

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8982-2015 (O&M)
Date of Decision:-12.09.2019.

M/s RGVP Energy Sources

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjeev Sharma, Senior Advocate with
Ms. Aarushi Jain, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Ashwani Talwar, Advocate for
respondent Nos.3 to 5.

RAJIV NARAIN RAINA, J. (Oral)

1. Having heard the learned Senior counsel/counsel for the parties, I am of the view that the writ petition is not maintainable to answer the sole prayer for setting aside HAREDA letter dated 29/30.04.2015 intending to invoke seven bank guarantees totaling a sum of Rs.57,26,700/- against the petitioner RGV Energy Sources, the supplier of solar street lights to different Gram Panchayats in Sirsa district under contract with HAREDA.

2. In view of the nature of the order proposed to be passed, this Court refrains from making any comments on the merits of the case so that

neither of the parties is prejudiced at the proposed trial before a Civil Court

where the disputes can be settled on evidence. What this Court really says is that writ jurisdiction is not the appropriate remedy for the prayer restraining HAREDA from encashing the bank guarantees, as the prayer itself is based on antecedent facts which are disputed by the respondents as to the quality of supplies made and their maintenance by contract spread over 5 years. A dispute to be entertained in writ jurisdiction must be substantive, clear, defined and free of doubt to be adjudicated in affidavit jurisdiction, which writ proceedings are about. It is well settled that disputed questions of fact will normally not be entertained in exercise of writ jurisdiction as evidence cannot be adduced by the disputants in these proceedings to prove complex disputed facts

3. Accordingly, this petition is disposed of with the following directions:-

(i)The petitioner may approach the civil court exercising territorial jurisdiction over the subject matter at Panchkula where the office of HAREDA is located and the record available for inspection and production. They are, thus, relegated to their remedy by way of a civil suit.

(ii)The period of time spent in these proceedings prosecuting the case from 4.5.2015 till today by the petitioner shall be exempted under Section 14 of the Limitation Act, 1963 as the petitioner was pursuing its remedy in this Court bona fide and had obtained an interim order in its favour, provided the suit is filed within two months from the date of receipt of a certified copy of this order.

(iii)In case the suit is filed together with an application for

temporary injunction under Order 39 Rule 1 and 2 CPC., the same will be decided in accordance with law within one month from the date of notice in case the petitioner does not seek adjournment. However, the interim order dated 29.05.2015 would continue to operate till orders are passed in the application in the best judgment and discretion of the trial court. In other words, the interim order dated 29.05.2015 shall remain *co-terminus* with the final orders as may be passed on the application for interim/temporary injunction by the civil court. The trial Court will weigh *prima facie* all the pros and cons before it proceeds to apply the three well known principles for grant of temporary injunction.

(iv) The trial Court will take an independent view at all stages of the suit and not be influenced by the interim order or the fact that this writ petition was disposed of without deciding the case on merits. That will not be regarded as a rejection of any of the submissions made in petition and supported at the hearing today, as this Court came to a conclusion in motion hearing refusing to exercise its discretionary and extra-ordinary writ jurisdiction under Article 226 of the Constitution, while leaving the matter to be adjudicated by the civil court.

(v) The trial court will endeavour to dispose of the suit within a year and half or at the most two years from the date of presentation. It will follow the procedure of admission and

denial of documents in the CPC to curtail time before it actual frames the issues involved for determination and proceeds to admit evidence on disputed facts alone and other than what stands admitted by the parties.

(vi)The subject matter of the suit will be confined to the pleadings in the present writ petition for purposes of Section 14 of the Limitation Act. However, any other relief based ground taken for the first time in plaint of the suit shall be subject to the laws of limitation etc. and the objections taken.

4. With these directions, the petition stands disposed of.

(RAJIV NARAIN RAINA)
JUDGE

September 12, 2019.

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Whether speaking/reasoned:

Yes / No

Whether Reportable:

Yes / No.