

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

W.A.No.920 OF 2015

PC: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard learned Standing Counsel Sri P.Bhaskar for the appellants and learned counsel for respondent/writ petitioner
Sri Prasada Rao Vemulapally.

Respondents 1 to 5 in W.P.No.25461 of 2015 are the appellants. The sole respondent herein filed writ petition for the following relief:

“.....to issue a Writ or Direction more particularly a direction in the nature of Writ of Mandamus declaring the action of the Respondents in proposing to recover an amount of

Rs. 2,52,36,448.96 from the running bills of agreement Nos. 19/CAO/C/SC/2015 dated 25.03.2015 and 25/DEN/Lines/HYB dated 16.04.2015 through notices dated 28.04.2015 and 20.07.2015 issued by the

5th Respondent towards alleged excess payment said to have been made in respect of agreement No. 08/CAO/C/SC/ 2012 dated 01.03.2012, as arbitrary, illegal, without any authority and against the principles of natural justice and consequently set aside the same and pass.....

On 01.09.2015, the learned Single Judge, after considering the grievance in the writ petition and the apprehensions expressed by the appellants in recovering the advance paid to respondent, disposed of the writ petition in the following terms:

“During the hearing, however, there was considerable consensus in the modalities for security in securing the said amount of Rs.1.00 crore and odd from the petitioner, if its proposal for adjustment @ 10% on the Running Bills is accepted. In view of that, it is evident that the dispute between the petitioner and the respondent Railways is

narrowed down only with regard to the security for the respondent Railways for repayment of the said balance amount, if petitioner's proposal for installments is to be accepted.

In my view, it would therefore be just and appropriate that the petitioner is directed to provide a security in the shape of bank guarantee to the extent of 50% of the balance amount in favour of the respondent Railways and thereafter the respondent Railways shall be entitled to recover the balance amount at 10% from each of the Running Bills as per the proposal as recorded above. The petitioner shall accordingly furnish the bank guarantee of nationalised bank within four weeks to the satisfaction of the 4th respondent".

Hence, the appeal.

At the time of hearing, learned counsel for the writ petitioner/respondent herein, on instructions, has placed on record the memo dated 04.11.2015, which reads as follows:

"Aggrieved by the orders passed by the learned Single Judge dated 01.09.2015 in W.P.No.3546 of 2015 the appellants filed the above writ appeal. The bone of contention is the security and the modality of recovery of Rs.1,11,13,533/-. The writ petitioner has furnished the guarantee by way of FDR on the name of FA & CAO, South Central Railway (3rd respondent) for an amount of Rs.55,57,000/- and the balance amount of Rs.55,56,533/-. Under instructions and consent from writ petitioners it is submitted that the balance amount can be recovered in two installments i.e., Rs.30,56,533/- from the amount kept in deposit towards the work executed. And the balance amount of Rs.25,00,000/- from the next running bill. Thereafter the appellants/respondents can recover 10% from each of the running bills until an amount of Rs.55,57,000/- is fully recovered from the ongoing works of agreement Nos.19/CAO/CLSC/2005 dated 25.03.2015, 25/DEN/Lines/HYB dated 16.04.2015.

This memo is filed under instructions and consent from respondent/writ petitioner"

Learned counsel for the appellants consents for disposal of the appeal. The appeal is disposed of in terms of the memo dated 04.11.2005. Now, it is for the parties to work out the recovery as indicated above.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 04.11.2015

Lrkm