

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Soumen Sen
And

The Hon'ble Justice Smita Das De

F.A. 266 of 1998

Sk. Salim

Vs.

Eastern Coalfield Ltd. & Ors.

For the Appellant : Mr. Amitava Mukherjee, Sr. Adv.
: Mr. Rajes Jana
: Ms. Arpita Saha
: Ms. Antara Das

For the Respondent : Mr. Shiv Shankar Banerjee
: Ms. Sanchita Barman Roy
: Mr. Abhishek Chakraborty

Hearing concluded on : **18.06.2025**

Judgment on : **16.07.2025**

Smita Das De, J.:-

1. This appeal is at the instance of the plaintiff being the appellant herein against the decree dated February 20, 1997 passed by the Asstt.

District Judge, Asansol in a suit filed for recovery of money and other reliefs.

- 2.** The fact emerges in brief that the appellant is a registered contractor of the defendants being the respondents herein and for the purpose of meeting emergency work at Naba Kajora Colliery No. 7 pit for roof support of drift, the appellant was advised by the Agent, Naba Kajora Colliery, being the Defendant No. 4/respondent, to perform the work for the emergency purposes and was being assured by the defendant No. 4 that the work order would be placed as per negotiated rate. Against the backdrop of the case the issues in the instant case are as follows:

 - i.** Whether the appellant is at all entitled to a sum of Rs. 1 lakh on account of the alleged completion of the work done in support of the earlier work done.
 - ii.** Whether the appellant performed the work upon request of the Agent of the Colliery upon assurance of issuing work order as alleged by him in the plaint.
- 3.** It is contended by the appellant that as per the request and assurances of the said defendant No. 4/respondent, he started the work on May 9, 1992 and completed the job. Whatever labourers were supplied by him against the said job has been mentioned and noted in some sheets of paper which bears the signature of pit Manager and

Senior Overman and mining Sardar. It was also contended by the appellant that a Tender Notice for all the three items were invited and in response the appellant submitted a Quotation on August 19, 1992. The appellant for regularizing the contract were asked to attend the office of the agent and was assured that the work order will be placed as per negotiated rate and the meeting for the same would be held on September 7, 1992.

4. Though the appellant was assured that the work order would be placed after the meeting dated September 7, 1992 but no work order was issued and the appellant by that time completed the work and requested for issuing the work order for regularizing the matter. But the defendant No. 4/respondent issued a letter dated November 15, 1992 / December 10, 1992 by making false charges against the appellant and it was falsely stated that the tender was only an enquiry tender, and it was floated with a view that if the alleged proposal of diverge of drift contractual and not accepted by the higher official, then the same could not be done departmentally. As a matter of fact the same was never done departmentally and it has been done and completed by the appellant. Thus the appellant has become entitled to get a sum of Rs. 1,00,000/- but in spite of demand raised by the appellant, the respondent/defendant avoided making payment on false pretext, although the appellant requested to settle the matter amicably

but defendant has failed and neglected to pay and settle the same amicably and the defendant is wrongfully withholding the said amount.

- 5.** On the other hand, the defendant filed its written statement and denied the allegations made in the plaint and inter alia contended that the appellant has no cause of action in the suit. It has been admitted by the defendant that the appellant was awarded the contract for execution of the drivage job in 33 and 35 rise No. 7 pit of Naba Kajora Colliery of the defendant by hand cutting as per work order no. NK/Agent/EE(C)/Survey/92/148, dated September 14, 1992 and work order no. NK/Agent/EE(C) /Survey/92/149 dated September 14, 1992. It has been denied that the defendant No. 4 ever advised the appellant for doing any work in connection for supporting the roof at drift No. 7 of the colliery as an emergency or other work, or that the appellant was given assurance that formal work order would be subsequently on the basis of rate to be decided by negotiation with the appellant.
- 6.** According to the defendant, the management of the defendant had a contemplation to get the drivage job in respect of the drift work which was required to be done in rise no. 33 and 35 of 7 pit of the Naba Kajora Colliery done departmentally and to get the support work done contractually for saving time as the management had shortage of

manpower for engaging in the support work. An inquiry was made for finding out a rate for the support work by the agent of the said colliery.

