
(2001) 07 PAT CK 0105
In the Patna High Court
Case No : Misc. Appeal No. 391 of 1993

State of Bihar and Others	Vs	APPELLANT
Baba Construction		RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Arbitration Act, 1940 — Section 2

Citation : (2001) 3 BLJR 1824

Hon'ble Judges : Ashok Kumar Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Kumar Verma, J.—The Defendants-Appellants have filed this Miscellaneous Appeal against the judgment and order dated 30-4-1993 passed in Title Suit No. 43 of 1988 by the Sub-ordinate Judge, I, Khagaria, whereby the learned Sub-ordinate Judge has decreed the Suit of the plaintiff-respondent and made the Award rule of the Court. The learned Sub-ordinate Judge has held that the Plaintiff is entitled to realise the amount of Rs. 69,492/- with interest at the State of Bank of India rate from 30-11 -1988 till the date of realisation.

2. The plaintiff had filed the suit in the Court of Sub-ordinate Judge, Khagaria, for appointment of an arbitrator to give his award in respect of the claim of the plaintiff and to make it a rule of the Court. According to the plaintiff, Baba Construction, it had filled up tender for F.D.R. work Badla Nagar Para embankment in Paharpur and his rate was approved and the work was allotted to him at an estimated cost of Rs. 03,04,067.61 P. An agreement to this effect was executed by the plaintiff on one side and the Executive Engineer, Flood Control Division 2, Khagaria, defendant No. 2, on the other side. A sum of Rs. 15, 500/- had been deposited by the plaintiff as earnest money and he completed the work, which was entered in the measurement book and he was paid Rs. 02,17,477/-. According to the plaintiff-respondent, Rs. 69,492/ - remained due with the department concerned of the appellants. In spite of oral and written

request made by the plaintiff-respondents, defendants-appellants did not pay the amount of Rs. 69,492. Due to delay in payment of the dues, the plaintiff has claimed interest. Further, according to the plaintiffs-respondents, there was a Clause for arbitration in the agreement which had been executed between the parties for carrying out the work in the embankment and it was to be referred to the Superintending Engineer of the circle, who was defendant No. 3 in the suit. It is relevant to mention here that in the title suit, the Collector of Khagaria was defendant No. 1 and the Executive Engineer, Flood Control Division 2, Khagaria, was defendant No. 2, and the Superintending Engineer, Flood Control Circle, Khagaria, was defendant No. 3 and the Chief Engineer, Irrigation, Samastipur, was defendant No. 4.

3. The defendants had contested the suit and a written statement on behalf of defendant No. 2 had been filed in the Court of the learned Sub-ordinate Judge, Khagaria. According to this defendant, the date of completion of work was 15-6-1985, but the plaintiff did not complete the work as per schedule date of agreement, but on the prayer of the plaintiff-defendant No. 3 extended the period till 14-7-1985 when the work was completed. This defendant had admitted in his written statement that the work done by the plaintiff-respondent was up to the tune of Rs. 02,86,969/- and the plaintiff has already been Rs. 02,17,477/- and thus Rs. 69,492/- is due with the defendant. According to this defendant, the amount of Rs. 69,492/- only could not be paid to the plaintiff respondent due to non-availability of the fund. The defendant has denied the payment of interest on the said amount. According to the defendant, as per Clause of agreement in view of the dispute in between the parties, the matter of dispute will be referred to arbitration but in the instant case, there is no dispute as the department is admitting dues of Rs. 69,492/- of the plaintiff. It has been stated in the written statement that in any view of the matter, the dues, as mentioned above, is valid claim of the plaintiff and it may be referred to the arbitrator. But, it has been prayed to dismiss the suit.

4. It is apparent from the pleadings of the parties that a sum of Rs. 69,492/- of the plaintiff-respondent is due with the defendant appellant.

5. It was argued by the learned lawyer for the respondent (Plaintiff in the Court below) that the plaintiff had filed the suit in the Court of the Sub-ordinate Judge, Khagaria, when the defendant appellant failed to pay the dues to the plaintiffs in spite of oral and written requests.

6. It was submitted by the learned lawyer for the appellant that the award in the said arbitration proceeding is not in proper form and it may be treated as a letter and not an award. The contention of the learned lawyer for the respondent was that an award means an arbitration award and the term award has been defined in Section 2 Clause (b) of the Arbitration Act. It was also submitted by him that all that an arbitrator is required to do is to give an intelligible decision, which determines the rights of the parties in relation to the subject-matter of the reference. It was also submitted by the learned lawyer for the respondent that

the Superintending Engineer, Flood Control Circle, Khagaria, to whom the matter for arbitration had been sent, had sent letter No, 1, dated 1-1-1993, to the learned Sub-ordinate Judge, Khagaria, in respect of Title Suit No. 43 of 1988 and he had stated in that letter that he had sent the report by his letter No. 1068, dated 1-7-1992, to the Government Pleader, Khagaria, and he (Government Pleader) had been requested to take necessary action and he (Superintending Engineer) he also sent a copy of that letter to the learned Subordinate Judge, Khagaria. It was also submitted by him that in the said letter No. 1068, dated 1-7-1992, of the Superintending Engineer, Flood Control Circle, Khagaria, addressed to the Government Pleader, Khagaria, in respect of Title Suit No. 43 of 1988, the Superintending Engineer has stated that the department has accepted the claim of the plaintiff for payment of the amount of Rs. 69,492/- but due to non-availability of fund the payment is pending. These facts are not disputed by the learned lawyer for the appellant defendant. In the facts and circumstances of the case plaintiff-respondent is entitled to realise the amount of Rs. 69,492/- from the defendant appellant.

7. It was submitted by the learned lawyer for the appellant-defendant that the plaintiff-respondent is not entitled to interest on the amount of Rs. 69,492/-. The contention of the learned lawyer for the respondent was that since the amount has been found due with the defendant-appellant, they are entitled for the interest on the said amount. The learned Sub-ordinate Judge has ordered for payment of interest on the amount at the Bank rate from 30-11-1988. The letter of the Superintendent Engineer, Flood Control Circle, Khagaria, addressed to the Sub-ordinate Judge, Khagaria, in respect of Title Suit No. 43 of 1988 is dated 1-1-1993, and with the said letter, dated 1 -1 -1993, the Superintending Engineer had also sent copy of letter No. 1068, dated 1-7-1992, addressed to the Government Pleader, Khagaria, that the department accepts the claim of the plaintiff for payment of Rs. 69,492/- and had requested the Government Pleader, Khagaria, to take necessary action in the matter.

8. In the facts and circumstances the plaintiff-respondent is entitled to interest at the Bank rate from 1-1-1993, that is, from the date of the letter of the Superintending Engineer, Flood Control Circle, Khagaria, to the Sub-ordinate Judge, Khagaria, till the date of realisation.

9. With the above modification in the date of interest only in the judgment and order of the learned Sub-ordinate Judge, Khagaria, this appeal is dismissed.