

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 1279 of 2020

M/s Sudhir Infraspaces Pvt. Ltd. Vs. Maharashtra State Electricity Transmission
Co. Ltd. and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. S.P. Deshpande, Advocate for the petitioner
Mr. D.M. Kale, Advocate for the respondent No.1.

CORAM : MANISH PITALE, J.

DATED : MARCH 05, 2020

By this writ petition, the petitioner has challenged rejection of interim stay, as sought by the petitioner in a pending suit, concurrently by the two Courts below. The petitioner has filed Regular Civil Suit No. 1538/2019, being a suit for declaration, permanent and mandatory injunction against the respondents herein. It is the claim of the petitioner that after the parties had entered into an agreement, whereby the petitioner was supposed to execute certain works, because of certain circumstances allegedly created by the respondents themselves, the respondents took action in the matter in the form of encashing bank guarantee and this gave rise to filing of the aforesaid suit on behalf of the petitioner. One of the prayers made in the suit was for direction to the respondents to take steps to foreclose the contract

immediately, in terms of specific communication dated 11/07/2019, addressed by the petitioner itself to the respondents.

2. In this suit, the petitioner moved an application for grant of stay to the e-tendering notice issued by the respondents. The said e-tender notice had been issued by the respondents in order to ensure the completion of balance work of an administrative building at Nagpur. The petitioner prayed for stay to the e-tender notice and to restrain the respondents from realloting the balance work to any other contractor or agency, during pendency of the suit.

3. The aforesaid application marked as Exh.14 was rejected by the Court of Civil Judge (Junior Division), Nagpur by order dated 19/12/2019. This was made subject matter of challenge by the petitioner by filing Misc. Civil Application No.290/2019, before the Court of District Judge, Nagpur. Although, initially the said Appellate Court granted ad-interim relief in favour of the petitioner, but, by impugned judgment and order dated 18th February 2020, the appeal was dismissed by the Appellate Court.

4. The petitioner has filed the present writ petition, challenging the said orders passed by the Courts below. Since the respondents had entered Caveat through counsel, copy of the writ petition was

served on the respondent's counsel. Today, when the writ petition is called out for hearing, submissions have been handed over on behalf of the respondents opposing the contents of the writ petition and the same are taken on record. It is contended by the learned counsel for the petitioner that the Courts below committed an error in rejecting the application for stay at Exh.14 filed by the petitioner, because the petitioner was always ready and even today is ready to complete the work in terms of the agreement that was entered into between the parties. It is claimed that sufficient representations were sent to the respondents, which were not decided and it would be in the interest of justice that the impugned order is set aside and prayers made in application at Exh.14 are granted.

5. On the other hand, the learned counsel appearing for the respondents invited attention of this Court to the communications already on record, indicating that the petitioner itself had made request for foreclosure of the contract. Specific attention of this Court was invited to prayer clause (c) of the suit, which appears to be contradictory, wherein the petitioner prayed for direction to the respondents to take steps for foreclosure of the contract immediately. On this basis, it was pointed out that there was no question of restraining the respondents from allotting the said work to any other contractor or agency during pendency of the suit.

6. This Court has perused the concurrent orders passed by the two Courts below. In fact, the Appellate Court while confirming the order passed by the Court below, held as follows :

“From the record it appears that, defendant No.1 issued work order on dated 5-1-2017 and directed the plaintiff to complete the entire construction within a period of 24 months. But after that plaintiff could not complete the work within the stipulated period of 24 months. Thereafter, various correspondence done between the parties and thereafter 10 days notice was served by the defendant on dated 26-04-2019 thereby calling the plaintiff's reply as to why the required progress could not be achieved till date. Thereafter, by reply notices dated 5-5-2019 and 11-07-2019 plaintiff has expressed his inability to continue with the work and complete the tendered work and requested for foreclosure of the work. Therefore, defendant has terminated the said contract by order dated 29-11-2019. Hence, in my opinion, considering the facts and circumstances of the case, the impugned order passed by the trial Court, is just and proper and requires no interference. But in my opinion, the stay granted to the appellant by this Court vide order dated 21-12-2019 requires to be extended after hearing argument of learned counsel for appellant. Accordingly, point No.1 is answered in the negative and I proceed to pass the following order.”

7. The material on record and the prayers made in the suit filed on behalf of the petitioner read with the orders passed by the Courts below clearly indicate that the petitioner failed to make out case for

grant of prayers as made in the application at Exh.14. In the light of the specific stand taken by the petitioner in the communications sent to the respondents, as also before the Court below in the suit filed against the respondents, it becomes clear that the petitioner cannot now claim that fresh process initiated by the respondents for completion of the balance work needs to be stalled during pendency of the suit. This Court agrees with the findings rendered by the two Courts below concurrently, while rejecting the application at Exh.14.

8. In view of above, the writ petition is found to be without any merits and accordingly, it is dismissed.

9. Needless to say, the findings given by the two Courts below in the orders made subject matter of challenge in the present writ petition, as also observations made by this Court in the present order are limited to the question of entitlement of the petitioner for interim relief and the Court below shall decide the suit on merits, without being influenced by any such findings or observations.

JUDGE