

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.862 of 2023

In

Civil Writ Jurisdiction Case No.4489 of 2023

Virendra Kumar Chaudhary Son of Daroga Chaudhary, Resident of Village and P.O.- Ajgari, P.S.- Banjariya, District- East Champaran.

... .. Appellant/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Chief Engineer (North), Building Construction Department, Government of Bihar, Patna.
4. The Superintending Engineer, Building Construction Department, Building Circle, Motihari.
5. The Executive Engineer, Building Division, East Champaran at Motihari.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kumar Kaushik, Advocate
For the Respondent/s : Mr. Amit Prakash (GA-13)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-04-2024

The writ petition was filed for setting aside the order issued by 3rd respondent whereby the claim of the petitioner for payment for Rs.10,34,000/- in terms of the rate approved by the competent authority (bill of quantity for the year 2019-20) for the construction of Sadbhav Mandap Building in the Block of Banjariya in the district of



East Champaran against Notice Inviting Tender bearing NIT No.51/2018-19.

2. The learned Single Judge dismissed the writ petition with liberty to approach under the Commercial Courts Act, 2015, as has been declared in ***C.W.J.C. No.4144 of 2023, Kaushalendra Kumar v. State of Bihar*** by judgment dated **19.04.2023**.

3. We were not inclined, at the outset, to entertain the appeal since money claims cannot be raised in a petition under Article 226. However, the learned counsel for the appellant urged that there are no disputed questions of fact. If that be the case, there would be no reason why the claim was rejected by the 3rd respondent; which indicates a dispute insofar as the money claimed in the writ petition.

4. We have to notice the decision of the Hon'ble Supreme Court in ***South Indian Bank Ltd. & Others v. Naveen Mathew Philip and Another*** reported in **2023 SCC Online SC 435**, which has been extracted in the cited decision. We extract paragraph 18 of the said decision hereunder:-

"18. While doing so, we are conscious of the fact



that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal. "

5. In addition, we also notice that the petitioner admits that the contract was entered into in the year 2018 and the contract incorporated the bill of quantity for the year 2018-19, while the petitioner is claiming the settlement of the contract amounts as per the bill of quantity of the year 2019-20. A counter affidavit filed by the respondent Nos.2 to 5 specifically indicates that two bills were inadvertently paid as per the rates of 2019, but it was rectified in the third bill. The petitioner, hence, is claiming amounts far in excess of that reflected in the contract executed between the parties.

6. We are not inclined to invoke the extraordinary jurisdiction and we notice that we are in an appeal from the denial of exercise of jurisdiction under Article 226



by the learned Single Judge. We are not to substitute the refusal of exercise of discretion by the learned Single Judge and we are of the opinion that the refusal was perfectly in order, considering the money claim raised, which is also disputed.

7. The appeal stands dismissed but reserving the liberty as reserved by the learned Single Judge, with just exceptions.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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CAV DATE	
Uploading Date	04.04.2024
Transmission Date	

