

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.16139 of 2022
(Through hybrid mode)**

***Usha Projects (India) Pvt. Ltd.,
BBSR and another***

....

Petitioners

Mr. A. Rath, Advocate

-versus-

Canara Bank, BBSR and others

....

Opposite Parties

Mr. A. Mishra, Advocate for O.P.1

Mr. A. Dash, Advocate for O.P.3

CORAM: JUSTICE ARINDAM SINHA

ORDER

02.08.2022

Order No.

- 03.** 1. Mr. Rath, learned advocate appears on behalf of petitioners and submits, and had moved the writ petition on 6th July, 2022. He had submitted, his clients' did the work but payment is outstanding. Completion certificate dated 21st October, 2021 could not be furnished in time to the employer (opposite party no.2). The employer encashed the bank guarantee. His clients seek relief of appropriate directions being made for payment, from the money obtained by encashing the bank guarantee.
2. There was direction for issuance of notice upon the employer (opposite party no.2). In spite of good service said opposite party goes unrepresented. Mr. Mishra, learned advocate appears on behalf of opposite party no.1 (petitioners' banker). On query from Court he submits, his client furnished the bank guarantee at instance of petitioners, in favour of opposite party no.2. On further query from Court he submits, the bank guarantee was

invoked by the employer and proceeds paid out to it.

3. Mr. Dash, learned advocate appears on behalf of opposite party no.3. He submits, his client was the contractor. His client employed petitioners as sub-contractor. Petitioners, in executing the sub-contract, had caused the guarantee to be furnished. Petitioners abandoned the work midway. His client had to engage another agency to complete the sub-contracted work, whereupon, completion certificate was issued by the employer. In the circumstances, his client is entitled to proceeds of the guarantee.

4. Petitioners' claim is for money against the employer. The employer has chosen not to appear. Opposite party no.3 claims to be principal contractor. The bank guarantee stood invoked and encashed. The money is claimed by petitioners and opposite party no.3, from opposite party no.2.

5. Claim for money is to be obtained by way of decree and execution, from Civil Court. No order can be made in the writ jurisdiction. Mr. Rath submits, this should not prevent his clients from approaching opposite party no.2 with their claim. The submission stands recorded.

6. The writ petition is disposed of.

(Arindam Sinha)
Judge