

**(2019) 02 CHH CK 0360**

**Chhattisgarh High Court**

**Case No:** First Appeal No. 174 Of 2003

State Of Chhattisgarh And Ors

APPELLANT

Vs

Rakesh Awasthi And Ors

RESPONDENT

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**Date of Decision:** Feb. 20, 2019

**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 96

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Ravish Verma

**Final Decision:** Dismissed

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### **Judgement**

Ram Prasanna Sharma, J

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 07.05.2003 passed by Third

Additional District Judge, Bilaspur, District- Bilaspur (C.G.) in Civil Suit No. 8A/2003, wherein the said court decreed the suit filed by the respondent/

plaintiff for declaring orders dated 15.06.1998 & 05.11.1998 void and for releasing amount to the tune of Rs. 87,419.10 with interest.

2. Original respondent namely Rakesh Awasthi was awarded with a contract by appellant No. 3 for completion of Earth Work at Bherva Main Canal.

After completion of the work, when the respondent/ plaintiff submitted his bill, it was found that in the measurement submitted by the respondent,

there was some miscalculation and error in the work executed by him, on account of which it was ordered for recovering the excess amount that is

why the amount was withheld, but the trial court decreed the suit of the respondent on the ground that the bill submitted by the respondent is valid and appellants are liable to pay the same.

3. Learned counsel for the State/ appellants submits as under:-

(i) The appellants have not been given sufficient opportunity of leading proper evidence before the trial court and the case has been decided without any evidence being recorded from the appellants side.

(ii) Case of the respondent/ plaintiff is barred by limitation.

(iii) The award of interest on the amount is barred by law and the same is liable to be set aside.

4. The case of the appellants is based on false measurement made by the respondent and miscalculation on accounting, but no evidence was laid

before the trial court by the appellants and there is nothing on record to rebut the statement of original respondent/plaintiff- Rakesh Awasthi (PW-1).

As per version of Rakesh Awasthi (PW-1), bill for Rs. 87,419.10 was outstanding towards appellants for work completed by him. As per work order

and during measurement of the work, no objection was made by any of the authority of the department.

5. Version of Rakesh Awasthi (PW-1) is unrebutted, therefore, the trial court opined that no recovery or adjustment can be made against original

respondent and he is entitled for recovery of amount which is outstanding against the appellants. When the evidence of original respondent is

unrebutted, there was nothing to disbelieve the same by the trial court and this Court has no reason to substitute contrary finding. The appeal which is

without substance is liable to be and is hereby dismissed.

6. Accordingly, the decree is passed against the appellants and in favour of the respondent on the following terms and conditions:-

(i) The appeal is dismissed with cost.

(ii) Parties to bear their own costs.

(iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.

(iv) A decree be drawn accordingly.