

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.256 of 2018

1. The State Of Bihar through the Secretary, Department of Science and Technology, Government of Bihar, Technology Bhawan, Patna.
2. The Chief Engineer, Science and Technology Department, Technology Bhawan, Patna.
3. The Project Engineer, Department of Science and Technology, Government of Bihar, Technology Bhawan, Patna.

... .. Appellants

Versus

1. Rastriya Pariyojna Nirman Nigam Limited, presently called as National Project Construction Corporation Limited, having its registered office at Raja House, 30-31 Nehru Place, Delhi-110019 and Unit Office at Uday Giri Apartment through its Unit Office.
2. Mr. Justice R.N. Lal (Retired), the Sole Arbitrator, resident of Kadam Kuan, Near Arbind Mahila College, P.S.- Kadam Kuan, town and District- Patna.

... .. Respondents

Appearance :

For the Appellants	:	Mr. Bijoy Kumar Singh, AC to AAG-V
For the Respondents	:	Mr. J.S. Arora, Sr. Advocate with Mr. Shashi Ranjan Kumar, Advocate Mr. Rahul Kumar Dubey, Advocate Mr. Kumar Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

13 11-07-2023 Heard learned counsel for the appellants and learned counsel for the respondents.

2. This Miscellaneous Appeal has been filed against the judgment and order dated 22.12.2017, passed by learned 1st Additional Sessions Judge, Gopalganj in Miscellaneous Case No. 65/2016/16A/2012, whereby the learned lower Court below has rejected the said Miscellaneous Case filed by the appellants under Section 34 (2) of the Arbitration and Conciliation Act, 1996 as barred by law of limitation and also



held that Miscellaneous Case is not maintainable on merit.

3. Learned counsel for the appellants submits that earlier Miscellaneous Appeal No. 356 of 2013 was filed by the appellants against the order dated 07.03.2023, passed by the Sub-Judge 1st, Gopalganj in Miscellaneous Case No. 16A of 2012, whereby the said Miscellaneous Case was dismissed on the ground of limitation. The said matter was heard and finally decided on 13.01.2015 by this Court wherein it has held that:

“The Court below has misdirected itself in approaching the case and dismissing the Miscellaneous Case recording a finding that Limitation Act is not applicable without considering the relevant provision of law and without considering the grounds raised by the appellant. The impugned order is unsustainable in the eye of law and the matter was remitted back to the Court below to pass a fresh reasoned order after considering the relevant provision of law and meeting the points that is raised by the appellant.”

4. Learned counsel for the appellants vehemently submits that the learned lower Court by observing that the application is barred by law of limitation has also transgressed the judicial propriety in ignoring the findings and observations made in order dated 13.01.2015, passed in



Miscellaneous Appeal No. 356 of 2013 by a Bench of this Court. It is further submitted that the learned Court below by its order dated 22.12.2017 has dismissed the Miscellaneous Case, in question, committing a grave error of record in taking into consideration order dated 15.12.2015 passed in Miscellaneous Appeal No. 522 of 2015, which is not related to the parties of the present appeal.

5. On the other hand, Mr. J.S. Arora, learned senior counsel for the respondents submitted that there was an Award given in Request Case No. 11 of 2001 between the parties. Against that Award, Miscellaneous Case No. 16A of 2012 was filed, which was dismissed on merit and also on the ground of limitation *vide* order dated 07.03.2013, which was allowed by the Bench of this Court on 13.01.2015, passed in Miscellaneous Appeal No. 356 of 2013 and the matter was remitted to the Court of Sub-Judge to hear and decide afresh on merit. On 15.07.2015, the said Miscellaneous Case was dismissed after considering the relevant provision of law and also considering the directions of this Hon'ble Court. It is further submitted by learned senior counsel for the respondents that the appellants again filed Miscellaneous Case No. 65 of 2016 to set aside the final Award given by the



arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996 in the Court of 1st Additional District Judge, Gopalganj, without disclosing the fact and development having been taken place. The Miscellaneous Case No. 65 of 2016 was heard and decided on 22.12.2017 on merit and against that present Miscellaneous Case has been filed. It is further submitted that Miscellaneous Case No. 65 of 2016 filed before learned 1st Additional District Judge, Gopalganj was not at all maintainable. The learned lower Court has rightly held that the Miscellaneous Case is not maintainable and also held that the Miscellaneous Case is barred by law of limitation.

6. In reply, leaned counsel for the appellants submitted that the Miscellaneous Case No. 35 of 2016 was heard in view of order dated 15.12.2015 passed in Miscellaneous Appeal No. 422 of 2015 by a Bench of this Court whereby the order dated 15.07.2015 passed by learned 1st Sub-Judge, Gopalganj in Miscellaneous Case No. 16A of 2012 was set aside. The matter was remitted to Sub-Judge with the direction that the entire file be transferred to the District Judge, Gopalganj, who will hear this matter either himself or will refer the same to any of the Additional District



Judge, who would decide the case in accordance with law.

7. Learned 1st Additional District Judge rejected the Miscellaneous Case no. 65/2016/16A/2012 as being time barred and not maintainable on merit.

8. After perusing the impugned order, material on records and considering the submissions made by the parties, it is manifest that there was specific direction given by this Court in Miscellaneous Appeal No. 356 of 2013 by a co-ordinate Bench, which reads as follows:

“In view of the aforesaid discussion, I find that the Court below has misdirected itself in approaching the case and dismissing the Misc. case recording a finding that Limitation Act is not applicable without considering the relevant provisions of law and without considering the grounds raised by the appellant. I, therefore, find that the impugned order is unsustainable in the eye of law.

In the result, this Misc. Appeal is allowed. The matter is remitted back to the Court below to pass a fresh reasoned order after considering the relevant provisions of law and meeting the points that is raised by the appellant.”

9. Despite the aforesaid directions the 1st Additional District Judge, Gopalganj has not taken pain to look into the direction given by this Court and decided the *lis* against the



finding of this Court in Miscellaneous Appeal No. 356 of 2013, which is a matter of concern and tantamount to violating of judicial propriety.

10. Accordingly, the impugned order dated 22.12.2017, passed by learned 1st Additional District Judge, Gopalganj is hereby set aside.

11. The matter is remitted to the Court of learned 1st Additional District Judge, Gopalganj to pass a fresh reasoned order within a period of three months after considering the directions of this Court.

12. Accordingly, this Miscellaneous Appeal is allowed.

13. The concerned Additional District Judge, Gopalganj is being forewarned that in future he should be vigilant so that no judicial impropriety is committed again.

(Khatim Reza, J)

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