

Pramod Kumar Bharti Vs. The State of Jharkhand Through Secretary Public Health Engineering Department and Ors

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Court : Jharkhand

Decided On : Mar-09-2016

Appellant : Pramod Kumar Bharti

Respondent : The State of Jharkhand Through Secretary Public Health Engineering Department and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI I.A. No. 5842 of 2015 In L.P.A. No. 601 of 2015 Pramod Kumar Bharti, S/o Late Durgeshwar Dayal Bharti, R/o Village- Barkadohar, P.O-Jori, P.S.-Bishunpur, Dist.-Gumla ..Appellant Versus
1. The State of Jharkhand through Secretary, Public Health Engineering Department, Government of Jharkhand, Project Building, P.O-Dhurwa, P.S.-Jagarnathpur, Dist.-Ranchi 2. The Finance Secretary, Ministry of Finance, Government of Jharkhand, Project Building, P.O-Dhurwa, P.S.-Jagarnathpur, Dist.-Ranchi 3. The Chief Engineer, Public Health Engineering Department, Government of Jharkhand, Project Building, P.O-Dhurwa, P.S.- Jagarnathpur, Dist.-Ranchi 4. The Superintendent of Engineer, Public Health Zone, Gumla, P.O & P.S.-Gumla, Dist.-Gumla 5. Executive Engineer, Public Health Division, Lohardaga, P.O, P.S. & Dist.-Lohardaga 6. Assistant Engineer, Public Health Deputy Division, Kuru, Block-Senha, P.O & P.S.-Senha, Dist.-Lohardaga .
Respondents ----- CORAM: HONBLE MR. JUSTICE D.N. PATEL HONBLE

MR. JUSTICE AMITAV K. GUPTA ----- For the Appellant : Md. Kaisar Alam,
Advocate For the Respondents : J.C. to G.A. ----- 05/Dated:09th March, 2016
Per D. N. Patel, J.: I.A. No. 5842 of 2015 1. This interlocutory application has been
preferred under Section 5 of the Limitation Act for condonation of delay of 61 days
in preferring this Letters Patent Appeal.

2. Having heard counsels for both the sides and looking to the reasons stated in
this interlocutory application, especially para no. 3 thereof, there are reasonable
grounds for condonation of delay.

3. We therefore, condone the delay of 61 days in preferring this Letters Patent
Appeal.

4. I.A. no. 5842 of 2015 is allowed and disposed of. -2- L.P.A. No. 601 of 2015 5.
This Letters Patent Appeal has been preferred against the judgment and order
delivered by the learned Single Judge in W.P.(C) no. 6193 of 2013 vide order
dated 07.07.2015, whereby the petition preferred by this appellant was dismissed
and also the money claim of this appellant was not allowed by the learned Single
Judge, hence, this Letters Patent Appeal has been preferred by the original
petitioner.

6. Learned counsel appearing for the appellant has submitted that three different
contracts were given to the appellant by the respondent- State for constructing
sanitary well under Drinking Water and Sanitation Division, Lohardaga. The work
had been completed in the year 2001-02, in the year 2002-03 and in the year
2003-04. For all the three contracts the three contracts, the amount due and
payable by the respondents to this appellant was Rs. 4,56,265/- (four lakhs fifty six
thousand two hundred sixty five). Nonetheless, this appellant will be satisfied if the
amount of Rs. 3,60,000/- (three lakhs sixty thousand) is paid to him. The work has
already been completed and there is a recommendation by the Executive
Engineer to the Chief Engineer by letter dated 24.02.2006. This aspect of the
matter has not been properly appreciated by the learned Single Judge. The work
done by this appellant was up to the satisfaction of the respondents, and, hence,
the amount as stated in the three contracts ought to have been paid to this
appellant.

7. Learned counsel appearing for the respondents has submitted that a detailed counter affidavit has been filed wherein it has been stated that in not a single contract, the work carried out by this appellant, was found up to the mark of satisfaction. Some sanitary wells were incomplete or -3- there is a direction to complete the work which has not yet been completed by this appellant, and, hence, a detailed counter has been filed. It is submitted that this appellant is entitled for Rs. 3,167/- (three thousand one hundred sixty seven) only under the three contracts and the part payment of the aforesaid amount has already been paid. It is submitted by the learned counsel for the respondent that highly disputed question of facts have been involved in the writ petition, hence, the writ petition preferred by the petitioner has not be entertained by the learned Single Judge, as no error has been committed by the learned Single Judge in dismissing the writ petition, hence, this Letters Patent Appeal may not be entertained by this Court.

8. Having heard counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to interfere with this Letters Patent Appeal mainly for the following facts and reasons:- (i) Three different contracts were given to this appellant by the respondents. These agreements are referred to as Agreement nos. F2- 20(2001-02), F2-28(2002-03) and F2-12 (2003-04). (ii) All the three contracts were for construction of eight sanitary wells in the District of Lohardaga under the Drinking Water & Sanitation Scheme. (iii) It appears from the counter affidavit filed by the respondents that the work carried out by this appellant regarding construction of sanitary wells were not up to the mark of satisfaction. There were several defects in the construction of sanitary wells and in few cases the wells have been collapsed and in rest of the cases this appellant-contractor was directed to remove the defects in the construction of sanitary wells. -4- (iv) It further appears from the facts of the case that a letter has been written by the Executive Engineer to the Chief Engineer dated 24.02.2006 which is in favour of the appellant, makes no difference. The Executive Engineer must have favoured this appellant, but this does not mean that even for incomplete sanitary wells, the payment has to be made by the respondents to this appellant.

9. It appears from the facts of the case that for incomplete sanitary wells construction, full payment cannot be made by the respondents- State. This aspect

of the matter has been properly appreciated by the learned Single Judge while dismissing the writ petition preferred by this appellant. The money suit type writ petition has been instituted by this appellant which involves several disputed questions of fact, whether the construction of sanitary wells were complete or incomplete is yet to be established by cogent and convincing evidence.

10. This court will not decide the questions involved in the writ petition, therefore, no error has been committed by the learned Single Judge in dismissing the claim of the appellant, hence, we see no reason to entertain this Letters Patent Appeal, as no error has been committed by the learned Single Judge in deciding the writ petition and thus, there being no substance, this Letters Patent Appeal, is hereby, dismissed. (D.N. Patel, J.) (Amitav K. Gupta, J.) Tarun/Sateyendra

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