

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 174 of 2003****Reserved on : 31.01.2019****Delivered on : 20.02.2019**

1. State of Chhattisgarh, thgourh Collector, Bilaspur (C.G.)
2. Chief Engineer, Hasdeo Kachhar, Water Resources Department, Bilaspur (C.G.)
3. Executive Engineer, Kharang Water Resources Division, Bilaspur (C.G.)
4. Sub Divisional Officer, Water Resources Sub Division, Bilaspur (C.G.)

---- Appellants**Versus**

Rakesh Awasthi (Dead), S/o Shri Ramsahai Awasthi, Contractor- Class A-2, R/o 245, Yadunandan Nagar, Bilaspur (C.G.) Through Lrs.

- (a) Smt. Shakuntala Awasthi, Wd/o Late Rakesh Awasthi, Aged About 41 Years.
- (b) Yogesh Awasthi, S/o Late Rakesh Awasthi, Aged About 24 Years.
- (c) Deepak Awasthi, S/o Late Rakesh Awasthi, Aged About 20 Years

All R/o C/180, Yadunandan Nagar, Tifra, P.S. Sirgitti, District- Bilaspur (C.G.)

---- Respondent

For State/ Appellants : Mr. Ravish Verma, Government Advocate.
 For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 07.05.2003 passed by Third Additional District Judge, Bilaspur, District- Bilaspur (C.G.) in Civil Suit No. 8A/2003, wherein the said court decreed the suit filed by

the respondent/ plaintiff for declaring orders dated 15.06.1998 & 05.11.1998 void and for releasing amount to the tune of Rs. 87,419.10 with interest.

2. Original respondent namely Rakesh Awasthi was awarded with a contract by appellant No. 3 for completion of Earth Work at Bherva Main Canal. After completion of the work, when the respondent/ plaintiff submitted his bill, it was found that in the measurement submitted by the respondent, there was some miscalculation and error in the work executed by him, on account of which it was ordered for recovering the excess amount that is why the amount was withheld, but the trial court decreed the suit of the respondent on the ground that the bill submitted by the respondent is valid and appellants are liable to pay the same.
3. Learned counsel for the State/ appellants submits as under:-
 - (i) The appellants have not been given sufficient opportunity of leading proper evidence before the trial court and the case has been decided without any evidence being recorded from the appellants side.
 - (ii) Case of the respondent/ plaintiff is barred by limitation.
 - (iii) The award of interest on the amount is barred by law and the same is liable to be set aside.
4. The case of the appellants is based on false measurement made by the respondent and miscalculation on accounting, but no evidence was laid before the trial court by the appellants and there is nothing on

record to rebut the statement of original respondent/plaintiff- Rakesh Awasthi (PW-1). As per version of Rakesh Awasthi (PW-1), bill for Rs. 87,419.10 was outstanding towards appellants for work completed by him. As per work order and during measurement of the work, no objection was made by any of the authority of the department.

5. Version of Rakesh Awasthi (PW-1) is unrebutted, therefore, the trial court opined that no recovery or adjustment can be made against original respondent and he is entitled for recovery of amount which is outstanding against the appellants. When the evidence of original respondent is unrebutted, there was nothing to disbelieve the same by the trial court and this Court has no reason to substitute contrary finding. The appeal which is without substance is liable to be and is hereby dismissed.
6. Accordingly, the decree is passed against the appellants and in favour of the respondent on the following terms and conditions:-
 - (i) The appeal is dismissed with cost.
 - (ii) Parties to bear their own costs.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge