

07-08-2023
ct no. 13
sl. no. 69
pk

F.A. No. 120 of 2003

Sailendranath Shome
-Versus-
State of West Bengal

Mr. Tapan Kumar Dey,
Mr. Rakesh Roy

...for the appellant.

1. The instant appeal is directed against judgement dated 25.01.2002 passed by the 7th Bench of the City Civil Court at Calcutta.
2. The facts relevant to the parties of the instant case are that the plaintiff was awarded a tender in July 1987 for construction of a hospital building, staff quarters including sanitary and plumbing, water supply arrangement for a new primary health centre at Sahajpur, District-Burdwan.
3. The plaintiff undertook the work but could not complete the same within the extended time.
4. The learned counsel for the appellant submits that the defendant was to make site ready after levelling of ground since construction was to be effected on the paddy field. For inability to do so a second contract was awarded to the petitioner for levelling of the land.
5. The plaintiff in terms of the work order put in security deposit of Rs.48,787/-. The time to

complete the contract was extended on two occasions. The plaintiff could only complete 70 per cent of the work. The executive Engineer of the State by communication dated 6th August, 1991 terminated the contract and forfeited the security deposit.

6. The plaintiff prayed for a decree for a sum of Rs.5,37,071/- together with interest and costs.
7. Three issues were framed by the court below. There was no issue framed with regard to,
 - (a) who was responsible for the delay in completion of the work;
 - (b) whether the plaintiff was entitled to terminate the contract?
 - (c) whether the plaintiff was entitled to any interest and costs?
 - (d) whether there are other issues also that may require to have been framed?
8. About 26 exhibits were taken on record. The plaintiff and the defendant examined a witness each.
9. The court below only recorded the evidence that came on record and the submissions of the parties. Except to say the plaintiff has not completed the work within the stipulated period or did not take legal step against the defendant

(unintelligible). The Ld court did not discuss any of the evidence that has come on record.

10. The court below dismissed the suit accepting the defendant' s case. The evidence that has come on record as regards alleged delay in completion of work and the entitlement of the State to terminate the contract extension of time granted to the appellant have not been discussed.
11. This Court is, therefore, left with no option than to set aside the decree dated 25th January 2002 and remand the matter back to the court below.
12. The court shall be entitled to frame any further issues either as already indicated herein above and any other issues that may be relevant for the facts of the case.
13. Parties shall be entitled to advance argument based on the evidence already recorded. No further evidence and documents shall be received by the court below.
14. After hearing the arguments on behalf of the parties, court below shall pronounce the judgement.
15. It is expected that the aforesaid exercise shall be completed within a period of three months from date.
16. The instant appeal is therefore allowed.

17. In view of disposal of the appeal itself, connected application, if any, are also disposed of.
18. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)