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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.434 OF 2019

Guangdong – Niraj – PKHS (JV)

... Petitioner

Vs.

The State of Maharashtra

through the Secretary of Development Dept. and Ors.

... Respondents

Mr. Vaibhav P. Pandya for the Petitioner.

Mr. Kedar Dighe, AGP for the Respondent No.1.

Ms. Kiran Bagalia for the Respondent No.2.

Mr. Kedar Wagle, Mr. Sagar Wagle and Ms. Sayali Puri for the Respondent No.4.

CORAM : A.S.OKA AND
M.S. SANKLECHA, JJ.

DATE : 19th MARCH 2019.

P.C. :

1 Heard the learned counsel appearing for the petitioner. The petitioner is a joint venture. A copy of the joint venture agreement dated 15th January 2018 is annexed to the petition and marked as Exh.-A to the petition. We must note here that PK Hospitality Services Private Limited is a part of the joint venture as is disclosed by the agreement for joint venture which is annexed as Exh.-A. In fact, in paragraph 1 of the petition, reliance is placed on the said joint venture agreement and it is specifically stated that the petitioner is a joint venture entity. The petitioner, as a joint venture, submitted a bid for the work of part design and construction of

elevated viaduct and 5 elevated stations viz. Diamond garden, Shivaji-chowk, BSNL Metro, Mankhurd and Mandale from chainage 52665.359 m to 57757.000 m of Mumbai Metro Rail Project of the second respondent. It appears that the petitioner's bid was accepted and a letter of acceptance was issued to the petitioner.

2 On 12th September 2018, by sending a notice (Exh.-C to the Petition), the letter of acceptance as well as award of contract was annulled by the second respondent. It was mentioned in the said notice that the petitioner did not furnish performance security in the form of Bank guarantee as well as additional performance Bank guarantee. The prayer in this petition under Article 226 of the Constitution of India is for setting aside termination notice dated 12th September 2018. We must note here that P.K. Hospitality Services Private Limited which is a joint venture partner of the petitioner has filed a commercial suit on the Original Side of this Court, a copy of which is tendered across the Bar by the learned counsel appearing for the petitioner. Perusal of the averments made in the plaint show that the cause of action specifically pleaded for filing the suit is the aforesaid letter of termination dated 12th September 2018 and consequent threat given for forfeiture of Bank guarantee furnished by the plaintiff in the said suit. The prayer made in the suit is for return of Bank guarantee. Injunction is prayed for restraining the first defendant (the second respondent) in the writ petition from acting pursuant to the letter dated 12th September 2018.

3 The letter of acceptance and award of contract was in favour of the petitioner which is a joint venture of which the plaintiff in Commercial Suit (L) No.1316 of 2018 is a part. As stated earlier, the plaintiff has based the suit on the cause of action based on the termination notice dated 12th September 2018 in which injunction is claimed restraining the second respondent from acting upon the said notice of cancellation. The present petitioner is the fifth defendant in the said suit. Apart from the fact that cause of action for filing the present petition and the suit is the same, the relief which is prayed for in this petition could have been always sought in the commercial suit inasmuch as cause of action for filing both the proceedings is same.

4 The remedy under Article 226 of the Constitution of India is always a discretionary and equitable remedy. Considering the pendency of commercial suit filed by a joint venture partner of the petitioner which is based on the same cause of action, we decline to exercise writ jurisdiction under Article 226 of the Constitution of India. The petition is rejected. We however, make it clear that no adjudication is made on the merits of the controversy in the pending suit.

(M.S. SANKLECHA, J.)

(A.S.OKA, J.)