

GAHC010295092023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/21/2024

NHPC LIMITED
REGISTERED OFFICE, COMPLEX SECTOR 33, FARIDABAD-121003.
THROUGH ITS DULY AUTHORIZED REPRESENTATION RIMON RYMBHUI,
AGED ABOUT 42 YEARS, S/O SHIR SHRI ENLY MANNAR, SERVING AS
MANAGER (CIVIL), EMP. NO. 103668N POSTED AT SUBANSIRI LOWER
HYDRO ELECTRIC PROJECT, NHPC LTD., GERUKAMUKH, ASSAM, PIN-
787035

VERSUS

M/S MEGHALAYA CEMENT LIMITED
REGISTERED OFFICE VILLAGE- THANGSKAI, P.O. AND P.S.-LUMSHNONG
DISTRICT EAST JAINTIA HILLS MEGHALAYA-793120

Advocate for the Petitioner : MR G BAISHYA

Advocate for the Respondent : MS. S. TODI

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 29-04-2024

29.04.2024

This is an application under Article 227 of the Constitution of India challenging the orders dated 08.12.2022 and 17.06.2022, passed by the Court of learned Civil Judge, Dhemaji, in Title Suit No. 11/2022.

2. It appears from the records that the petitioner herein as plaintiff had instituted a suit, being Title Suit No. 11/2022 for realisation of an amount of Rs. 1,88,38,323/- from the respondent/defendant, along with interest @ 18% per annum, *pendente lite* and future. Subsequent thereto, the said suit was amended.

3. Be that as it may, the defendant in the said suit filed an application under Order VII Rule 10 of the Code of Civil Procedure, 1908 (for short, "Code") for return of the plaint on the ground of territorial jurisdiction. In addition thereto, the respondent/defendant also filed an application under Section 8(1) of the Arbitration and Conciliation Act, 1996 (for short, "Act of 1996") for referring the dispute to arbitration. Apart from that, another application was filed by the respondent/defendant under Section 8(2) of the Act of 1996 seeking a direction upon the plaintiff to produce the original or duly certified copy of the general conditions of the contract as well as the special conditions of the contract along with copy of all the four supply orders wherein Arbitration clause had been mentioned. The said applications were registered and numbered as Misc.(J) Case Nos. 14/2022, 15/2022 and 16/2022 respectively. These applications were filed on 08.12.2022. It is pertinent to take note that in addition to the above applications, another application was filed for deferring the filing of written statement till disposal of the said applications. This application was registered and numbered as Petition No. 195/2022.

4. It is seen from the order dated 08.12.2022 that while the said applications, which were registered as Misc. (J) Case Nos. 14/2022, 15/2022 and 16/2022, were directed to be registered and copy thereof were directed to be furnished to the plaintiff, the learned trial Court observed that the petitions were allowed and thereby fixed 05.01.2023 for necessary order.

5. In the opinion of this Court, the said order is vague and cryptic, taking into

account the fact that when the trial Court was referring to various petitions, the learned trial Court ought to have been more specific as to which petition was allowed inasmuch as merely stating "petitions are allowed accordingly" would entail allowing all the petitions, including the petition which was yet to be registered as Misc. Case and copy whereof was furnished to the opposite party only on that day.

6. Be that as it may, the plaintiff duly filed objections to these applications, which were registered as Misc. (J) Case No. 14/2022, 15/2022 and 15/2022. Thereupon, the petitioner/plaintiff, taking into account that 90 days had already elapsed from the date of service of summons, filed an application on 17.06.2023 under Order VIII Rule 10 of the Code for pronouncement of judgment in view of non-filing of written statement within time in terms of Order VIII Rule 1 of the Code. On the very day, the learned trial court passed an order thereby rejecting the application on the ground that the learned trial court had already allowed the Petition No. 195/2022 thereby deferring the further proceedings of the suit till disposal of the Misc. (J) Case Nos. 14/2022, 15/2022 and 16/2022. It is against this order dated 17.06.2023 as well as the earlier order dated 08.12.2022 the instant Revision Petition has been filed.

7. This Court duly heard Mr. G. Baisahya, learned counsel appearing on behalf of the petitioner and Mr. D. Senapati, learned counsel appearing on behalf of the respondents and has given thoughtful consideration to their respective submissions.

8. This Court has duly perused the order dated 08.12.2022 and is of the opinion, as already stated in the previous segment of this order, that the said order is a cryptic order without detailing as to which petition was allowed. The passing of such a cryptic and ambiguous order has resulted into the subsequent order dated 17.06.2023. It is observed that had the learned trial court been more careful and

specific, the anomaly, which has come into existence, would not have ensued. In such circumstances, this Court is of the opinion that the order dated 08.12.2022 requires to be interfered with partially.

9. Accordingly, this Court therefore disposes of the instant Revision Petition thereby directing the learned trial court to *de novo* decide the application, which has been registered as Petition No. 195/2022. This Court further sets aside the order dated 17.06.2023 and directs the learned trial court to decide the application under Order VIII Rule 10 of the Code, filed by the plaintiff on 17.06.2023 subsequent to the disposal of the application, being Petition No. 195/2022.

10. This Court has further taken note of the fact that vide order dated 12.01.2024, this Court had stayed further proceedings of the suit, which order stands vacated and the parties, which are duly represented, are directed to appear before the learned trial court on 27.05.2024 for further proceedings of the suit.

11. With the above observations and directions, the instant Revision Petition stands disposed of.

JUDGE

Comparing Assistant