant-opposite party on 12.03.2008 being agreement no. 71F2 of 2007-08 for construction of PCC Lane and Drain for which completion time was within six months i.e. 27.09.2008 at a cost of Rs. 19,60,426/- Subsequently, on 29.03.2008 there was another agreement entered between the petitioners and claimant-opposite party being Agreement No. 94F2 of 2007-08 for construction of PCC Lane and Drain for which completion time was within six months i.e. 12.09.2008 at a cost of Rs. 16,80,503/-.

3. On account of differences and disputes relating to execution of work contract reference was made to the Tribunal in Reference Case No. 71 of 2012.

4. Claimant-opposite party with respect to agreement No. 94F2 of 2007-08 has stated in his claim petition that the



work could not be completed within time as there was delay in payment on accounts bill contrary to terms of agreement for which he had to stop the work several times. The execution of work was hampered by local people which slowed down the work. However, petitioner kept on executing the work but neither 2nd account bill was prepared nor measurement was made although work worth Rs. 5 Lacs was done as such claimant had to stop the work and thereafter 2nd on account measurement was made for an amount of Rs. 5,24,804/- and payment was made on 14.06.2008. Petitioner kept on executing the work of more than work value of Rs. 3 Lacs till 15.07.2008 but no 3rd account measurement was made and thereafter, petitioner executed work of more than work value of Rs. 5 Lacs by July-2008, however, no 3rd on account measurement was made and petitioner had to stop the work and thereafter 3rd on account measurement was made on 02.02.2009 of work value of Rs. 5,34,296/- and thereafter he executed work of more than work value of Rs. 3 Lacs by March-2009 although the work was delayed due to obstructions made by villagers but no action was taken by Respondent/petitioner to resolve the issue and 4th on account measurement and account bill was prepared of Rs. 15,59,895/- on 02.07.2009 and was passed on



25.07.2009. However, a deduction of 10 per cent for time extension of Rs. 31,679/- was made in 4th account bill.

5. Similarly, in respect of agreement No. 71F2 of 2007-08, Ist on account bill for Rs. 2,15,447/- was paid on 29.03.2008. IInd on account bill for Rs. 10,36,06/- was paid on 11.09.2008. IIIrd on account bill of Rs. 3,06,953/- was paid on 11.02.2009. IVth on account bill of Rs. 3,09,981/- was paid on 22.08.2009. However, deduction towards time extension for an amount of Rs. 30,998/- was made. The work was completed in September-2009 but no final measurement was taken.

6. Claimant has made prayer for final measurement and making payment against the work done, refund of security deposit, earnest money and also refund of deduction made towards for time extension.

7. Petitioner-respondents in their reply before the Tribunal have admitted the payment but have alleged delay in execution and completion of work and have stated measurement were taken whenever the execution of work was done. Amount towards extension of time was deducted as no extension was granted. The Tribunal on pleadings of parties had framed five points for determination.

8. Point No. 1 Petitioner-respondent had taken a plea



that work was not completed within time and claimant-opposite party took a plea that due to delay in payment and hindrance created by villagers work could not be completed within time. There was payment of Rs. 15, 59,895/- against agreement value of Rs. 16,80,503/- in Agreement No. 94F2 of 2007-08 and in respect of Agreement No. 71F2 of 2007-08, total payment made was Rs. 18,68,443/- against agreement value of Rs. 19,60, 426/-.

9. The Tribunal has held in point no. I that final bill of the work was not prepared and there was breach and default of reciprocal promises and claimant-opposite party is not entitled for any compensation for breach of terms of agreement.

10. Point No. II, Tribunal has held that claimant-opposite party is entitled to close the agreement but is not entitled for payment of any outstanding dues of Rs. 2 Lacs as made by claimant in execution of two works contract.

11. Point No. III, Tribunal has found that deduction of amount to the extent of 10 per cent for the extension of time as unjustified and claimant-opposite party is entitled for refund of amount of Rs. 62,677/- with 10 per cent simple interest.

12. Point No. IV, Tribunal has held that under the



clauses of contract respondent-petitioner are not entitled to withhold the security money and earnest money of the petitioner and claimant is entitled for refund of the same with interest @ 10 per cent and is also entitled for refund of earnest money/initial security deposit for Rs. 1,82,400/- with respect to both the agreements.

13. After hearing the counsel for the petitioner and going through the order passed by the learned Tribunal this Court does not find any infirmity or jurisdictional error committed by the learned Tribunal requiring any interference by this Court in its revisional jurisdiction, accordingly, the revision petition is dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.06.2019
Transmission Date	NA

