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Division Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR,

WRIT PETITION (C) NO. 5090 /2011

PETITIONER : M/s Kapoor Chand & Sons,
Bilaspur a proprietorship firm
through its Proprietor Shri
Mukesh Chand Ghai, son of Shri
K.C. Ghai, aged 62 years,
resident of Gondpara, Bilaspur
Tehsil & District Bilaspur (CG)

Vs

RESPONDENTS : 1. Municipal Corporation, Korba
through its Commissioner,
Municipal Corporation, Korba
2. The Executive Engineer,

P.R. No. 5410/2011
Presented by Shri. Mukesh Chand Ghai
dated. 29/8/2011

WRIT PETITION
CONS

Amendment
incorporated
at Bilaspur
on 24/02/2012
initially on 14/02/12

3. Bank of Maharashtra
Through its Branch Manager
Bilaspur Branch,
Madhyanagari Chowk, Bilaspur (C.G.)

Attested
Sd/-
ARC



Shrivastava

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HIGH COURT OF CHHATTISGARH, BILASPUR

DB: HON'BLE SHRI NAVIN SINHA, ACTING CHIEF JUSTICE &
HON'BLE SHRI GOUTAM BHADURI, J.

Writ Petition (C) No. 5090 of 2011

PETITIONER

M/s. Kapoor Chand & Sons,
Bilaspur

Versus

RESPONDENTS

Municipal Corporation, Korba and
others

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF
INDIA

Appearance :

Shri Malay Shrivastava, Advocate for the Petitioner.
Shri B .D. Guru, Advocate for Respondents 1 and 2.
Shri Saurabh Sharma, Advocate for Respondent 3.

ORDER

(23.12.2014)

NAVIN SINHA, ACTING C.J.

सत्यमेव जयते

1. We have heard Learned Counsel for the Petitioner and the Respondent-Corporation as also for the Bank of Maharashtra.
2. The Respondent-Corporation published a Notice Inviting Tender for installation of a Conference System in a Conference Hall, Korba on 15.7.2008. The Petitioner *inter alia* was a tenderer. On 14.8.2008 he was informed that the Tender process has been cancelled and the bid documents were being returned to him. The Petitioner had deposited an F.D.R. for Rs.7,500/- towards Earnest Money and therefore requested for return of the amount also.

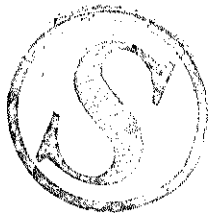
3. Learned Counsel for the Petitioner submits that thereafter the Petitioner wrote several letters in 2008, 2009 and 2011 for refund of the Earnest Money. On 29.3.2011 the Respondent-Corporation informed that it had released the F.D.R. in favour of the Bank on 29.1.2009. The Bank however has informed him in writing that it has never been received by it. The Petitioner is therefore entitled to refund of the Earnest Money amount with interest.
4. Learned Counsel for the Corporation from an extract of the Despatch Register submits that the F.D.R. was returned to the Bank through the representative of the Petitioner who signed in acknowledgement on the Despatch Register. He next submits that the writ petition was filed on 29.8.2011 when even a money suit was barred in view of the cause of action having been accrued on 14.8.2008 for a money claim simplicitor.
5. Learned Counsel for the Bank submitted that it has already informed the Petitioner in writing that no F.D.R. had been received by it.
6. We have considered the submissions on behalf of the parties.
7. It is no universal rule that a writ petition will not lie for a money claim when the facts are not in dispute and neither is the amount. The objection that a money suit for refund of money would not have been maintainable on the date that the writ petition was filed, merits no consideration in view of the acknowledgement by the Corporation on 29.3.2011 that it had released the F.D.R. in favour of the Bank on

29.1.2009.

8. If the F.D.R. was deposited as Earnest Money along with the bid documents, we find the conduct of the Respondent-Corporation a little unusual in handing over the F.D.R. with a covering letter dated 29.1.2009 to a representative of the Petitioner instead of the Bank. The counter affidavit is completely silent with regard to the name of the person who received it on behalf of the Petitioner. In normal circumstances either the employee of the Corporation would have taken it to the Bank and it would have been received by the Bank in its Issue and Despatch Section granting acknowledgement on the Register or separately as the case may be. The conduct of the Corporation in handing over the F.D.R. with a covering letter addressed to the Bank to a person not associated with the Bank, in our opinion, is an act for which the Corporation must bear the consequences. We are also not unmindful of the overwriting both on the letter addressed to the Bank as also on the Despatch Register.

9. If the Respondent-Corporation has not been able to satisfy us that the F.D.R. was dispatched to the Bank in the normal course of business by a normal mode of transmission and on the contrary the entire action of the Corporation appears to be different from what is required to be done in the normal course of business, the Corporation must bear the consequences.

10. The Petitioner is held entitled to the sum of Rs.7,500/- along with interest at the Bank rate from 29.1.2009 till the date of payment which



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must be paid to him by the Corporation within a period of four weeks from the date of receipt and/or production of a copy of this order before the competent authority of the Corporation. Nothing prevents the Respondent-Corporation from holding an inquiry and fixing the responsibility in house and recovering the same from the erring person.

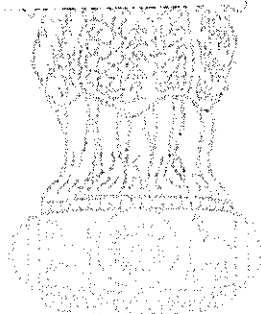
11. The Respondent-Bank shall proceed to cancel the F.D.R. in its records.

12. The Writ Petition is allowed.

Sd/-
Acting Chief Justice

Sd/-
Goutam Bhaduri
Judge

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सत्यमेव जयते