

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 5th August, 2015
Date of Decision: 30th September, 2015

+ W.P.(C) 9105/2014

SARVESH SECURITY SERVICES PVT. LTD.Petitioner
Through: Mr.S. Singh & Ms.Herinder
Kaur Brar, Advocates.

versus

DELHI TRANSPORT INFRASTRUCTURE
DEVELOPMENT CORPORATION Respondent
Through: Ms.Zubeda Begum with
Ms.Sana Ansari & Mr.Prem
Kumar Mishra, Adv.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. This is a petition under Article 226 of the constitution of India seeking directions to the respondent to refund the earnest money of Rs.2,49,492/- (Rupees Two lakhs forty nine thousand four hundred and ninety two) and security deposit of Rs.3,48,000/- (Rupees Three lakhs forty eight thousand).

2. Brief facts leading to the present petition are that the petitioner is a Private Limited Company providing manpower services to organizations such as Supreme Court of India, Indian Law Institute, Institute of Human Behaviour & Allied Sciences, etc. On 21.01.2013,

the respondent invited tender for providing housekeeping services at ISBT, Anand Vihar. On 04.03.2013, the respondent issued a letter bearing F.1(30)A/TCD/DTIDC/2012-13/1094, thereby accepting the rates filed by the petitioner. Vide letter dated 05.03.2013, the petitioner forwarded a Stamp Paper worth Rs.100/- for incorporation of the terms and conditions of the agreement by the respondent. Vide letter dated 11.03.2013, the respondent requested another contractor M/s Good Year Security Services to discontinue the work within one week as the petitioner was awarded the contract. However, the workers of M/s. Good Year Security Services did not stop their work and rather prohibited the workers of the petitioner to commence work. The petitioner vide letter dated 16.03.2013, intimated the respondent that its workers were not being permitted to commence work by the workers of M/s. Good year Security Services. However, no help was extended by the respondent owing to which the petitioner lodged a complaint dated 20.03.2013 before the Madhu Vihar Police Station. The petitioner intimated the respondent regarding the aforementioned police complaint vide its letter dated 23.03.2013, however, the respondent did not send any reply to the said letter. On account of no action or reply on behalf of the respondent, the petitioner vide its letter dated 26.08.2013, requested the respondent to return the earnest money and the security deposit. On 26.08.2013, the respondent verbally informed the petitioner that the earnest money and security deposit of the petitioner has been forfeited.

3. Aggrieved, the petitioner issued a legal notice to the respondent vide letter dated 27.08.2013 to return the earnest money and the

security deposit but no reply was received from the respondent. The authorized representative of the petitioner company filed an application dated 25.09.2013 under Right to Information Act, 2005, (for short “RTI Act”) which was again not responded to by the Public Information Officer of the respondent. Consequently, the authorized representative of the respondent filed a first appeal dated 06.11.2013 under the RTI Act. Respondent replied to the said RTI Application vide its letter dated 27.11.2013 informing the petitioner that the earnest money and the security deposit have been forfeited.

4. Thereafter, the petitioner filed a writ petition bearing No. W.P. (C) No.7770/2013 before this Court against the said forfeiture of the earnest money and security deposit. Vide order dated 10.12.2013, this Court issued a direction that the respondent shall not encash the security deposit and earnest money without prior permission of the Court. However, in the subsequent hearing on 04.02.2014, the respondent stated that the date of encashment of the security deposit and earnest money was 09.12.2013 i.e. one day prior to the order dated 10.12.2013. Based upon the said statement made by the respondent, the petitioner withdrew its petition on 04.02.2014, however, after realizing the misrepresentation made by the respondent, the petitioner filed a restoration application dated 06.02.2014. Vide order dated 26.11.2014, this Court without going into the controversy whether the stay order was communicated prior to the encashment of the bank guarantee, observed that the petitioner’s rights are not curtailed in any manner by the order dated 04.02.2014 and the petitioner is at liberty to file a fresh petition

urging all grounds available to the petitioner. Hence, the petitioner has preferred the present petition.

5. Learned counsel for the petitioner contended that as per clause 36 of the tender document, both the parties were subject to *force majeure* which could prevent either party to discharge the obligation and thus the respondent was unjustified in forfeiting the earnest money and security deposit for having itself failed to provide adequate security to the petitioners' employees in the premises of the respondent. The act of the respondent in forfeiting the security deposit and earnest money without issuing any show cause notice is violative of *doctrine of fairness*, and, in blatant violation of the principles of natural justice. The same encashment was also in violation of the Order dated 10.12.2013 passed by this Court in *W.P.(C) No.7770/2013* thereby depriving the petitioner from the accrued interest. As per clause 38 of the tender document, it was the responsibility of the respondent to intimate an exact date for commencement of the services. On the contrary, the respondent vide letter dated 11.03.2013 merely requested another contractor to discontinue the services within one week, thereby creating confusion on the date of commencement of the services as the workers of the other agency failed to hand over the work to the workers of the petitioner company. Vide letter dated 05.03.2013, the petitioner company requested the respondent to schedule a meeting for signing of the agreement as the date of commencement of contract had to be entered. However, the respondent failed to take any action in that

regard and hence, the respondent cannot be allowed to benefit from its own wrongs and forfeit the earnest money.

