

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NO.197 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 orders passed by the learned Single Judge in WP.MP.No.53541 of 2016 in WP.No.43386 of 2016 dated 05.01.2017.

The first respondent herein filed the Writ Petition to declare the action of the respondents, in not finalising and releasing the amounts for the work executed by the petitioner, pursuant to the agreement dated 30.12.2015, pertaining to the subject work, as arbitrary, illegal and in violation of Articles 14 and 19(1)(g) of the Constitution of India. A consequential direction was sought to the respondents to pay the amounts for the work done by the petitioner with interest @ 12% per annum. By way of interim relief, the petitioner sought a direction to the respondents to finalise payments to the extent of the work done by the petitioner pursuant to the agreement, and release the amounts to the petitioner within a specified time-frame.

In the order under appeal, the learned Single Judge, after noting the contentions urged on behalf of the petitioner and the submission of the learned Government Pleader that the Writ Petition was not maintainable, the work was executed even before the contract was entered into, there were certain irregularities committed by the petitioner, a vigilance enquiry

was going on, and therefore the question of release of the amount at that stage did not arise, perused the records and observed that, in view of the peculiar facts of the case and to balance the rival claims, it was appropriate to direct the respondents to release 25% of the amount payable to the petitioner as an interim measure for the work executed by him.

The learned Single Judge, while noting the submission of the learned Government Pleader regarding maintainability of the Writ Petition, has not expressed any opinion as to whether or not this Court should exercise its discretion to entertain a Writ Petition wherein payment is sought in terms of the agreement i.e. a Writ Petition wherein contractual disputes are in issue.

Further, the facts stated in the counter-affidavit filed by the appellants, and the contentions urged on their behalf by the learned Government Pleader, including those recorded in the order itself, have not been dealt with. It is only after the objections raised by, and on behalf of, the respondents are dealt with, could an order, similar to the one under appeal, have been passed granting the interlocutory relief of payment of 25% of the amounts allegedly due to the petitioner. We are satisfied, therefore, that the order under appeal necessitates interference.

The order under appeal is, accordingly, set aside and WP.MP.No.53541 of 2016 is restored to file. As a counter affidavit has already been filed by the respondents, it is open to the petitioner to request the learned Single Judge to take up WP.MP.No.53541 of 2016 at an early date for grant of interim relief. The Writ Appeal is disposed of accordingly. There shall

be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

14th February 2017
RRB

