

(2016) 03 JH CK 0056

In the Jharkhand High Court

Case No : I.A. No. 5842 of 2015 in L.P.A. No. 601 of 2015

Pramod Kumar Bharti

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Citation : (2016) 3 JBCJ 38 : (2016) 3 JCR 512 : (2016) 2 JLJR 282

Hon'ble Judges : D.N. Patel and Amitav K. Gupta, JJ.

Bench : Division Bench

Advocate : Md. Kaisar Alam, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

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.

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 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.

(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.