

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.18038 of 2013

R.Venktesh Babu

Proprietor

Sri Mahalakshmi Grainage,
Opp.Rajaji Swimming Pool,
Salem Main Road,
Dharmapuri 636 705.

...Petitioner

-Vs-

1.The Director,
National Silk Warm Organisation,
Central Silk Board
Ministry of Textiles,
Government of India,
C.S.B. Complex,
Fourth Floor,
B.T.M. Layout,
Hosur Road, Madivala,
Bangalore 650 068.

2.S.Rajkumar

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the first respondent to refund the deposit amount of Rs.2.5 lakhs with the prevailing rate of interest deposited on 22.01.2007 for the purpose of implementation of C.D.P. and E.F.C. Scheme for production of Bivoltine Silkworm Seed by the petitioner with the first respondent vide D.D.No.508232, dated 22.01.2007 drawn on State Bank of India, Bangalore Main Branch, forthwith.

For Petitioner

: Mr.C.Prabakaran

For 1st

Respondent

: Mr.T.L.Thirumalai Samy,
CGC

For 2nd

Respondent

: No Appearance

O R D E R

The writ petition has been filed, seeking a direction to the first respondent to refund the deposit amount of Rs.2,50,000/-, which was deposited on 22.01.2007 with the prevailing rate of interest for the purpose of implementation of C.D.P. and E.F.C. Scheme for production of Bivoltine Silkworm Seed by the petitioner with the first respondent vide D.D.No.508232, dated 22.01.2007 drawn on State Bank of India, Bangalore Main Branch, forthwith.

2. The case of the petitioner is as follows:

The petitioner is carrying on the business of seed and silk worm production. To develop his business, he entered into an agreement with the respondent organisation under C.D.P. and E.F.C. Scheme for production of Bivoltine silkworm seed. Pursuant to the agreement, the first respondent sent a communication dated 10.10.2006 informing that the petitioner has to furnish certain particulars for finalising the agreement and the petitioner also furnished the same. That apart, the first respondent sent another communication dated 10.01.2007 requesting the petitioner to deposit a sum of Rs.2,50,000/- as per the scheme, for purchase and supply of various equipments. Again, the first respondent, sent another communication dated 16.01.2007 directing the petitioner to deposit the share amount of Rs.2,50,000/- in favour of the first respondent on or before 22.01.2007. Pursuant to which, the petitioner, deposited a sum of Rs.2,50,000/- by way of Demand Draft dated 22.01.2007. On such deposit, though the first respondent sent a communication ensuring the work and place for setting up the machineries and apparatus which are needed for starting the business of silkworm production, they have not given any technical guidance and special training as per the agreement. Thereafter, there was no co-operation from the first respondent and therefore, the petitioner could not facilitate the business and cannot move forward for the production of the silkworm seeds.

3. In such circumstances, the first respondent issued a communication directing the petitioner to handover all the machineries and all the equipments supplied under the scheme to the second respondent. In obedience of the aforesaid communication, the petitioner handed over all equipments supplied by the first respondent to the second respondent on

11.12.2009 and also received the acknowledgment for the same. Since then the petitioner repeatedly requested the first respondent to refund the deposit amount of Rs.2,50,000/- with prevailing rate of interest. But they did not repay the said amount. Hence, the petitioner left with no other alternative, has come before this Court by way of filing present writ petition.

4.The learned counsel for the petitioner submitted that as per instruction though the petitioner had handed over all the equipments to the second respondent vide letter dated 20.10.2009, the first respondent had not paid the admitted deposit amount of Rs.2,50,000/-. Hence, the petitioner had incurred huge loss. As the first respondent has accepted to pay the admitted deposited amount, the petitioner can invoke arbitration clause to settle the disputed issue. Therefore, the learned counsel requested this Court to issue a direction to the first respondent to return the deposited amount along with prevailing rate of interest to the petitioner.

5.The learned Central Government Standing counsel appearing for the first respondent, on the basis of the counter affidavit, has submitted that as per the agreement, if any dispute or difference arises under the agreement, the same shall be settled by consent of the parties. If the dispute is not settled, the respective parties may go before the Arbitrator for settling the issue. Therefore, the petitioner shall invoke the arbitration proceedings to settle the issue. Moreover, the petitioner has committed breach of agreement and miserably failed to implement the scheme. Hence, the first respondent is not liable to pay the money. Therefore, the writ petition has to be dismissed.

6.Heard the learned counsel for the petitioner and the learned Central Government Standing counsel appearing for the first respondent and perused the materials available on record.

7.It is useful to extract paragraph No.5 of the counter affidavit filed by the first respondent:

"Any dispute or difference under this agreement shall be settled by mutual consent of the parties. If it cannot be redressed by mutual consent that the same shall be referred to an Arbitrator by all the parties or either one of them under notice to other for redressal and for settling the issue through Arbitration. The jurisdiction in all matter will be Bangalore".

8.In the letter dated 20.10.2009 addressed to the petitioner, the first respondent stated that they would refund the deposit amount of Rs.2,50,000/- to the petitioner after deducting the depreciation on equipment cost. But, as per the said letter, the first respondent had not refunded the said amount till date. Therefore, in view of the acceptance given by the first respondent, the petitioner deserves no right to invoke arbitration clause as per agreement.

9.From the above, it is clear that the first respondent had accepted to refund the deposit amount of Rs.2,50,000/- after deducting the depreciation on equipment cost. In view of the settlement arrived at between the parties, there is no need for the petitioner to invoke arbitration clause.

10.Therefore, this Court directs the first respondent to refund the admitted deposit amount of Rs.2,50,000/- along with interest at the rate of 6% from the date of deposit, after deducting the depreciation on equipment cost as per the letter dated 20.10.2009 within a period of eight weeks from the date of receipt of a copy of this order, failing which, the first respondent has to pay the interest at the rate of 12% per annum to the deposited amount of Rs.2,50,000/-.

11.The writ petition is disposed of with the above said direction. No costs

s/d-
Assistant Registrar(CS III)

//True Copy//

Sub-Assistant Registrar

To

The Director,
National Silk Warm Organisation,
Central Silk Board
Ministry of Textiles, Government of India,
C.S.B. Complex, Fourth Floor, B.T.M. Layout,
Hosur Road, Madivala, Bangalore 650 068.
+1 CC to Mr. T.L. Thirumalai samy, sr 2414
+1 CC to Mr. C. Prabakaran, Advocate sr 3244

W.P.No. 18038 of 2013

LRS (CO)
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