

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

-

W.P. No. 28733 of 2016

-

DATE: 26.08.2016

-

Between:

M/s.AMRCL – HARSHA (JV)

.. Petitioner

And

Visakhapatnam Port Trust
and another

.. Respondents

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-
-
-
-
-
-
-
-
-
ORDER:-

The main grievance of the writ petitioner is that the respondents are seeking to invoke and encash the Bank Guarantees bearing Nos.1303910BG0001499 for Rs.62,50,200/-, No.1303910BG0003069 for Rs.1,83,76,048/- and 1303910BG0002704 for Rs.1,83,76,048/- in the absence of certified copy of the order dated 09.08.2016 in A.O.P.No. 669 of 2013 passed by II Additional District Judge, Visakhapatnam.

The learned counsel for the petitioner has submitted that the petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 before the Court of II Additional District Judge, Visakhapatnam seeking interim injunction restraining the respondents from invoking and obtaining proceeds of the encashment of Bank Guarantees bearing Nos. 1303910BG0001499 for Rs.62,50,200/-, 1303910BG0003069 for Rs.1,83,76,048/-, 0008BG00130110 for Rs.2,36,00,000/- and 1303910BG0002704 for Rs.1,83,76,048/- from the respective banks. The aforesaid Court, by order dated 24.07.2013, granted interim stay against invocation and

encashment of the Bank guarantees. Thereafter, the matter was heard and at first reserved on 29.12.2015 for judgment and thereafter adjourned from time to time.

The learned counsel for the petitioner was informed on 10.08.2016 by the learned Judge that A.O.P. No.669 of 2013 was dismissed on 09.08.2016, however a copy of the order has not been made available till date either to the petitioner or the 1st respondent.

The learned Standing Counsel for Visakhapatnam Port Trust appearing for the 1st respondent does not dispute the facts stated by the learned counsel for the petitioner.

Heard the learned counsel for both the parties and perused the material placed on record.

The petitioner has filed an I.A.No. 656 of 2016 in A.O.P.No. 669 of 2013 praying for consequential relief. When the matter was listed on 11.08.2016, the learned counsel for the 1st respondent requested time till 12.08.2016 to file counter affidavit, and again on 12.08.2016,

sought extension of time till 16.08.2016 to file counter.

When the Court was apprised on 12.08.2016 that the 1st respondent was insisting on invocation and encashment of Bank Guarantees without certified copy of the order dated 09.08.2016, the trial Court directed the learned counsel for the 1st respondent to advise his client not to

press for the invocation until the I.A.No. 656 of 2016 is disposed of. In spite of such direction, the 1st respondent has insisted on invocation and encashment of the Bank Guarantees.

The whole controversy revolves round the order dated 09.08.2016 which was informed on 10.08.2016 by II Additional District Judge, Visakhapatnam. It is evident from the Web Site of the District Courts, Visakhapatnam which is placed on record at page 26 showing as “Case Status: CASE DISPOSED; Nature of Disposal: Contested—DISMISSED”.

From the facts recorded above, this Court feels that if the learned Judge had informed the petitioner on 10.08.2016 that the petition was dismissed on 09.08.2016, in that eventuality, the learned Judge was supposed to sign the judgment and send it to the Registry same day unless and until there were some unavoidable circumstances which would prevent him from sending copy of the judgment. However, this type of attitude of a Judge is not warranted.

I wonder, the petitioner filed I.A.No. 656 of 2016 praying for consequential relief and the learned Standing Counsel for the 1st respondent gave an oral undertaking not to insist on the invocation of the Bank Guarantees till the date of filing counter affidavit i.e. 16.08.2016. By that date, at least certified copy of the judgment dated 09.08.2016 should have been furnished to the parties,

however it seems that it has not been furnished.

In view of the above facts and circumstances of the case, I hereby direct II Additional District Judge, Visakhapatnam to furnish certified copy of the order dated 09.08.2016 passed in A.O.P.No. 669 of 2013 to the parties by tomorrow before 04:00 clock positively.

So far as the I.A.No. 656 of 2016 is concerned, since counter affidavit has already been filed, the application shall be decided by 29.08.2016. Till then, the respondents are restrained from invoking and encashing the aforementioned Bank Guarantees.

With the above observation, the writ petition is disposed of. No order as to costs.

The Registry is directed to communicate copy of this order to II Additional District Judge, Visakhapatnam forthwith.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

26.08.2016

bcj