

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 915 of 2021

With

CAN 1 of 2021

(Through Video Conference)

Reserved on: 06.01.2022

Pronounced on: 19.01.2022

M/s. Aatreyee Nirman Private Limited and others

...Appellants

-Vs-

State of West Bengal and others

...Respondents

Present:-

Mr. Surojit Nath Mitra, Senior Advocate
Mr. R. Sinha,
Mr. S. K. Roy, Advocates
... for the appellants

Mr. Jishnu Choudhury,
Ms. Amrita Panja Moulick, Advocates

... for the State

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE KESANG DOMA BHUTIA,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal, at the instance of the writ petitioner, is directed against the order of the learned Single Judge dated 10.08.2021 whereby WPA 8209 of 2020 has been dismissed with liberty to the parties to agitate grievance before the appropriate civil forum.

2. The appellant had filed the writ petition before the learned Single Judge seeking a direction to the official respondents to cooperate with the appellant in undertaking the construction work and to restrain the respondents/police authorities from creating any obstruction/disturbance in the construction work. The plea of the appellant before the writ Court was that the appellant had entered into an agreement with the respondent No. 9, Mrs. Lailee Saha to buy out the entire area of land owned and possessed by respondent No. 9. Since Nimta Police Station is located in the building within the said premises, hence, a tripartite agreement was entered into by the appellant/ respondent No. 9 and respondent No. 6, Inspector-in-Charge of the police station with the stipulation that the construction of building should commence and be completed first by the appellant before proceeding further with the rest of the developmental project. Earlier appellant had filed W.P. 6344 (W) of 2020 which was disposed of by order dated 26.08.2020, *inter alia*, with a direction to the Commissioner of Police to look into the matter and submit the report to the Deputy Secretary who, accordingly, was to deal with the issue in accordance with the law.

3. In the present writ petition, the petitioner has raised the plea that there was no response by the concerned respondent.

4. Learned Single Judge has refused to interfere with the rights and liabilities of the parties under the agreement in question and has permitted the parties to agitate the grievance before the appropriate civil forum.

5. The submission of learned Counsel for the appellant is that once the writ petition was entertained by order dated 18.02.2021, then

it could not have been dismissed subsequently without adjudicating the issue on merit. His further submission is that the contract is not denied, therefore, in the writ petition, direction as prayed ought to have been issued and the appellant is only wanting the cooperation of the respondents/police authorities in the construction work.

6. Learned Counsel for the State has opposed the petition by submitting that though the attempt for amicable settlement was made but the settlement could not be arrived at and in view of the order in the earlier writ petition, the fresh writ petition was not maintainable and after lapse of so many years the appellant is not entitled to the relief which otherwise has also become time barred.

7. Having heard the learned Counsels for the parties and on perusal of the record, it is noticed that the appellant, by way of writ remedy, is seeking enforcement of the agreement. Learned Single Judge, in the earlier round of litigation by order dated 26.08.2020 passed in W.P. 6344 (W) of 2020, had held as under:

“Having gone through the the records. If the petitioner wants enforcement of the agreement then his remedy would be in a suit for Specific Performance of Contract.”

Then it was further held that:

“This Court has not decided on the merits of the claim of the petitioner. Any civil suit that may be preferred by the petitioner with respect to the alleged contract agreement will be governed by the general laws of limitation.”

8. By that order, the Commissioner of Police, Barrackpore was directed to look into the matter because the letter of the Deputy Secretary dated 17th of December 2019, in this regard, was placed on

record. But, the view of the Court was clear that for enforcement of the agreement, the remedy was to file suit for specific performance of contract. The said order has attained finality.

9. The communication dated 20th of October 2020 sent by Commissioner of Police, Barrackpore Police Commissionerate to the Deputy Secretary was placed on record before the learned Single Judge along with the report, by which the Commissioner had conveyed that there was lackadaisical attitude of the appellant and after lapse of sever years, requirement of the Nimta Police Station have increased. The record further reflects that though the learned Single Judge, in the fresh round of litigation, had made attempt for amicable settlement but the same did not succeed. Hence, by the order under challenge, the writ petition has dismissed.

10. The learned Single Judge in the order dated 18th of February 2021 had only *prima facie* expressed about maintainability of the petition, therefore, on the basis of the said order, it cannot be held that the learned Single Judge was bound to decide the petition on merit. In the aforesaid background, we are of the opinion that learned Single Judge has not committed any error in dismissing the petition.

11. Counsel for the appellant has placed reliance upon certain judgments which are not applicable in the facts of the present case. He has relied upon the judgment of the Supreme Court in the matter of **Madras Port Trust vs. Hymanshu International by Its Proprietor V. Venkatadri (Dead) By L. R.s, (1979) 4 SCC 176** but that was a case of claim for refund of the amount of wharfage and demurrage and transit charges. Therefore, the Hon'ble Supreme Court took the view that such a claim should not be defeated by taking a technical view,

but, that is not so in the present case. Similarly, he has placed reliance upon a judgment in the matter of **ABL International Ltd. And Another vs. Export Credit Guarantee Corporation of India Ltd. And Others, (2004) 3 SCC 553**. There is no dispute that in appropriate case, the Writ Court has jurisdiction to entertain the writ petition involving disputed questions of facts but the present is not such a case where the Writ Court was required to permit the parties to lead evidence and to settle the civil dispute. He has also placed reliance upon the judgment of the Supreme Court in the matter of **Surya Constructions vs. State of Uttar Pradesh And Others, (2019) 16 SCC 794** but that was a case relating to claim of undisputed amount whereas present is a case where an agreement is sought to be enforced by filing a writ petition.

12. In view of the above, no error is found in the order of the learned Single Judge and no case for interference is made out. The appeal is, accordingly, dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(KESANG DOMA BHUTIA)
JUDGE

Kolkata
19.01.2022

PA (P. Adak)