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WPO 146 of 2020

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BMW INDUSTRIES LTD.
VERSUS
UCO BANK AND ORS.

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
Date : 12th July, 2021.

APPEARANCE:
Mr. Dhruba Ghosh,Sr. Adv.
Mr. Bhaskar Ghosh,Adv.

Mr. Pranit Bag,Adv.
Mr. Arjun Mookerji,Adv.
Mr. Malay Kr. Seal,Adv.

The Court:-The writ petitioner is aggrieved by the actions of the UCO Bank in not granting a concession on the rate of interest on outstanding dues payable. It is stated that the bank had, in fact, agreed to a lesser amount of interest and there is only dispute on the exact liability of the writ petitioner. The difference of opinion is a sum of Rs.15 lacs and is stated to be rather paltry and small. Affidavits have been exchanged.

Mr. Dhruba Ghosh, learned Senior Advocate, for the writ petitioner has laboriously placed the pleadings to demonstrate that the issue between the parties is narrow and small.

This Court has carefully heard counsels for both sides and has considered the entire facts of the case. As to how much the bank should accept from the petitioner and at what rate it will close the Loan account, should be left exclusively to the commercial discretion of the bank's. The dispute itself arises out of a private agreement between the writ petitioner and the bank. This Court sees a large number of disputed questions that will emerge in the process of adjudication. A trial on evidence is necessary to decide as to whether the bank was correct or the writ petitioner was right.

Mr. Ghosh would rely upon several decisions of the Supreme Court to argue that where the facts are admitted in a dispute, a Writ Court's jurisdiction is not barred even in the area of private contract. A writ court can also enter into such private dispute, if it is demonstrated State instrumentality has acted arbitrarily or unreasonably.

Reliance is first placed on the decision of the Supreme Court in the case of **M/s. Hyderabad Commercials vs. Indian Bank and Others** reported in **1991 Supp (2) SCC 340**. In the said case a transfer of 12.95 lakhs was effected by the Indian Bank without the written instructions of the customer. It is in that context that the Supreme Court has held that an unauthorised transfer of funds and that too based on alleged oral instructions of a customer is, indeed, an arbitrary and illegal act hence relief was granted. The said decision cannot come to the aid of the petitioner as a large number of facts in the instant case are disputed.

Mr. Ghosh next relies upon the decision of the Supreme Court in the case of **ABL International Ltd. vs. Export Credit Guarantee Corporation** reported in **(2004) 3 SCC 553**, particularly paragraphs 27 and 28. It is once again seen that the facts of the case are substantially different from the facts of the instant case. The Hon'ble Supreme Court was concerned with a decision of Export Credit Guarantee Corporation in refusing to honour an insurance claim only on the ground, of a change of payment terms of trade, from currency to barter. There were no other disputes or disputed facts on which the ECGC had, in fact, refused the claim of the Exporter. It is essentially in that context that the Supreme Court had held that even in the area of private contract, an action of an instrumentality of State, is amenable to the Writ Court's jurisdiction. The Writ Court in such a situation can definitely enter into, entertain and assess the propriety of an arbitrary or unreasonable act of an instrumentality of a State, even in the area of private contract.

It is seen in the facts of the instant case that there are, indeed, a large number of disputed questions of fact as regards the liability of the petitioner towards the UCO Bank. Mr. Ghosh has tried his best to place portions of the affidavit-in-opposition and affidavit-in-reply to indicate that there is an admission as regards most of the petitioner's claim and hence the scope of the dispute is extremely narrow. This Court has seen the facts of the instant case and is of the view that it would need a trial on evidence to ascertain the liability of the writ petitioner towards the bank. The propriety of any amount of interest or penal interest or any other amount charged by the Bank would have to be decided, which the writ court cannot do.

There are no admitted amounts or admitted facts. This Court is also conscious of the fact that under Article 226 of the Constitution of India, it would be highly improper for a Writ Court to compel an instrumentality of State to accept any amount on the basis of a perceived impropriety. This would be grossly improper and a Writ Court should be loath to give such a finding without proof or evidence.

Reference in this regard should also be made to the decision of the Supreme Court in the case of **Joshi Technologies International Inc. v. Union of India** reported in **(2015) 7 SCC 728**, particularly paragraph 70 **which is set out hereinbelow**:

> **"70.** Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:
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> **70.1.** At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.
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> **70.2.** State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.
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> **70.3.** Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.
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> **70.4.** Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.
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> **70.5.** Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it

> profitable to do so: and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.
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> **70.6.** Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.
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> **70.7.** Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.
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> **70.8.** If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.
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> **70.9.** The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.
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> **70.10.** Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.
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> **70.11.** The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

For the reasons stated above, this Court is of the view that the disputes between the writ petitioner and the bank cannot be gone into under Article 226 of the Constitution of India. The writ petition must fail and is hereby dismissed.

However, since the petitioner claims to have narrowed down the scope of the dispute, the UCO Bank shall not be precluded from considering the contentions of the writ petitioner in annexure P 21 being a letter dated 1st November, 2019 as regards the amount of outstanding liabilities in its own commercial perspective.

There will be no order as to costs.

Urgent photocopies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(RAJASEKHAR MANTHA, J.)

S.Chandra