

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.37810 of 2021

(Through Hybrid mode)

Central Public Works Department, Petitioners
BBSR and others

Mr. P. K. Parhi, Advocate (ASG)

Mr. P. K. Das, Advocate (CGC)

-versus-

Rajesh Mohanty Construction Pvt. Opposite Party
Ltd.

Mr. S. S. Rao, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER

12.08.2022

Order No.

03. 1. Mr. Parhi, learned advocate, Assistant Solicitor General appears on behalf of petitioners. He had moved the writ petition on 13th July, 2022 to submit, impugned is ex parte order dated 25th August, 2020, made in application filed in the petition under section 9 of Arbitration and Conciliation Act, 1996, by opposite party. In spite of opposite party having asserted completion of the work, it obtained this ex parte restraint order, preventing his client from taking possession of the property. He had referred to his clients' additional affidavit dated 19th February, 2022 (Flag-D) to submit, letter dated 15th December, 2021 of opposite party is the completion letter. He had submitted, thereafter the Court below passed order dated 5th May, 2022, whereby his clients' application for

dropping the section 9 proceeding was rejected. Today he submits, his clients have taken inspection.

2. Mr. Rao, learned advocate appears on behalf of opposite party and submits, the writ petition is not maintainable. Though there is mention of order 39 rule 3(A), Code of Civil Procedure in impugned order but same was passed on his client's petition made under section 9 of the Act of 1996. Petitioners, if aggrieved, have remedy under section 37.

3. Direction made in impugned order dated 5th May, 2022 is reproduced below.

"In the above circumstances, if possession of the site will be taken over by OP No.2 the purpose of filing of the petition U/s 9 of the Arbitration and conciliation Act, 1996 would be frustrated. Keeping in view of the urgency involved in the matter, as an interim measure the Ops are directed not to take possession of the construction site in accordance with the letter vide Annexure-24 till their appearance. Accordingly the petition U/o 39 Rule 3(A) of CPC is disposed of."

4. Petitioners on having moved this Court obtained following direction as made in order dated 13th July, 2022.

"There is no bar on petitioners taking inspection of the property. The only restraint placed is against taking possession thereof. Petitioners, if want to take inspection, will give 48 hours notice to opposite party and take inspection of the site. The report be produced before this Court, for adjudication of the writ petition. It is made clear, in event inspection is not duly taken and report filed on adjourned date or thereafter,

the writ petition will be proceeded with for hearing and disposal.”

5. Section 9 provides for interim measures etc. by Court in matters of arbitration. Scope of the provision includes application regarding vacating, varying or modifying interim measure directed thereunder. It is not necessary to have resort to provisions in Civil Procedure Code in that regard. Hence, any order passed by Court under the provision is subject to appeal provision by section 37. Petitioners, therefore, also have remedy of appeal. On having moved this Court they have taken inspection. They must now obtain statutory remedy as available to them either by approaching the Court under section 9 or under section 37.

6. With above observations the writ petition is disposed of.

(Arindam Sinha)
Judge

RKS