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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7748/2018

VIKRAM SHARMA

..... Petitioner

Through: Mr. H.S. Sharma, Adv. with
petitioner in person.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Jagjit Singh, Standing Counsel
for Railways with Mr. Preet Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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03.08.2018

1. A short counter affidavit has been filed by Mr. Jagjit Singh, learned counsel appearing for the respondent in the Court today. The same is taken on record. Learned counsel for the petitioner states, he does not wish to file any rejoinder affidavit. The statement is taken on record.
2. The present petition has been filed by the petitioner with the following prayers:

“It is, therefore, most humbly and respectfully prayed that this Hon’ble Court be pleased to issue:

- a) *A writ in the nature of mandamus or any other appropriate writ/order/direction by directing the respondent to release the fixed deposit dated 11.01.2014*

- as security amount of Rs.4,00,000/- deposited by the petitioner by quashing / setting aside the letter dated 19.03.2018 (Annexure-P/1) issued by the respondent;*
- b) Any other direction or order as deemed fit and proper for meeting the ends of justice and equity.”*

3. Suffice to state that the case of the petitioner is that the respondent should be directed to release the fixed deposit dated January 11, 2014 of Rs.4 lakhs which was deposited by the petitioner against the contract awarded to the petitioner as a city booking agent. Some of the relevant facts are that the petitioner was allotted Railway contract for forwarding the parcels and booking of passenger tickets in the year 1995. The said contract was renewed from time to time and lastly it was renewed up till March 31, 2015. It is the case of the petitioner that as desired by the respondent the petitioner deposited an amount of Rs.4 lakhs with the respondent as security in the form of FDR dated January 11, 2014 to be refunded / returnable at the time of termination of the contract. The termination of the contract was a subject matter of a writ petition by the petitioner being W.P. (C) 3371/2016. The said petition was disposed of directing the respondent to treat the writ petition as a representation and to dispose of the same by a speaking order. The representation was rejected vide letter dated June 03, 2016. The petitioner impugned the letter dated June 03, 2016 in W.P.(C) No.

10588/2016. Vide Judgment dated January 29, 2018, this Court had dismissed the writ petition. One of the grounds was that the petitioner has already filed a suit seeking damages against the respondent, this aspect was noted by this Court in para 16 of its judgment dated January 29, 2018. During the pendency of the writ petition, the petitioner vide his letter dated August 18, 2017 sought the refund of the fixed deposit of Rs.4 lakhs. It is averred in the writ petition that in terms of the letter dated August 18, 2017, the respondent vide their communication dated March 01, 2018 called upon the petitioner to deposit an amount of Rs.8,000/- so that the security amount can be refunded to the petitioner. It is averred and also stated by the learned counsel for the petitioner that the petitioner had deposited the complete amount of Rs.8,000/-. It is also stated by the learned counsel for the petitioner that as desired, an affidavit has also been submitted to the respondent. In this regard he has drawn my attention to page 47 of the paper book.

4. It is the submission of the learned counsel for the petitioner, by conceding that the petitioner had filed a suit before the Civil Court which is pending, that there is no counter claim of the respondent seeking any amount from the petitioner. He states that as the petitioner has complied with all the

directions of the respondent, there is no reason why the amount of Rs.4 lakhs be not released in favour of the petitioner. According to him, the stand of the respondent in the impugned letter by referring to clause 19 of the agreement to deny the refund of the security amount in view of the pendency of Suit No. 59417/2016 filed by the petitioner is untenable.

5. According to him, the suit may or may not be decreed in favour of the petitioner. But that cannot not be a ground for the respondent to deny the release of Rs.4 lakhs to the petitioner which admittedly is due and payable by the respondent. He seeks the release of the amount as prayed for in the writ petition.

6. On the other hand, Mr. Jagjit Singh in his submissions has reiterated the stand taken by the respondent in the impugned letter and in the affidavit by relying on clause 19 which stipulates as under:

*“Upon the expiry of one year next after the date, on which this agreement is in any manner determined, the contractor shall be entitled to the refund of the security deposit or portion thereof then standing to his credit, after fully discharging and satisfying all sums, if any due to the Railway Administration may be liable on account of the contractor and all losses, suffered and expenses incurred by the Railway Administration in consequences of the default, misconduct, negligence, omission or any other wrongful act of the contractor, his servants or other persons acting on his behalf.
Provided that the Railways Administration shall not be*

obliged to refund the security deposit or any portion thereof unless and until the contractor should first deliver to it, a certificate in writing, certifying that the contractor has no outstanding claims or demand under or arising out of or in any way connected with or relating to this agreement against the Railway Administration.

7. Having heard the learned counsel for the parties, there is no dispute that the amount of Rs.4 lakhs was deposited by the petitioner as security. There is no dispute that the said amount has to be refunded on the completion of the contract. The contract having come to an end and even the writ petition filed by the petitioner having been dismissed, the petitioner had rightly vide its letter dated August 18, 2017 made a claim for the said amount. The request of the petitioner was acceded to by the respondent vide their letter dated March 01, 2018 wherein they have called upon the petitioner to deposit the amount of Rs.8,000/-. This direction was complied with by the petitioner. He has also filed an affidavit in support of his claim for Rs.4 lakhs.

8. The plea of the respondent by relying on clause 19 is untenable. The requirement of filing a certificate in writing, certifying that he has no outstanding claim or demand under or arising out of or in any way connected with or relating to the agreement against the Railway

Administration cannot be fulfilled by the petitioner for the simple reason that the same may be taken against the petitioner by the respondent while contesting the claim raised by the petitioner in the Suit. Except the said objection, as there is no other objection for refund of Rs.4 lakhs, this writ petition needs to be allowed. The impugned letter dated March 19, 2018 is set aside. The respondent is directed to return the FDR dated January 11, 2014 for Rs.4 lakhs to the petitioner within a period of two weeks. If the same is not refunded within a period of two weeks, interest @ 9% shall accrue for the period thereafter.

The writ petition is disposed of.

No costs.

V. KAMESWAR RAO, J

AUGUST 03, 2018*/aky*