

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 5412 of 2015 (B)

PETITIONER(S):

**MURSHAD K.M., AGED 27 YEARS,
S/O. LATE MUHAMMED ALI, CHANGANATHU, CHERANALLORE,
ERANAKULAM.**

BY ADV. SRI.T.K.ANANDA KRISHNAN

RESPONDENT(S):

- 1. THE PROJECT ENGINEER, B.P.C.L, KOCHI REFINERY,
AMBALAMUGAL, ERANAKULAM - 682 024.**
- 2. THE PROJECT ENGINEER,
ENGINEERS INDIA LIMITED,
CONSULTANT OF B.P.C.L PROJECT, AMBALAMUGAL,
ERANAKULAM - 682 024.**
- 3. SHAHUL HAMEED,
MANAGING PARTNER, M/S. DEENS CONSTRUCTIONS,
PALARIVATTOM, ERANAKULAM - 682 025.**

**R1 & R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R3 BY ADV. SRI.MOHAMMED RAFIQ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AD/

WP(C).No. 5412 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1-TRUE COPY OF THE AGREEMENT WITH BETWEEN THE PETITIONER AND
3RD RESPONDENT.**

**EXHIBIT-P2-TRUE COPY OF THE BILL PERTAINING TO THE MACHINERIES OF THE
PETITIONER.**

**EXHIBIT-P3-THE TRUE COPY OF THE REPRESENTATION SUBMITTED TO THE 1ST
RESPONDENT.**

**EXHIBIT-P4-TRUE COPY OF THE REPRESENTATION SUBMITTED TO THE 2ND
RESPONDENT.**

**EXHIBIT-P5-THE TRUE COPY OF THE POSTAL RECEIPT EVIDENCING THE SENDING OF
EXHIBIT-P3.**

**EXHIBIT-P6-THE TRUE COPY OF THE POSTAL RECEIPT EVIDENCING THE SENDING OF
EXHIBIT-P4**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S. TO JUDGE

AD/

P.R.RAMACHANDRA MENON, J.

W.P.(C) No. 5412 of 2015

Dated this the 10th day of March, 2015

J U D G M E N T

The petitioner has approached this Court with the following prayers:

- "i) Issue a writ of mandamus or other writ or order directing the respondents 1 and 2 to give permission to the petitioner to remove the machineries, shuttering materials, tools, metal scrap etc of the petitioner from the premises of the respondents.
- ii) Issue a direction to the respondents 1 and 2 to consider Ext.P3 and P4 representations and direct the respondents to do the necessary actions to enable the petitioner to remove his machineries, shuttering materials, metal scrap, tools etc from the premises of the respondents

- iii) Issue such other writs, order or direction to deem fit and proper in the circumstances of the case."

2. The learned counsel for the petitioner points out that the a portion of the work awarded to the 3rd respondent by the respondent-Oil Marketing Company was re-awarded to the petitioner, by the 3rd respondent. The work was completed by the petitioner but his machinery is still lying in the premises. It is stated that there is some dispute between the petitioner and the 3rd respondent who, according to the petitioner, has not honoured the terms of Ext.P1 agreement and the payment due to the petitioner is not so far effected. In the said circumstance, the petitioner has approached the respondent Company and sought for permission to take back the machinery. The representation preferred by the petitioner in this regard is not attended to, which made him to approach this Court.

3. Pursuant to notice on admission ordered by this Court, the 3rd respondent has entered appearance and filed a counter affidavit. The version of the petitioner is sought to be rebutted stating that the work re-awarded to the petitioner was never done by the petitioner and that there was blatant breach of the terms and conditions agreed in between. It is also stated that because of the default on the part of the petitioner huge loss has been resulted to the 3rd respondent and that steps are being taken to recover the loss/damage. The learned counsel also points out that in view of the disputed question of facts, the matter is not liable to be entertained in the writ petition.

4. Heard the learned Standing Counsel appearing for the respondent-Corporation as well.

5. After hearing both the sides, this Court finds that in view of the disputed questions of facts, it is not a fit matter to be examined by this Court invoking the

discretionary jurisdiction under Article 226 of the Constitution of India.

Interference is declined, the Writ Petition is dismissed, without prejudice to the rights and liberty of the parties to pursue other appropriate remedy with regard to the grievance/dispute.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE

jjj