6. It was further contended by learned counsel for the petitioner that as per clause 9 of the tender document, the period of validity of tender was merely 120 days which expired on 19.05.2013. Therefore, the respondent could not have forfeited the bid security after the expiry of the validity of the tender. The respondent has encashed the FDRs only on 10.12.2013 which was well beyond the date of validity of the tender. Forfeiture of earnest money and security deposit would cause a severe dent upon the goodwill and reputation of the petitioner apart from inflicting severe financial loss. The respondent has failed to even issue a show cause notice to the petitioner before forfeiting the earnest money and security deposit.

7. *Per Contra*, learned counsel for the respondent contended that the present petition is merely for recovery of money and involves a disputed question of fact and is thus not maintainable.

8. I have given my thoughtful consideration to the submissions made by learned counsel for both the parties and have also perused the material on record.

9. Before entering into the merits of this case, it is necessary to consider the scope and ambit of the powers vested with this Court under Article 226 of the Constitution of India, which reads as under:

“Article 226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in article 32 [***] every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari], or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose].

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.]

[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without--

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is

later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

[(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]”

10. It is to be reiterated that under Article 226 of the Constitution of India, this Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extra-ordinary situation having no parallel. It is equally true that extra-ordinary powers are required to be sparingly used and the Court must adjudicate the matter after properly appreciating the nature of its jurisdiction. Where there is an alternative, effective and efficacious remedy available under the law, the High Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

11. In ‘**Hari Vishnu Kamath v. Syed Ahmad Ishaque and Ors.**’, (1955) 25 AWR 339, the Supreme Court determined the scope of powers vested with the High Court under Article 226 and *inter alia* observed:

“20. It is argued that the wording of Article 226, that the High Court shall have power to issue writs or directions to any person or authority within its territorial jurisdiction posits that there exists a person or authority to whom it could be issued, and that in consequence, they cannot be issued where no such authority exists. We are of opinion that this is not the true import of the language of the Article. The

scope of Article 226 is firstly that it confers on the High Courts power to issue writs and directions, and secondly, it defines the limits of that power. This latter it does by enacting that it could be exercised over any person or authority within the territories in relation to which it exercises its jurisdiction. The emphasis is on the words "within the territory", and their significance is that the jurisdiction to issue writ is co-extensive with the territorial jurisdiction of the Court. The reference is not to the nature and composition of the Court or tribunal but to the area within which the power could be exercised."

(emphasis supplied)

12. In **‘Orissa Agro Industries Corporation Ltd. and Ors. v. Bharati Industries and Ors.’** *AIR 2006 SC 198*, it was observed:

“8.Where a complicated question of fact is involved and the matter requires thorough proof on factual aspects, the High Court should not entertain the writ petition. Whether or not the High Court should exercise jurisdiction under Article 226 of the Constitution would largely depend upon the nature of dispute and if the dispute cannot be resolved without going into the factual controversy, the High Court should not entertain the writ petition.....”

13. It is a settled law that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. When an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the extra-ordinary jurisdiction of the High Court to issue a prerogative writ. (See: **‘Kurapati Maria Das v. Dr. Ambedkar Seva Samajan and Ors.’**, *AIR 2009 SC 2475*, **‘General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P., v. Satrugan Nishad and Ors.’**, *AIR 2003 SC 4531*, **‘Haryana Urban Development**

Authority and Another v. Anupama Patnaik’, (2000) 10 SCC 649, ‘Chairman, Grid Corporation of Orrisa Ltd.(Gridco) and Others v. Sukamani Das (Smt) and Another’, (1999) 7 SCC 298 and ‘Union of India v. T.R. Varma’, AIR 1957 SC 882).

14. Reverting to the facts of the present case, the petitioner seeks to entail the writ jurisdiction of this Court under Article 226 of the constitution of India seeking directions for respondent to refund the earnest money of Rs.2,49,492/- (Rupees Two lakhs forty nine thousand four hundred and ninety two) and security deposit of Rs.3,48,000/- (Rupees Three lakhs forty eight thousand) which was forfeited by the respondent against clauses 36 and 38 of the tender document issued by the respondent. This Court is of the view that the question whether such forfeiture was valid or not is a disputed question of fact and any liability so arising out of such a dispute does not entail the party contesting the dispute to avail a remedy of the writ Court under Article 226 of the Constitution of India.

15. In the light of aforesaid discussion, the petition deserves to be dismissed and the same is hereby dismissed.

16. No order as to costs.

**(VED PRAKASH VAISH)
JUDGE**

SEPTEMBER 30th, 2015
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