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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.NO.32004 OF 2012

M/s. The India Cements Limited,
Represented by its Joint President (Corporate Finance)
V.M.Mohan,
Coromandel Towers,
No.93, Santhome High Road,
Karpagam Avenue, Raja Annamalaipuram,
Chennai - 600 028.

... Petitioner

.Vs.

M/s. Housing and Urban Development Corporation Limited,
5th Floor, CMDA Tower II,
1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

... Respondent

Prayer :

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondent to refund the differential sum of Rs.13,30,33,441/- with interest at the rate of 10.25% p.a. from 17.08.2011 till the date of repayment.

For Petitioner : Mr.P.S.Raman
Senior Counsel
for M/s.K.Harishankar

For Respondent : Mr.M.Vaidyanathan

O R D E R

The relief sought for in the present writ petition is to direct the respondent to refund the differential sum of Rs.13,30,33,444/- with interest at the rate of 10.25% p.a. from 17.08.2011 till the date of repayment.

2.The learned senior counsel for the petitioner mainly contended that the respondent, being the State, treated the petitioner in an unfair manner and resulted in monetary loss. Thus, the petitioner is constrained to move the present writ



petition. In respect of excess payment, refund of differential sum is sought for in the present writ petition arose from and out of the contractual obligations between the parties.

3.No doubt, the respondent is a public sector company owned by the Government of India for financing of housing and urban infrastructure activities in India, incorporated under the Companies Act, 1956. The petitioner states that they have availed loan amount of Rs.301,13,44,331/- from the respondent during the period of 10.10.2005 to 23.02.2006 on a fixed rate basis. The rate of interest applied was from 10% to 10.25% p.a. and the loan was serviced impeccably. As per the loan agreement, the interest rate was fixed and Automatic Reset Period was agreed as five years or at such interval as may be decided by the lender (i.e. respondent).

4.The grievance of the petitioner is that, to their shock and surprise, they received a letter from the respondent on 06.11.2008, automatically resetting the interest rate on the substantial portion of the loan released at fixed rate of interest from 01.09.2008 to an exorbitant rate of 15.75% p.a.

5.The learned counsel for the petitioner contended that prescription of exorbitant interest unilaterally by the respondent is in violation of the terms and conditions of the contract. They have treated the petitioner in an unfair manner and exceeded their jurisdiction by imposing exorbitant interest. The petitioner have elaborated the terms and conditions and other criteria for sanction of loan, repayment of loan, etc.

6.This Court raised an objection regarding the entertainability of the writ petition on the ground that the relief sought for is based on the contractual obligations between the parties and more specifically, regarding loan transactions and the petitioner has to approach the competent Civil Court of Law.

7.In this regard, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of Unitech Limited and others v. Telengana State Industrial Infrastructure Corporation and others reported in 2021 (219) AIC 39. The learned counsel relied on the observations made by the Apex Court in Para No.33 of the judgment, which reads as under :

"33. ... Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The



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jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal."

8. Relying on the observations, the learned counsel for the petitioner reiterated that the power under Article 226 of the Constitution of India may be exercised in such circumstances where the writ petitions are filed against the instrumentalities of the State. In the present case, the respondent is a 'State' within the meaning of Article 12 of the Constitution of India and thus, the writ petition is to be entertained and the issues raised are to be adjudicated.

9. The learned counsel appearing on behalf of the respondent objected the said contention by stating that the issues raised and the relief sought for in the present writ petition are to be considered based on the terms and conditions of the contract and various other documents involved in the loan transactions and therefore, the writ petition needs to be rejected.

10. Regarding the observations made by the Hon'ble Supreme Court of India, in the very same paragraph of the judgment cited supra, the Apex Court in unequivocal terms observed that "it still needs to be decided from case to case as to whether



recourse to a public law remedy can justifiably be invoked". Thus, mere elaborating the powers of the High Court under Article 226 of the Constitution of India could not be of any avail to the petitioner for the purpose of entertaining the writ petition. The Courts are bound to consider the facts and circumstances, nature of adjudication to be entertained, and the relief sought for in the writ petition, and the documents and evidences to be considered. If the High Court forms an opinion that such contractual obligations and its violations resulted is the cause for filing of litigation, then the parties have to approach the competent Court of Law for the purpose of adjudication of the issues elaborately based on the documents, evidence and oral evidence, if required. Contrarily, the High Court cannot adjudicate such issues in a writ proceedings.

11.It is to be emphatically held that all writ petitions filed under Article 226 of the Constitution of India are maintainable and no writ petition needs to be dismissed merely on the ground of maintainability. However, entertainability of the writ petition is to be considered based on the issues raised and the relief sought for. Therefore, the High Court need not dismiss a writ petition on the ground of maintainability. Writ petition, being a constitutional remedy, the violation of rights if any established or injustice caused to any citizen, High Court may not hesitate to issue appropriate remedy. One step further, the High Court shall go to any extent in a writ proceedings for the purpose of providing complete justice to the parties. This being the spirit of the constitutional remedy available to the citizens of this great nation under the Indian Constitution, High Court need not dismiss any writ petition on the ground of maintainability.

12.As far as the present writ petition is concerned, the issues are completely based on terms and conditions and the loan transactions. The parties have signed the documents during its execution. Scrutiny of original documents are imminent for the purpose of crystallizing the rights of the parties, evidence are to be placed, and parties are bound to establish their case through evidence and documents, and if necessary, by oral evidence. However, such an exercise cannot be done in a writ proceedings under Article 226 of the Constitution of India.

13.Caution is expected to be exercised in such circumstances by the High Court in view of the fact that, based on the affidavits filed in a writ petition and considering the photocopies of certain documents, such rights of the parties cannot be crystallized. The relief sought for is to refund the differential sum. The quantum of differential sum as calculated by the petitioner, liability or otherwise, and also the rights of the parties based on the documents, are all to be considered



by the Court for forming an opinion. Thus, in the event of considering such issues in a writ proceedings under Article 226 of the Constitution of India, undoubtedly, there is possibility of omission or commission or error in deciding or crystallizing the rights of the parties accrued based on the contractual obligations. Thus, the writ petition on hand is an appropriate case where the parties are bound to approach the appropriate Civil Court of Law for the purpose of redressal of their grievances.

14.The learned Senior Counsel appearing on behalf of the petitioner made a submission that the writ petition is pending for long years. Thus, there is a likelihood of rejection of their case on the ground of limitation. In this regard, the petitioner is at liberty to file an appropriate application setting out the facts and circumstances, including the period during which this writ petition is pending before the High Court, and such period is to be considered by the competent Court for the purpose of condoning the delay in the event of filing any such application. Thus, the petitioner is at liberty to approach the competent Civil Court of Law for redressal of their grievances in the manner known to law.

With these observations, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mkkn

To

The Housing and Urban Development Corporation Limited,
5th Floor, CMDA Tower II,
1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

+2ccs to M/s.K.Harishankar, Advocate, S.R.No.55516
+1cc to Mr.M.Vaidyanathan, Advocate, S.R.No.55553

W.P.No.32004 of 2012

PCH(CO)
PM/29/11/2021