- 7.** The defendant submitted that after considering various aspects the management of the defendant had to drop the idea of getting the drift job done departmentally and accordingly the management dropped the idea of getting the said job done departmentally and took steps for getting the work done by engaging contractor to save time. For that reason the management of the defendant did not proceed further with the tender / enquiry notice for support work as the idea of execution of that work departmentally was dropped by the defendant and all support work was included in the contract work given to the appellant for drift drivage.
- 8.** It was contended by the defendant that the appellant has been deliberately misconstruing the terms of the work order dated September 14, 1992 and the appellant has wrongfully raised the question of payment for any support work done prior to issuance of the work order separately. The defendant has denied that any assurances were given to the appellant by the defendant that he would be issued any work order at any time prior to September 7, 1992 or any time thereafter or that the appellant has completed any work on the basis of any such assurances. Further there was misconception on the part of the appellant that the contract job would be awarded to

him and he transported materials in anticipation of the work order and he is entitled to get a separate payment for the said work done, if any, by him, as the same was included in the work order.

- 9.** For the reason of above misconception on the part of the appellant, the alleged dispute arising therefrom was referred to for inquiry by One Man Inquiry Committee which submitted the report, that the appellant's claim for extra payment of support work was untenable as the work was already incorporated in the work order of drivage work. Further the defendant has contended that the appellant was paid all his dues for the work done by him in connection with the contract job and he was not required to do any job in connection with the said work for which he can claim payment another of Rs. 1 Lac from the defendant, hence, the defendant have prayed for dismissal of the suit.
- 10.** Parties have adduced their evidence in the suit. The PW1 in his cross-examination has stated that he completed the job of supporting work in the month of November, 1992 and after receipt of the Work Order he did the work of stone cutting, coal cutting, brick work. It is his evidence that he was asked to do the work by the defendant before issuance of the tender as the work was urgent. It is also the evidence of the PW1 that there were two work orders both dated September 14, 1992 which were issued on the basis of the submission of the tender by the appellant.

- 11.** Thus from the appellant's own oral evidence it reveals that the work orders were issued to the appellant by the defendant on the basis of submission of the tender by the appellant. Further it reveals from appellant's own oral evidence, that after receiving the Work Order he completed the job. Hence from the evidence of the appellant, it cannot be inferred that the work order did not include all the works performed by the appellant.
- 12.** It is the evidence of DW1, that the defendant did not issue any verbal order to the appellant for doing any contract work in the colliery. It is also the evidence of DW1 that during the work in two drifts namely, 33 rise and 35 rise at Pit No. 7, fault occurred and at first the defendant tried to do it departmentally. Later, it was decided to avoid the situation and support works to be assigned to an outside contractor as explosive use was not possible except by manual cutting of the stone. Hence the appellant was engaged to do the drift work in 33 and 35 rises on the basis of work order issued on September 14, 1992 being exhibit No. 4.
- 13.** From the exhibit No. 6, being the report, of One Man Committee, it is revealed that after examination, explosive has not been used for stone drivage from the inception of the drivage till the date of the report and the contention of the agent that explosive was used for drivage in stone was not corroborated through documentary proof. The PW1 in his

deposition has made no whisper that he used explosive in the drivage work, hence, on the basis of evidence on record it does not prove that the appellant did any work which was not included in the contract and in the work order. Hence plea and/or allegation of the appellant that he performed extra work upon assurance of the agent is not proved.

14. It is trite law that he who allege and assent a fact must prove it. The appellant has failed to discharge his initial burden of proof in establishing his claim. In view thereof, the appellant is not entitled to get any payment in respect of any work which he alleged to have been done by him. The cases cited on behalf of the appellant being **1961 SCC Online (SC) 76 State Of West Bengal Vs. B.K. Mondal And Sons, 1976 (4) SCC 505 Union Of India Vs Sita Ram Jaiswal** are all under Section 70 of the Indian Contract Act. All the aforesaid cases do not apply in the facts and circumstances of the instant case since the appellant has failed to prove his case and he has not done any work which the defendant is bound to compensate.
15. From the conspectus of the above, we also find there is no clinching evidence to support the contention of the appellant that assurances were given by the department to issue work order of extra work as claimed by the appellant. The appellant has also failed to substantiate and prove that the work was actually completed after obtaining the work order.

- 16.** We have considered the case and in our opinion that the Trial Court was justified in dismissing the suit since the appellant has failed to prove its case.
- 17.** In view of the aforesaid we are not inclined to interfere with the order of the Trial Court. As such we dismiss the appeal.
- 18.** With the above observations and directions, **F.A. 266 of 1998** is dismissed with no order as to costs.
- 19.** Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Smita Das De, J.)

- 20.** I agree.

(Soumen Sen, J.)