

Present:  
Mr. Justice Md. Iqbal Kabir  
And  
Mr. Justice Md. Riaz Uddin Khan

First Appeal No. 37 of 1995

Bangladesh Water Development Board, represented  
by Executive Engineer, Nilphamari Water  
Development Division, Bangladesh Water  
Development Board, Nilphamari

....Appellant

Versus  
Syed Abu Jafar

....Respondent

Mr. Md. Muktadir Rahman, Advocate

....For the Appellant

No one

....For the Respondent

Judgment on 28.01.2026.

Md. Iqbal Kabir, J:

This Appeal has been directed at the instant of the appellant/plaintiff against the judgment and decree dated 25.09.1994 (decree signed on 02.10.1994) passed by the learned Subordinate Judge, 2<sup>nd</sup> Court, Nilphamari in Money Suit No. 10 of 1994, dismissing the suit.

Short facts of the case narrated by the plaintiff are that the Bangladesh Water Development Board (BWDB), represented by the Executive Engineer, Nilphamari, invited a tender for the construction of a bridge. Initially, the estimated cost of the work was Tk. 61,76,291/-, which was later reduced to Tk. 48,38,673/-. According to the tender conditions, the work was to be completed within 450 days. The defendant is an enlisted A-Class contractor who participated in the tender, and his tender was accepted by the plaintiff. The plaintiff alleged that the defendant did not start construction work within the fixed time; due to the negligence of the defendant, one span of the bridge collapsed; the defendant completed only 50% of the work in about six months; the defendant did not appoint a skilled and experienced engineer for the work. The plaintiff reminded the defendant by letter to appoint an experienced engineer, due to such negligence, a span of the bridge had collapsed. Therefore, an inquiry committee was formed, which reported that the collapse occurred due to the defendant's negligence. The committee assessed the loss

at Tk. 19,60,362/-. However, the defendant returned construction materials worth Tk. 3,80,847/-, but the remaining amount of Tk. 15,59,515/- was not paid. Therefore, the plaintiff filed this money suit to recover the unpaid amount.

However, by filing a written statement, the defendant denied all material allegations made in the plaint. He claimed that although he started the work after receiving the work order, the plaintiff took time to acquire the necessary land, which caused a delay in starting the work. According to the defendant, this delay was not his fault. The construction work was regularly inspected and supervised by the plaintiff's engineers and officers, and no objection or allegation of negligence was raised during construction. The defendant further stated that after completion of the bridge span, other works, and after being satisfied, the plaintiff paid the running bills. He claimed that on 06.08.1988, an earthquake occurred, and due to the earthquake, the bridge span collapsed. He also stated that the plaintiff admitted this fact in a letter. According to the defendant, the bridge design had defects; therefore, cracks appeared on the day of the earthquake, which ultimately caused the collapse.

In order to adjudicate the suit, the trial Court framed as many as five different issues where the plaintiff examined 4(four) witnesses and submitted some documents which have been marked as Exhibits 1, 1/1-1/13. On the other hand, the defendant examined 1(one) witness and submitted some documents which have been marked as Exhibits-Ka and Kha.

However, upon hearing the learned Subordinate Judge, 2<sup>nd</sup> Court, Nilphamari, dismissed the suit by the impugned judgment and decree dated 25.09.1994 (decree signed on 02.10.1994) in Money Suit No. 10 of 1994 with a finding that there was no negligence on the part of the defendant. Moreover, the plaintiff failed to prove his case. Thus, there is no reason to allow the plaintiff to get compensation.

Being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Subordinate Judge, 2<sup>nd</sup> Court, Nilphamari, the appellant preferred the instant appeal.

Mr. Md. Muktadir Rahman, learned Advocate for the plaintiff-appellant, submits that the Court below dismissed the suit by misreading the pleadings, evidence, and materials on record and by misconstruing the law. Therefore, the impugned judgment and decree are not sustainable in law.

He submits that the bridge was damaged due to the negligence and faulty execution of work by the defendant-respondent. According to him, P.Ws

have proved the plaintiff case by the consistent and reliable evidence, but the Court below, without proper reason, disbelieved their statements and wrongly held that the plaintiff failed to prove its case.

He also submits that P.W.1 stated that the bridge was damaged due to the defendant's failure to engage skilled workers. Lastly, he submits that an enquiry was held in which the defendant-respondent was found liable for faulty execution, but the Court below ignored this material fact.

This Court heard the submissions advanced by the learned Advocate for the appellant, went through the impugned judgment and decree vis-à-vis perusing the documents exhibits appeared in the paper book, and compared those kept with the lower court record available before us.

In this context, on going through the plaint, other documents and evidence of P.Ws and D.Ws, this Court examined how far the plaintiff has been able to prove its case by adducing and producing evidence.

