



O.A.No.817 of 2021

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SENTHILKUMAR RAMAMOORTHY, J.

The applicant seeks to restrain the respondent from terminating the contract as per letter dated 01.11.2021 and seeks a consequential stay of the encashment of a security deposit by the respondent.

2.The applicant contends that the purported termination of the contract by a communication dated 01.11.2021 is not valid. Consequently, it is contended that the arbitration clause was invoked by issuing communication dated 26.11.2021. Therefore, the applicant contends that the respondent should not be permitted to encash the security deposit, which is said to be in the form of a bank guarantee. The present application is filed for such purpose.

3.The communication dated 01.11.2021 from the respondent deals with termination. Clause 1 of the said communication is as under:

“1. In terms of the conditions of contract agreement No.SA/204 dt. 15/11/2018 governing the execution of the above work, it was required to be

completed by the stipulated date of



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completion/mutually extended date of completion, viz 03/01/2019. You have shown no progress of work even after repeated reminders given by subordinate office. Even after issuing 7 days Notice and 48 hour Notice, you have failed to show adequate progress in the work. Due to your failure to fulfill your contractual obligations, the contract stands terminated with effect from extended date of completion of the contract ie. 31/03/2021.”

4. Upon perusal of Clause 1, it is evident that the respondent has terminated the contract with effect from 31.03.2021. The question as to whether such termination is lawful or not is required to be adjudicated upon by the arbitral tribunal, pursuant to a reference of the dispute for arbitration. However, the first and principal limb of the application filed by the applicant herein is infructuous in as much as the contract has already been terminated. As regards the consequential prayer to restrain the encashment of the security deposit, the applicant contends that such security deposit, which is in the form of a bank guarantee, should not be invoked because the applicant has invoked the arbitration clause. The law on restraining a call on a bank guarantee enables such



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restraint only if fraud, irretrievable justice or special equities are pleaded and established at least prima facie. The applicant has neither pleaded nor established the same in any manner.

5. For reasons set out above, O.A.No.81 of 2021 is dismissed without any order as to costs. However, it is open to the applicant to raise the dispute before the arbitral tribunal in accordance with the contract between the parties.

20.12.2021

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