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

Date of Decision: 19.3.2018

+ **W.P.(C) 2550/2018**

GENEX INDUSTRIES LIMITED Petitioner
Through: Mr. Shubhankar Sengupta, Adv.

versus

UNION OF INDIA AND ANR. Respondent
Through: Mr. Sanjeev Vniyal with Mr. Dhawal
Vniyal, Advs. for R-1.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

CM No.10535/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 2550/2018

2. The substantive prayers made in the suit is as follows:

“Call for the records of the Respondent and issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondent to restitute to the petitioner the sum of Rs.2,00,000/- (Rupees Two Lacs only) from the date of deposit being sometime in July, 2000 till date together with interest @ 18% per annum;”

3. The relief sought by the petitioner is in the following broad facts:

3.1 The petitioner was awarded a contract for wool combing and allied works. His contract contained job work and the same was awarded to the petitioner on 2.3.2000. According to the petitioner, in terms of the contract, the bank guarantee dated 14.3.2000 in the sum of Rs.2 lakhs was furnished to respondent No.2. It appears that respondent No.2 was not satisfied with the job work performed by the

petitioner. Accordingly, respondent No.2, on 25.5.2000, called upon the petitioner to replace the material. The petitioner disputed the stand taken by respondent No.2. This resulted in respondent No.2 invoking the bank guarantee furnished by the petitioner. Respondent No.2 consequently encashed the bank guarantee furnished by it. It appears that the petitioner being aggrieved and filed a suit before the Civil Judge (Senior Division), Ludhiana. This suit was filed on 19.7.2000. The petitioner's suit, however, was dismissed. It appears that the learned Civil Judge while dismissing the suit took the view that it did not have jurisdiction to deal with the matter and at the same time, decided the matter on merits.

3.2 Being aggrieved by the aforesaid order, the petitioner preferred an appeal to the Additional District Judge, Ludhiana. Vide judgment dated 28.3.2014, the learned Additional District Judge, Ludhiana allowed the petitioner's appeal primarily on the ground that once the Court came to the conclusion that it has no jurisdiction, the Court ought not have decided the matter on merits. Consequently, a direction was issued that the petitioner's plaint should be returned.

3.3 The petitioner, however, chose not to pursue the action any further. In the interregnum, on 29.7.2000, respondent No.2 had instituted a suit in this Court. This suit was numbered as CS(OS) 1706 of 2000. Via this suit, respondent No.1 claimed damages against the petitioner in a sum of Rs.13,80,725/-.

3.4 A perusal of the plaint shows that while calculating the damages, a sum of Rs.2 lakhs which had been received by respondent No.2 by encashing bank guarantee furnished by the petitioner was suitably adjusted. However, this suit of respondent No.2, on account of enhancement of pecuniary jurisdiction of this Court, was transferred to the District Court. The suit upon transfer was, however, dismissed vide judgment and decree dated 31.8.2017 by Additional District Judge (West), Tis Hazari.

3.5 Counsel for the petitioner says that in these circumstances, the petitioner

has approached this Court by way of instant writ petition.

4. According to me, *prima facie*, writ petition for pure refund would not lie. Reasons for the same would be that there could be several defences that respondent No.2 may want to raise, if a suit was instituted. Mr. Shubhankar Sengupta, who appears for the petitioner, says that at this stage, he would like to obtain a limited direction *qua* respondent No.2 that the writ petition should be treated as a representation which respondent No.2 would deliberate upon and pass a speaking order.

5. In my view, this direction can be issued. Accordingly, writ petition is disposed of with a direction to respondent No.2 to treat this writ petition as a representation and pass a speaking order thereon in accordance with law. Needless to say that respondent No.2 will carry out this exercise, though not later than 10 weeks from today.

6. Writ petition is disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

MARCH 19, 2018/pmc