P.W-1 in his cross examination states স্প্যান ভাংগে তার বিল বিবাদীকে পরিশোধ করেছি। নির্মান কাজ সম্পর্কে Fully Satisfied হয়েই বিল পেমেন্ট করা হয়। বিল পেমেন্ট এর পূর্বে নির্বাহী প্রকৌশলী এস, ই, এস, ডি, ই, কাজ সম্পর্কে তদন্ত করেন। ...সার্টারিং কাষ্টিং ও ঢালাই এর সময় নির্বাহী প্রকৌশলী এস, ডি, ই উপস্থিত ছিল-এস, ই মাঝে মাঝে উপস্থিত থাকিতেন। তারা সার্টারিং, কাষ্টিং, ঢালাই বিষয়ে কোন আপত্তি দিয়েছিল কিনা জানা নাই।...আমাদের Quality Control dept. নালিশী ব্রীজের কাজ তদারক করেছে। যাবতীয় নির্মান সামগ্রী আমরা সরবরাহ করেছি।

P.W-2 deposed that “সার্টারিং খোলার পর স্প্যানে ফাটল দেখা যায় যা পরবর্তীতে বড় হয় (তীব্র আপত্তিসহ) স্প্যান ভাংগার পর বিবাদীকে চিঠি দিয়ে জানাই কিন্তু তিনি কোন পদক্ষেপ নেয়নি।” However in his cross examination he states নালিশী নির্মান কাজ Specification অনুসারে হয়েছে মর্মে Satisfied হয়ে আমি সার্টিফিকেট দেই এবং তারপর Bill Payment করা হয়। সার্টারিং, কাষ্টিং, ঢালাই এর সময় আমি সার্বক্ষনিক উপস্থিত ছিলাম। যা যা Rectify করা প্রয়োজন তা করেছি-কোন অভিযোগ বা আপত্তি করিনি। ...কথিত তদন্ত কমিটিতে বিবাদীর কোন প্রকৌশলী ছিল কিনা জানি না।

P.W-3 in his cross examination states “নালিশী স্প্যান বাবদ রানিং বিল পেমেন্ট করেছি। রানিং বিলের পার্ট পেমেন্ট করেছি। নালিশী স্প্যানের কাষ্টিং পর্যন্ত কাজ হয় এবং ততটুকুর জন্য ঠিকাদার বিল দিলে তা পেমেন্ট করি। ...কাষ্টিং এর সময় S.O এবং উপস্থিত ছিল, আমিও ছিলাম। কাষ্টিং এর কতদিন পর স্প্যান ভাংগে মনে নাই। ০৬-৮-৮৮ তাং-এ ভূমিকম্প হয়েছিল।

P.W-4 deposed that “তদন্ত কমিটি গঠিত হয় এবং তদন্ত প্রতিবেদনে ক্ষতিপূরণ আদায়ের সিদ্ধান্ত হয়।” However in his cross examination he states নালিশী স্প্যানের নির্মান সুপারভাইজ করেছি তবে সার্বক্ষনিক নয়। .... রানিং বিল দেবার পূর্বে নির্মান কাজ চেক করে সেটিসফাইড হয়েছি। কাষ্টিং এর ৩/৪ মাস পরে নালিশী স্প্যান ভেংগে যায়। কাষ্টিং এর এর ১৪ দিন পরে সাইড সার্টারিং এবং নীচের সার্টারিং খোলা হয়নি। ভূমিকম্পের পরেই স্প্যান ভেংগে যায়-তবে আগে হইতেই ফাটল ধরেছিল স্প্যানে। .... কতটুকু কাজ হয়েছে তা Measurement Book-এ নোট করেছি এবং এর আলোকে রানিং বিল করা হয়।”

All the prosecution witnesses are officials of the BWDB and were involved in supervising the construction of the bridge. The work was inspected at different stages, and bills were paid after the work was found satisfactory. During shuttering, casting, and concreting, responsible engineers were present, and no objection was raised at that time. However, after the removal of the shuttering, cracks appeared in the span, which later widened, and the defendant was informed, but no corrective steps were taken. The span collapsed after the earthquake, though cracks had appeared earlier. The completed work was recorded in the measurement book, and bills were paid accordingly.

From the above discussions, it was revealed that the work was carried out under the supervision of the responsible representatives of the plaintiff. The bills were prepared and submitted by the defendant and were duly examined by the competent authority. As there was no complaint regarding the quality or execution of the work for which the bills were submitted, the authority approved the bills and made the corresponding payments.

Indeed, the Trial Court, as a Court of fact and on due consideration of the entire evidence and materials on record, came to its conclusion that the work had been made properly and there was no negligence on the part of the defendant, and dismissed the suit.

From the above discussion, it appears the impugned judgment and decree have been passed based on proper appreciation of law and facts, and we don't find any illegality, perversity, or misdirection that would warrant interference of the same sitting in an appellate jurisdiction. In view of the above, the appeal must fail.

In the result, the Appeal is dismissed without any order as to cost.

The impugned judgment and decree dated 25.09.1994 (decree signed on 02.10.1994) passed by the learned Subordinate Judge, 2<sup>nd</sup> Court, Nilphamari in Money Suit No. 10 of 1994, dismissing the suit, is hereby maintained.

Send down the lower Court records with a copy of this judgment to the Court below at once.

Md. Riaz Uddin Khan, J:

I agree.