

THE HIGH COURT OF TRIPURA
AGARTALA

RFA No.07 OF 2015

Sri Dilip Kumar Kar,
Son of Late Makhan Lal Kar,
Resident of Assam-Agartala Road,
Math Chowmuhani, P.O. – Dhaleswar, Agartala,
District – West Tripura.

..... *Plaintiff-Appellant.*

- Vs. -

1. Hindustan Steel Works Construction Ltd. (HSCL)
A Government of India Undertaking,
5/1, Commissariat Road, Hastings, Kolkata – 700 022,
Represented by Head (Project), Tripura Unit,
Banik Kutir, Sankar Chowmuhani, Agartala-1.
2. The State of Tripura represented by the Secretary to
The Government of Tripura, Public Works Department,
New Secretariat Complex, Kunjaban, Agartala,
West Tripura.
3. The Empowered Officer, PMGSY, Public Works Department,
Government of Tripura, New Capital Complex,
P.O. NCC, Agartala, West Tripura.

..... *Principal-Defendant-Respondents.*

4. Bank of Baroda, Jail Ashram Road Branch, Assam-Agartala
Road, Math Chowmuhani, P.O. – Dhaleswar, Agartala,
District – West Tripura.

..... *Pro-Respondent.*

RFA No.08 OF 2015

Sri Dilip Kumar Kar,
Son of Late Makhan Lal Kar,
Resident of Assam-Agartala Road,
Math Chowmuhani, P.O. – Dhaleswar, Agartala,
District – West Tripura.

..... *Plaintiff-Appellant.*

- Vs. -

1. Hindustan Steel Works Construction Ltd. (HSCL)
A Government of India Undertaking,
5/1, Commissariat Road, Hastings, Kolkata – 700 022,
Represented by Head (Project), Tripura Unit,
Banik Kutir, Sankar Chowmuhani, Agartala-1.
2. The State of Tripura represented by the Secretary to
The Government of Tripura, Public Works Department,
New Secretariat Complex, Kunjaban, Agartala,
West Tripura.
3. The Empowered Officer, PMGSY, Public Works Department,
Government of Tripura, New Capital Complex,
P.O. NCC, Agartala, West Tripura.

..... *Principal-Defendant-Respondents.*

4. Bank of Baroda, Jail Ashram Road Branch, Assam-Agartala
Road, Math Chowmuhani, P.O. – Dhaleswar, Agartala,
District – West Tripura.

..... *Pro-Respondent.*

RFA No.09 OF 2015

Sri Dilip Kumar Kar,
Son of Late Makhan Lal Kar,
Resident of Assam-Agartala Road,
Math Chowmuhani, P.O. – Dhaleswar, Agartala,
District – West Tripura.

..... *Plaintiff-Appellant.*

- Vs. -

1. Hindustan Steel Works Construction Ltd. (HSCL)
A Government of India Undertaking,
5/1, Commissariat Road, Hastings, Kolkata – 700 022,
Represented by Head (Project), Tripura Unit,
Banik Kutir, Sankar Chowmuhani, Agartala-1.
2. The State of Tripura represented by the Secretary to
The Government of Tripura, Public Works Department,
New Secretariat Complex, Kunjaban, Agartala,
West Tripura.

3. The Empowered Officer, PMGSY, Public Works Department,
Government of Tripura, New Capital Complex,
Kunjaban, Agartala, West Tripura.

..... *Principal-Defendant-Respondents.*

4. Bank of Baroda, Jail Ashram Road Branch, Assam-Agartala
Road, Math Chowmuhani, P.O. – Dhaleswar, Agartala,
District – West Tripura.

..... *Pro-Respondent.*

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant	: Mr. D.K. Biswas, Advocate. Mr. G.K. Nama, Advocate.
For the respondent No.1.	: Mr. S. Deb. Sr. Advocate. Mr. P. Datta, Advocate. Mr. S. Datta, Advocate.
For the respondent Nos.2 & 3.	: Mr. T.D. Majumder, GA.
Date of hearing	: 30.11.2015.
Delivery of Judgment & order	: 10.12.2015.
Whether fit for reporting	: Yes.

