

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

WRIT APPEAL NO.1361 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WP.No.30793 of 2017 dated 12.09.2017 dismissing the Writ Petition.

After arguing for some time Sri K.Chidambaram, learned counsel appearing on behalf of the appellant-writ petitioner, would submit that the order of the learned Single Judge would disable the appellant from even availing their remedies under the underlying contract. The apprehension expressed by the learned counsel for the appellant is wholly unfounded.

The learned Single Judge has, in our opinion rightly, held that the bank guarantee constitutes a separate contract, apart from the underlying contract; and, in the absence of fraud or irretrievable injury being established, no interference can be sought against encashment of the bank guarantee. The learned Single Judge further observed that, under Article 226 of the Constitution of India, a Writ Petition, questioning invocation of the bank guarantee, would not be entertained. The Writ Petition was, accordingly, dismissed.

As has been rightly held by the learned Single Judge, a bank guarantee constitutes a contract distinct from that of the underlying contract. Save fraud, irretrievable injury or special equities, neither would any order be passed by the High Court

under Article 226 of the Constitution of India, nor would an injunction be granted by the Civil Court, restraining invocation of the bank guarantee. The mere fact that the bank guarantee is encashed would not disable a party, at whose behest the bank guarantee was furnished by the bank to the beneficiary, from claiming damages for breach of the contract against the beneficiary of the bank guarantee. As no case of fraud, special equities or irretrievable injury has been made out, we see no reason to interfere with the order of the learned Single Judge. Suffice it to make it clear that neither the order under appeal, nor the order now passed by us, would disable the appellant from claiming damages from the respondent by way of a suit filed before the competent Civil Court for breach of the underlying contract. In case any such suit is filed, the competent Civil Court will examine the claim on its merits and in accordance with law.

Subject to the aforesaid observations, the appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

18th September 2017
RRB