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

+ CM(M) 610/2017

BHARAT ENGINEERS AND CONSULTANTS Petitioner

Through: Ms.Monica Sharma, Advocate with
Mr.Sourav Arora, Advocate

versus

EXECUTIVE ENGINEERS & ANR. Respondents

Through: Sri Harsha Peechara, Advocate for
SDMC

AND

+ CM(M) 614/2017

BHARAT ENGINEERS AND CONSULTANTS Petitioner

Through: Ms.Monica Sharma, Advocate with
Mr.Sourav Arora, Advocate

versus

EXECUTIVE ENGINEER & ANR. Respondents

Through: Sri Harsha Peechara, Advocate for
SDMC

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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26.05.2017

CM No.20584/2017 in CM(M) No.610/2017

CM No.20667/2017 in CM(M) No.614/2017

1. Exemption allowed subject to all just exceptions.
2. Applications are disposed of.

CM(M) Nos.610/2017 & 614/2017

1. The petitioner is aggrieved by the order dated 22nd May, 2017 passed in CS Nos.782/2017 (Old No.391/17) and 783/2017 (Old No.392/17)

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whereby learned ADJ has directed the petitioner/plaintiff to place on record (i) the copy of the e-tender on the basis of which the petitioner/plaintiff participated in the bid to get the contract and; (ii) copy of the contract entered into between the parties, since there is no list of reliance by the petitioner/plaintiff relying upon such documents. In addition, petitioner/plaintiff was also directed to file written submissions on the issue of maintainability as well on the aspect of pecuniary jurisdiction of the Court.

2. Both these petitions are being disposed of by this common order as the impugned order and the prayer made in both the petitions are identical.

3. Learned counsel for the petitioner/plaintiff has submitted that in the plaint it has already been mentioned by the petitioner/plaintiff that e-tender is not in possession of the petitioner/plaintiff but in possession of the defendant. The list of documents alongwith documents has already been filed, copy of which is annexed with these petitions also (at page No.72 to 205 in CM(M) No.610/2017 and at page No.70 to 186 in CM(M) No.614/2017). Thus, there was no occasion for learned Trial Court to issue the above directions.

4. The petitioner/plaintiff is aggrieved that once it has been pleaded that e-tender is not in possession of the petitioner/plaintiff and list of documents has already been filed, the petitioner/plaintiff cannot be made to comply with such direction again and again.

5. CS Nos.782/2017 (Old No.391/17) and 783/2017 (Old No.392/17) have been filed by the petitioner/plaintiff for declaration and permanent injunction in respect of the show cause notice dated 1st May, 2017. While questioning the legality of the impugned order dated 22nd May, 2017,
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learned counsel for the petitioner has prayed that this Court may stay the operation of the show cause notice dated 1st May, 2017.

6. The order dated 22nd May, 2017 impugned by filing these petitions reads as under:-

“22.05.2017

Present: Ms. Monika Sharma, Ld. counsel for plaintiff

Heard. Perused.

Plaintiff is directed to place on record (1) copy of e-tender on the basis of which plaintiff participated in the bid to get the contract in question and (2) copy of terms and conditions of contract entered into between the parties to the lis; referred in the placed copy of agreement on record; since on record there is no list of reliance by the plaintiff relying upon any such documents.

Plaintiff/counsel may also submit written submissions on the maintainability of the plaint and on the aspect the pecuniary jurisdiction as to how this Court has pecuniary jurisdiction.

Put up on 30.05.2017 for consideration/further proceedings.

Sd/-

*ADJ-1(South-East), Saket Courts
New Delhi/22.05.2017”*

7. The question that arises for consideration is whether the petitioner/plaintiff should be permitted to invoke extraordinary jurisdiction under Article 227 of the Constitution of India just because the petitioner/plaintiff feels that petitioner/plaintiff cannot be made to comply with the above directions for the reasons recorded above.

8. The impugned order can be read in three parts i.e. (i) direction to the petitioner/plaintiff to file e-tender, (ii) to file copy of the contract entered into between the parties; and (iii) to submit written submissions on the issue of maintainability of the plaint and on the aspect of pecuniary jurisdiction.

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9. In the case of Jai Singh and Ors. Vs. Municipal Corporation of Delhi and Anr., (2010) 9 SCC 385, the Apex Court considered the scope of Power under Article 227 of the Constitution of India and held as under:-

"25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India had been discussed in the case of The Estralla Rubber Vs. Dass Estate (P) Ltd., (2001) 8 SCC 97 wherein it was observed as follows:

"The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

10. The reason recorded by the Court to issue such directions was that no list of witnesses relying upon any such documents has been filed. The last direction is to file written submissions on the issue of maintainability and

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pecuniary jurisdiction. If the petitioner/plaintiff feels that the above directions i.e. filing of e-tender and copy of the contract cannot be complied with for the reasons referred to above, instead of approaching this Court by invoking the jurisdiction under Article 227 of the Constitution of India, the learned Trial Court should have been apprised by the petitioner. The petitioner should have informed the learned Trial Court that the directions to file the documents/list of reliance cannot be complied with for the reasons argued before this Court.

11. The petitioner cannot have grievance so far as direction to file written submission is concerned. It may also be noted that issue of show cause notice dated 1st May, 2017 and whether any proposed action pursuant to the issuance of show cause notice needs to be aborted or operation of the show cause notice should be stayed, needs to be dealt with learned Trial Court.

12. It is not open to the petitioner to approach this Court for seeking the relief i.e. stay of the operation of the show cause notice dated 1st May, 2017 issued by the respondent/defendant reply to which has already been filed by the petitioner/plaintiff in CS Nos.782/2017 (Old No.391/17) and 783/2017 (Old No.392/17) before the learned Trial Court.

13. The impugned orders do not suffer from any illegality or infirmity so as to warrant interference by this Court under Article 227 of Constitution of India.

14. Both the petitions are dismissed.

CM Nos.20583 & 20585 of 2017 in CM(M) No.610/2017
CM Nos.20666 & 20668 of 2017 in CM(M) No.614/2017

Dismissed as infructuous.


PRATIBHA RANI, J.

MAY 26, 2017/'pg'
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