

10.06.2026
Court No.13
Item No. 9
sp

FA 61 of 2000
Eastern Coalfields Limited
Vs.
Sk. Salim & Ors.

Mr. Shiv Shankar Banerjee,
Mr. Siddharth Chamria.

.... For the appellant.

1. Respondents are not represented despite service.
2. The instant appeal is directed against judgment and decree dated 29th November, 1999 passed by the learned Civil Judge (Senior Division), Asansol in Title Suit No. 21 of 1996.
3. By the said judgment and decree, the Trial Court allowed a claim for extra work of drivage of two nos. of inclined shaft from underground working of upper Kajora seam (R-IX) to Lower Kajora seam (R-VIII) of Lachipur. The work was entrusted on 29th May, 1992 after NIT was issued and the respondent/plaintiff succeeded as a lowest bidder. For the principal work done under the contract, the plaintiff/respondent was duly paid all dues. The said dues came to be paid pursuant to a decree passed in T.S. No. 19 of 1996.
4. The instant suit was filed subsequent to the earlier T.S. 19 of 1996. The claim in the instant suit was towards extra work done outside the scope of the

principal work order and/or contract. The learned Trial Judge at internal pages 14, 15 and 16 of the impugned judgment recorded several admissions on the part of the second witness of the appellant/defendant.

5. This Court, however, notes from the deposition of said D.W.-2, Shree Chand Sahajwani that there is no such admission whatsoever. The said D.W.-2 has not admitted that extra work was entrusted to the plaintiff/respondent. What was stated in evidence is that note sheet was duly prepared for the extra work but the same was not entrusted to the plaintiff respondent. There is categorical denial by D.W.-2 that any extra work was at all performed by the plaintiff/respondent.

6. In the light of the above, this Court is of the view that the findings of the learned Trial Judge of admission on the part of the D.W.-2, appellant's witness is wholly erroneous. There is substance in the argument advanced by Mr. Banerjee that the plaintiff/respondent may have inflated his claim by doubling the price and quantum of work performed by him.

7. In the light of the evidence of D.W.-2 in the Trial Court and the corresponding erroneous finding of fact by the Trial Judge, this Court is of the unequivocal view that the Trial Judge has misdirected himself into passing the judgment and decree.

8. The impugned judgment and decree dated 29th November, 1999 passed in T.S. 21 of 1996 is, therefore, erroneous and consequently set aside.

9. F.A. 61 of 2000 is allowed and disposed of.

10. Consequently, all pending applications, if any, shall stand disposed of.

11. There shall be no order as to costs.

12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)