

ITEM NO.1 Court 7 (Video Conferencing) SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 25730/2019

(Arising out of impugned final judgment and order dated 18-01-2019 in MA No. 272/2015 passed by the High Court Of Judicature At Patna)

THE STATE OF BIHAR

Petitioner(s)

VERSUS

M/S BHAIBHAW CONSTRUCTION PVT. LTD.

Respondent(s)

(Application for direction is to be listed.

IA No. 61706/2020 - CLARIFICATION/DIRECTION

IA No. 61708/2020 - EXEMPTION FROM FILING AFFIDAVIT)

Date : 25-02-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE DINESH MAHESHWARI

HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s)

Mr. Keshav Mohan, Adv.
Mr. R.K. Awasthi, Av.
Mr. Prashant Kumar, Adv.
Mr. Piyush Vatsa, Adv.
Ms. Ritu Arora, Adv.
Mr. Santosh Kumar-I, AOR

For Respondent(s)

Mr. Raghavendra K Singh, Adv.
Mr. Abhishek Gupta, Adv.
Mr. Nishant Ananad, Adv.
Mr. Vaibhav Sethi, Adv.
Mr. Kunal Kashyap, Adv.
Mr. Abhigya Kushwah, AOR
Ms. Sunita Yadav, Adv.
Ms. Anamika Kushwaha, Adv.
Ms. Nandita Rao, Adv.
Mrs. Mahija Reddy, Adv.
Mr. Virender Arora, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The respondent was awarded the contract for the work of widening and strengthening of Miraganj Bhagipati Samaur Road in pursuance to a valid tender and post bid negotiations. The agreement was entered into numbered as F.2/56-98-99 for a total value of Rs. 7,87,72,831- for a total length of 34 Kms of the road. The respondent claimed to have completed the work for 27 kms. and for the balance work, it is alleged that the work was not completed because the appropriate permissions were not granted by the petitioner. There were some revised estimates also submitted. The only result of all this was that the disputes arose *inter se* the parties, which were referred to the sole arbitration of Justice U.P. Singh, the retired Chief Justice of the Kerala High Court.

The interim award was passed on 19.01.2005 for Rs.1,05,85,231/- which was not assailed. The final award was passed on 4.6.2005 for Rs.2,05,78,644/- . This amount was to be paid within a period of 60 days from the date of receipt of the award, but on failure to do so, the post award interest had to be paid as per law.

The petitioner was aggrieved by this award and logically should have filed proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. The petitioner for the reasons best known to it persuaded a misconceived adventure of filing a title suit! We are not dealing with a person having lack of knowledge of law but the State of Bihar having large legal department working for it. To say the least, it is the sheer absurdity! Not only this, the title suit continued from 2005 till 2012 and after 7 years, it appears that the petitioner realized its mistake, at least this is the argument put forth by learned counsel for the petitioner, it is at that stage that an endeavour was made to convert the suit into a petition under Section 34 of the Arbitration and Conciliation Act, 1996 by taking recourse to Section 151 of the CPC. This endeavour was naturally unsuccessful and the suit was dismissed on 15.04.2015 on the preliminary issue relating to maintainability of the suit. It is, thereafter, that the petitioner preferred the Regular First appeal and thereafter endeavoured to change the nomenclature of that appeal to an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. The second misadventure resulted in the impugned order dated 18.01.2019, the

appeal having been dismissed.

In the present SLP, interim orders were passed on 25.10.2019 while issuing notice directing the petitioner to deposit the sum of Rs.1 crore to the credit on the executing Court to be disbursed to the respondent on filing of an undertaking. This amount stands deposited and disbursed.

We have heard learned counsel for the parties and find the appeal completely meritless. We are shocked and surprised to note that the legal department of the State of Bihar misadventured into a completely non-maintainable remedy when the Arbitration Act is a Code by itself and on top of that took 7 years to realize this mistake. If the petitioner has suffered losses on account of this misadventure, it is for it to recover the same from the officers concerned who were so legally ignorant, despite being part of the legal department.

We are of the view that this SLP is liable to be dismissed with costs quantified at Rs.15,000 (consideration being shown to the fact that a young lawyer is representing the petitioner) payable to the respondent within four weeks.

The executing Court, considering the delay

which has already occurred, should proceed forthwith with the execution and conclude it at the earliest.

A copy of the order be placed before the executing Court.

Pending applications stand disposed of.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)