



2024:DHC:5695



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 01st August, 2024***+ **CM(M) 3086/2024 & CM APPL. 43664/2024****NITYA GOPAL MANDAL**Petitioner

Through: Mr. Deepak Mehta, Advocate

versus

PRAGATI BIO AND RENEWABLE ENERGY & ORS.

.....Respondent

Through: None

CORAM:**HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Petitioner is plaintiff before the learned Trial Court and has filed a suit seeking recovery.
2. It is apprised that as far as defendant no. 1 to 4 are concerned, they are already being proceeded against *ex parte*.
3. During course of the proceedings, defendant no. 5 i.e. Secretary, Government of Bihar, Chief Minister's Secretariat, Patna, Bihar was impleaded as one of the defendants.
4. However, when the summons were issued to defendant no. 5, it moved an application under Order I Rule 10 CPC stating therein that it was not a necessary party. It was contended by defendant no. 5 i.e. Government of Bihar that there was no privity of contract between them and the plaintiff and, therefore, there was no question of their being impleaded in the present case as defendant.
5. Learned Trial Court has allowed the aforesaid application, which has



compelled the plaintiff to invoke Article 227 of the Constitution of India.

6. It is argued that even if there was no direct privity of contract between the plaintiff and said defendant no. 5, since work in question i.e. installation of solar plant had been done for the benefit of Government of Bihar, the State of Bihar was a necessary party, particularly in terms of Section 70 of Indian Contract Act, which reads as under: -

70. Obligation of person enjoying benefit of non-gratuitous act.—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

7. Admittedly, herein, there is no privity of contract of any kind between the plaintiff and defendant no. 5.

8. I have seen the averments made in the plaint. As per such averments, defendant No. 5 had awarded a contract to *M/s Vijeta Projects & Infrastructure Pvt. Ltd.* for supply, installation and commissioning of two Solar Power plants at Bihar Police Academy, Rajgir, District Nalanda, Bihar *M/s Vijeta Projects & Infrastructure Pvt. Ltd.* sub-contracted the said project to the *defendant No.3 Ms/ Adhunik Buildtech Pvt. Ltd.* The defendant no.3 further sub-contracted the same to the *Defendant No. 1 Ms/ Pragati Bio and Renewable Energy.* The defendant no. 1, acting through Defendant No. 2, engaged the services of the Plaintiff for the said project

9. During the course of arguments also, it was, very fairly, admitted by learned counsel for petitioner that sub-contract in question was awarded to plaintiff by *defendant no. 1/M/s Pragati Bio and Renewable Energy* in terms of purchase order dated 25.07.2018. According to plaintiff, he has commissioned the solar plant but has not got back his dues and since the



work in question was done for the benefit of State Government of Bihar, defendant no. 5 is also a necessary party and its name should not have been deleted.

10. It is also claimed that since the other defendants are not participating in the proceedings and have been proceeded against *ex parte*, there is no other way to ascertain the real facts, unless and until the situation is clarified in comprehensive manner by the State Government, which only is in the best position to apprise whether the solar plant in question was commissioned or not commissioned.

11. According to learned counsel for petitioner, project is already complete.

12. Be that as it may, fact remains that there is no privity of the contract between the plaintiff and State Government. As per the averments appearing in the application moved under Order I Rule 10 CPC, the entire payment has already been made by State Government of Bihar to *M/s Vijeta Projects and Infrastructure Pvt. Ltd.* In the garb of section 70 of Indian Contract Act, the plaintiff cannot rope in State Government and ask for any relief. State government has already cleared the payment as per contract and, it cannot be asked to pay twice over for the same work. Section 70 of Indian Contract Act has no place where there is a specific contract as it relates to certain relations resembling those created by contract. Here, there is a specific and binding contract between plaintiff and defendant no.1 and, thus, the plaintiff is totally unjustified in placing reliance upon said provision for dragging the State Government in.

13. Be that as it may, since there was no privity of contract between the plaintiff and defendant no. 5 and since, the plaintiff cannot, admittedly, seek



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any damages from such defendant, the learned Trial Court rightly deleted defendant no. 5 from the array of parties.

14. Therefore, finding no merit or substance in the present petition, same is accordingly dismissed.

(MANOJ JAIN)
JUDGE

AUGUST 01, 2024/dr