

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C) .No. 36404 of 2007 (H)  
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PETITIONER(S) :  
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N.D.JOSEPH, PROPRIETOR  
M/S. TRAVANCORE EARTH MOVING COMPANY,  
AYURVEDA JUNCTION, THIRUVAMKULAM P.O.  
ERNAKULAM DISTRICT.

BY ADVS.SRI.M.K.DILEEPAN  
SRI.DEEPAK T.NEDUNGADAN  
SMT.P.SUMITHRA

RESPONDENT(S) :  
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1. THE MANAGING DIRECTOR,  
KERALA INDUSTRIAL INFRASTRUCTURE DEVELOPMENT  
CORPORATION (KINFRA), KINFRA HOUSE, TC 14/1026  
VELLAYAMBALAM, THIRUVANANTHAPURAM-695 101.

2. DEPUTY GENERAL MANAGER,  
HINDUSTAN STEEL WORKS CONSTRUCTION LTD.  
REP. BY ITS DEPUTY GENERAL MANAGER,  
24,GARNMENT COMPLEX, SIDCO INDUSTRIAL ESTATE,  
GUINDY,CHENNAI-600 032.

R1 BY ADV. SRI.P.N.RAMAKRISHNAN NAIR  
R1 BY ADV. SRI.P.VISWANATHAN  
R2 BY SRI.R.T.PRADEEP,SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

WP(C) .No. 36404 of 2007 (H)

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1-TRUE COPY OF THE AGREEMENT EXECUTED BY THE PETITIONER  
WITH THE 2ND RESPONDENT DT.31.12.1999

Ext.P2-TRUE COPY OF THE JUDGMENT IN OP.28413/02 OF THIS COURT  
DT.8.6.06

Ext.P3-TRUE COPY OF THE CLAIM STATEMENT GIVEN BY THE  
PETITIONER TO THE 1ST RESPONDENT DT.11.9.06

Ext.P4-TRUE COPY OF THE MINUTES OF MEETING HELD ON 11.9.06

Ext.P5-TRUE COPY OF THE MINUTES OF MEETING AND SETTLEMENT  
DT.25.6.07

EXT.P6-TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO  
THE PETITIONER DT.25.7.07

EXT.P7-TRUE COPY OF THE DRAFT SUPPLEMENTARY AGREEMENT SENT BY  
THE 2ND RESPONDENT TO THE PETITIONER

EXT.P8-TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER TO  
EXT.P6 DT.5.8.07

RESPONDENTS' EXHIBITS: NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

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W.P.(C) No.36404 of 2007  
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Dated this the 16<sup>th</sup> day of December, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader. This is the second round of litigation pertaining to disputed rights and obligation in a contractual matter.

2. It is the case of the petitioner that the respondents are bound to effect payment of the amount to be found due to the petitioner, for the work and fell due as per Ext.P5 settlement, without insisting for any supplementary agreement, in the light of the direction of this Court, in Ext.P2 judgment. Moreover, according to the petitioner, without settling all the claims of the petitioner with respect to the work, the respondents are not justified in insisting for execution of supplementary agreement to release the amount due to the petitioner for the

extra work done.

3. Going by Ext.P5 agreement entered into between the petitioner and the respondents it is seen that the petitioner is also a signatory in Ext.P5 and he had agreed to sign the supplementary agreement pursuant to a consensus arrived at between the petitioner and the respondents. Therefore, this Court finds that any challenge against Ext.P5 is unsustainable, so long as the genuineness and validity of Ext.P5 are not disputed. Moreover, going by Ext.P2 judgment, it is seen that this Court, after issuing directions to the respondents to consider Exts.P9 & P10 representations, it is specifically observed that in case there is any dispute for the petitioner or the 3<sup>rd</sup> respondent it is for them to pursue their remedies before appropriate forums. It means writ petition is not the proper remedy. In view of the specific observation, even if any dispute still remains after the consideration of Exts.P9 and P10 in Ext.P2 judgment, the aggrieved party could have pursued civil remedies under law since the matter in issue rests on

factual dispute pertaining to breach of contract. However, this Court finds that the writ petition is not a proper remedy to resolve disputed facts pertaining to breach of contract. This view is supported by the decisions of the Supreme Court in Har Shankar v. Deputy Excise and Taxation Commissioner (AIR 1975 SC 1121) and The D.F.O., South Kheri v. Ram Sanahi Singh (AIR 1973 SC 205).

3. In this analysis, this Court declines jurisdiction under Article 226 of the Constitution of India. It is for the parties to workout proper remedies as observed earlier by this Court in Ext.P2 judgment.

This writ petition is disposed of.

Sd/-  
K. HARILAL, JUDGE

okb.