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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 387/2018

GANESH KUMAR MANDAL

..... Appellant

Through Mr. Manish Kohli & Mr. Manjit Pathak,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Vipin Chaudhary, Advocate for Mr.
Jagjit Singh, Sr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

20.07.2018

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CM No. 28352/2018

Exemption application is allowed, subject to all just exceptions.

CM No. 28351/2018

Delay of 121 days in re-filing the appeal is condoned, for the reasons stated in the application.

The application is disposed of.

LPA No. 387/2018

We are in agreement with the learned single Judge that this was not a fit case to exercise discretion and entertain the writ petition.

2. Appellant had challenged the termination of leasing contract and forfeiture of security deposit vide letter dated 15th October, 2015, in a writ petition, which was filed after nearly two years in September, 2017.

3. Supreme Court in *Joshi Technologies International Inc. versus Union of India and Others*, (2015) 7 SCC 728 has held that writ petition is an extraordinary remedy which usually the Court would not exercise where the issue does not have any public law character attached to it. Where a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when the dispute is to be settled through arbitration or there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination. Money claims arising out of contractual obligations are normally not to be entertained and examined in writ petitions.

4. Learned single Judge has referred to several decisions of the Supreme Court, including *Whirlpool Corporation versus Registrar of Trade Marks, Mumbai and Others*, (1998) 8 SCC 1, which elucidates exceptional cases in which writ jurisdiction can be invoked. Existence of alternative remedy though not a constitutional bar to High Court's jurisdiction, is a self-imposed restriction. Alternative remedy may not operate as a bar where the writ petition seeks enforcement of any of the fundamental rights; or where there is violation of principles of natural justice; or where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged.

5. Counsel for the appellant has submitted that the letter dated 15th October, 2015 had also barred the appellant from entering into any

tender for next two years. As noticed above, the writ petition, was filed sometimes in September, 2017, which was about a month before operation of the said prohibition order would have come to an end. In these circumstances, we are not inclined to issue notice in the present appeal in respect of the third prayer prohibiting and debarring the appellant from entering into any tender. The debarring period has expired.

6. Looking at the nature of dispute and the fact that the appellant had invoked the writ jurisdiction nearly two years after the termination letter, the learned single Judge was justified in asking the appellant to invoke and take recourse to the ordinary civil remedy; i.e., the arbitration clause.

7. Recording the aforesaid, the appeal is dismissed. No cost.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JULY 20, 2018
VKR