

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 101 of 2019**

1. State Of Chhattisgarh Through Collector, Surguja Ambikapur, District Surguja Chhattisgarh
2. The Collector Surguja - Ambikapur, District Surguja Chhattisgarh.
3. The Assistant Commissioner, Tribal Development, Ambikapur, District Surguja Chhattisgarh

---- Petitioners**Versus**

1. M/s Shree Krishna Industries Through Sh. Rakesh Bansal Aged About 36 Years, Jawahar Market, Banaras Chowk, Ambikapur, District Surguja Chhattisgarh

---- Respondent

For Petitioner/State	:	Smt. Fouzia Mirza, Additional Adv. Gen.
For Respondent	:	Shri Manoj Paranjpe, Advocate

D.B.- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Shri Justice Gautam Chourdiya

Order On Board**29/08/2019**

Heard on I.A.No.1, application for condonation of delay in filing review petition.

Upon consideration, the application is allowed.

Delay is condoned.

Also heard on application seeking review of order dated 18/09/2018 passed in FAM No.182/2017.

1. Review of order passed is sought on the grounds firstly that as per Clause 7 of the agreement, the appellant had a right to unilaterally alter the terms and conditions of the agreement. Second submission is that time was the essence of contract and the plaintiff failed to aver and prove that it was ready and willing to perform its part of contract. Thirdly, the plaintiff's evidence that he had offered supply of goods but it

was not accepted, is without any pleading.

2. First point that as per work order, the appellant could have unilaterally altered the terms and conditions of the agreement, has been elaborately dealt with by this Court under paragraph No.12 (c) and upon examination of the terms of agreement, work order, pleadings and evidence on record, it has been found that Clause 4 and 5 of the work order did not constitute terms and conditions of supply under agreement (Ex.P/8) either expressly or by way of implication.

The other argument that time was the essence of contract and the plaintiff failed to aver and prove that it was ready and willing to perform its part of contract has been elaborately dealt with by this Court in the order and taking into consideration the pleadings and evidence, specific finding has been recorded that even though the plaintiff had prepared school bags for supply and it was taken for supply to go-down, except some quantity, remaining quantity was not accepted. A detailed finding has been recorded in this regard in paragraphs 24 to 29 of the order.

Last submission that the evidence of taking the goods for supply and refusal are without specific pleading, we do not consider that it makes out a case of review because the plaintiff in its pleadings in the plaint has clearly averred that the plaintiff was ready and willing to perform its part of contract but the defendants were not accepting the supply.

3. Evidence to prove facts pleaded in the plaint was not required to be stated in the plaint. In our considered view, the review petition appears to be more an appeal in disguise and therefore, dismissed.

4. Learned State counsel submits that the State was protected by an interim order for a period of eight weeks and therefore, they may be protected against execution so that they may get some breathing time to approach the Apex Court.

It will be open for the State to move such application for staying execution

process before the Executing Court on such ground and the Executing Court shall duly consider the prayer.

C.C. today.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Gautam Chourdiya)
Judge