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

+ LPA 662/2018, CM Nos. 49388/2018 (stay)

M/S AVBS DIGITAL SOLUTIONS PVT LTD Appellant
Versus

DR RAM MANOHAR LOIHA
HOSPITAL & ANR Respondents

+ LPA 663/2018, CM No. 49392/2018 (stay)

M/S AVBS DIGITAL SOLUTIONS PVT LTD Appellant
Versus

DR RAM MANOHAR LOHIA
HOSPITAL & ANR Respondents

Present:- Mr.Ranjeet Kumar, Adv. for the appellants.
Ms.Shiva Lakshmi, CGSC for the respondents.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **28.11.2018**

C.M.No.49388/2018 (exemptions) in LPA 662/2018

C.M.No.49393/2018 (exemptions) in LPA 663/2018

Allowed, subject to all just exceptions.

LPA 662/2018 & C.M.No.49387/2018

LPA 663/2018 & C.M.No.49392/2018

1. Both these appeals arise out of the common order dated 12th October, 2018 passed by the learned writ Court in W.Ps.(C) No.9156/2018 & 9164/2018.

2. The appellants had filed the writ petitions assailing a communication dated 8th June, 2018 issued by the respondents terminating the contract

granted to the appellants for the purpose of comprehensive maintenance of the Printer, Bar Code Printer, Scanner, Bar Code Scanner, Fax Machine installed in various departments of the respondent/Hospital. It was the case of the appellants that the contract has been prematurely terminated and the termination under Clause (f) of the terms of contract is illegal as the same did not form part of the contract.

3. The learned writ Court found that the contract was terminated on 8th June, 2016 and the appellants approached the Court after more than two months. In the meanwhile, the contract has been awarded to another service provider. Under such circumstances, it was found that it would not be appropriate to direct reinstatement of the contract as it would necessitate termination of the contract entered into between the respondents and a third party who was not a party before the Court. Granting liberty to the appellants to work out their claim in an appropriate remedy, the petitions were dismissed.

4. Even though an argument was advanced that in this case, the learned writ Court has observed that even though *prima facie* there was merit in the case of the petitioners and the remedy in terms of Section 14 of the Specific Relief Act is not available, it is argued that the Court could have gone into the merits of termination of contract and decide the issue.

5. We are of the considered view that the relief to be granted in a petition under Article 226 of the Constitution is a discretionary relief to be granted after evaluating various aspects of the matter. If the writ Court finding that after termination of the contract, a fresh contract has been entered into with a third party and the consequence of allowing the petition would be cancellation of the contract entered into with a third party who is

not even a party before the Court, refused to exercise the discretionary jurisdiction under Article 226 of the Constitution, we see no reason to make an indulgence into the matter. If the contract has been illegally terminated, the appellants can take recourse to the remedy of claiming damages for the same.

6. In view of the observations made above, the appeals are dismissed. The pending applications are also disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

NOVEMBER 28, 2018

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