JUDGMENT & ORDER

(Deepak Gupta, CJ.)

These three appeals are being disposed of by a
common judgment since the questions of fact and law involved in
all the three cases are identical.

2. Briefly stated the facts of the case are that the appellant (hereinafter referred to as the 'plaintiff') entered into three different contracts with the State of Tripura for construction of roads under the Pradhan Mantri Gram Sadak Yojana (PMGSY). The tender of the appellant was accepted and they furnished bank guarantee in favour of the implementing agency M/S. Hindustan Steelworks Construction Ltd. (HSCL). According to the plaintiff he started the work but the defendant No.1 instead of releasing the payment raised certain objections and did not make the payment. Disputes arose between the parties and the defendant No.1 terminated the contract and invoked the bank guarantees. The plaintiff filed the suit for recovery of Rs.3,32,88,062.00, Rs.4,97,90,365.00 and Rs.1,73,54,961.00 and also challenged the rescission of the contract and invocation of the bank guarantee.

3. The defendants filed written statement contesting the suit and the defendant No.1-Hindustan Steelworks Construction Ltd. raised a preliminary submission that the suit was not maintainable and that the petitioner was bound to approach the Dispute Redressal Committee in terms of Clause 24.1 & 24.2 of the agreement, which reads as follows:-

"24.1 If any dispute or difference of any kind what-so-ever shall arise in connection with or arising out of this Contract or the execution of Works or maintenance of the Works there under, whether before its commencement or during the progress of Works or after the termination, abandonment or breach of the Contract, it shall, in the first instance, be referred for settlement to the competent

authority within 45 days of arising the dispute or difference, described along with their powers in the Contract Data, above the rank of the Engineer. The competent authority shall, within a period of forty-five days after being requested in writing by the Contractor to do so, convey his decision to the Contractor. Such decision in respect of every matter so referred shall, subject to review as hereinafter provided, be final and binding upon the Contractor. In case the Works is already in progress, the contractor shall proceed with the execution of the Works, including maintenance thereof, pending receipt of the decision of the competent authority as aforesaid, with all due diligence.

24.2 Either party will have the right of appeal, against the decision of the competent authority, to the Standing Empowered Committee within 90 days of decision of the competent authority if the amount appealed against exceeds rupees one lakh.”

4. The learned trial Court treated the submission as a preliminary objection and passed an order on 03.03.2015 holding that since the petitioner had taken the matter before the competent authority, the Court had no jurisdiction to entertain the suit. Identical orders have been passed in all the three suits which are challenged in these appeals.

5. Since the only issue involved is whether the Court had jurisdiction to try the suit or not it is not necessary to give other detailed facts. The fact of the matter is that the plaintiff did file a petition before the empowered officer to take action in accordance with Clause 24.1. The empowered officer returned the application with the noting that it should have been filed before the competent authority. However, who is the competent authority was not stated by the empowered officer. It is not disputed that in all the three

suits the amount involved is much more than Rs.1,00,000/-. In terms of Clause.16 of the Contract certain officers have been designated competent authority but they only have jurisdiction to decide disputes up to Rs.1,00,000/-. Despite specific query of the Court, learned counsel for the respondents failed to point out who was the competent authority to decide disputes above Rs.1,00,000/-. Therefore, we are clearly of the view that the suit could not have been dismissed. The defendant No.1 is a Government of India undertaking. Even if the application is filed before a wrong officer, it was the duty of such officer to point out where the petition for redressal of the grievance would lie. No such authority has been pointed out to us even at this stage. We are of the considered view that the learned Court below gravely erred in rejecting the suit.

6. We would like to point out certain other factors in support of our view.

Section 9 of the Code of Civil Procedure reads as follows:-

"9. Courts to try all civil suits unless barred. – The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I – A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II. – For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]”

7. Therefore, every civil Court has the jurisdiction to try or disputes unless the cognizance thereof is either expressly or impliedly barred. We cannot read any express or implied bar in Clause 24 of the agreement, quoted hereinabove. This was a matter between the parties and it is up to the parties to decide whether they want to get it settled by the ordinary Courts or go to some other authority for reconciliation. This, however, does not mean that there is any bar to the jurisdiction of the civil Court. It may also be pointed out that no competent authority has been pointed out to us who is empowered to decide disputes above Rs.1,00,000/-. Probably, the intention of the party was that minor disputes involving amounts of less than Rs.1,00,000/- should not be taken to Court at the first instance. The civil suit could not be dismissed on the ground of lack of jurisdiction. The Court has jurisdiction under Section 9 of CPC to try the suit. This jurisdiction is not expressly or impliedly barred and the trial Court gravely erred in holding that there was a bar.

8. We may also make reference to Section 28 of the Indian Contract Act, 1972, which reads as follows:-

"28. Agreements in restraint of legal proceedings, void – Every agreement,-

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,
is void to that extent."

"Exception 1.— Saving of contract to refer to arbitration dispute that may arise. —This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred. 18 [*]**

Exception 2.— Saving of contract to refer questions that have already arisen. —Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration."

9. Any agreement which restrains any party to the agreement from enforcing its rights in any ordinary Tribunal or Court is a void contract. The only exception is an agreement whereby the parties have agreed to refer the matter to arbitration. The judgment relied upon by the learned Court below is a judgment related to arbitration proceedings and has no applicability to Clause 24.1 which does not deal with arbitration but in house Dispute Redressal System. This agreement does not bar the jurisdiction of the civil Courts and if it had done so that that portion of the agreement would have been void.

10. We may also point out Clause 25 of the agreement, which reads as follows:-

"25. Arbitration

25.1 In view of the provision of the clause 24 on Dispute Redressal System, it is the condition of the Contract that there will be no arbitration for the settlement of any dispute between the parties."

This Clause clearly indicates that there will be no arbitration for settlement of disputes between the parties. This fortifies our views that the agreement does not bar the jurisdiction of the civil Court.

11. Mr. S.K. Deb, learned senior counsel has placed reliance on a Division Bench judgment [**W.P. (C) No.91 of 2015**] of this Court authored by one of us (Deepak Gupta, CJ) wherein this Court in another matter where such dispute had been brought in writ proceedings had directed as follows:-

"12. We, therefore, dismiss this writ petition with liberty reserved to the petitioner to either take recourse to the dispute redressal mechanism mentioned in Clause 24 of the agreement or to file a suit in the Court of competent jurisdiction."

12. We may point out that in that case we had relegated the writ petitioner to other remedies because we had felt that there were disputed questions of law involved which could not be decided in a writ petition and therefore, the petitioner was told to

take recourse either to dispute redressal mechanism mentioned in Clause 24 of the agreement or to file a suit in the Court of competent jurisdiction. The issue whether the clause providing for dispute redressal mechanism barred the jurisdiction of the civil Courts was never argued before us nor was the same decided by this Court. That judgment has no applicability to the facts and circumstances of the present cases.

13. Jurisdiction of the civil Courts cannot be ousted in such a simple manner. As far as writ petitions are concerned, it would be pertinent to mention that the power to issue writs is an extraordinary discretionary power vested in the High Courts under Article 226 and when there is an efficacious alternative remedy available the writ Court normally does not exercise its writ jurisdiction. This principle is however not applicable to civil Courts. If a party has a right to move the civil Court then the civil Court cannot dismiss the suit on the ground that the party has some other alternative remedy. Even if there be an alternative remedy (except arbitration) it is for the party to decide whether to proceed with the other remedy or to file a suit. Even in cases where there is an arbitration agreement between the parties, a party to the agreement can file a suit. The suit is not barred. However, if the defendant on the first date of hearing raises an objection that the matter should be referred to arbitration then the suit does not proceed. These principles are principles governed by the

Arbitration and Conciliation Act and we are clearly of the view that these principles cannot be read into the agreement entered into between the parties.

14. In view of the above discussions, we are clearly of the view that the learned trial Court has passed a totally erroneous and illegal order in all the three cases. All the three orders are, accordingly, set aside. The suits are remanded to the learned trial Court to decide the same in accordance with law.

15. The parties are directed to appear before the learned trial Court on 18.01.2016. Thereafter, the learned trial Court shall proceed in accordance with law.

16. Send down the L.C.Rs forthwith.

JUDGE

CHIEF JUSTICE

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