

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 906 OF 2022**

MIC Electronics Ltd Represented by Its ...Petitioner
Authorized Representative
Versus
Bank of Maharashtra Nashik ...Respondent

Dr Prasad, i/b Varad Dubey, for the Petitioner.
Mrs Rathina Maravarman, for Respondents Nos. 1 and 2.
Mr Vaibhav Patankar, i/b Patankar & Associates, for Respondent No.
3 -Nashik Municipality.

**CORAM G.S. Patel &
Vinay Joshi, JJ.**
DATED: 11th March 2022

ASHWINI
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GAJAKOSH

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1. The Petition is thoroughly misconceived. The prayers in the Writ Petition from (a) to (d) reads thus:

“a) This Hon’ble Court by issuing a Writ of Mandamus may kindly direct Respondent No. 1 to honor the letter of demand given by the Petitioner for encashment of unconditional Bank Guarantees No. 0001414BG000024 and No. 0001414BG0000245 in terms of RBI Master Circular DOR.STR.REC.66/13.07.010/2021-22.

b) This Hon’ble Court may kindly direct Respondent No. 2 to take cognizance of the issues raised before him and

ensure the encashment of the Bank Guarantee without any further delay.

c) This Hon'ble Court may kindly direct Respondent No. 4 to take appropriate steps or actions against Respondent 1 and 2 for violating the guidelines / instructions in RBI Master Circular No. - RBI/2021-2022/121 dated November 9, 2021 and refusing to pay guaranteed amount.

d) Any other appropriate writ, order or direction as this Hon'ble Court may deem fit and necessary on the facts and in the circumstances of the case and allow this Petition with all costs."

2. There is no dispute that the bank guarantees in question were issued at the instance of the 3rd Respondent, the Nashik Municipal Corporation, from the Bank of Maharashtra, the 1st Respondent, in favour of the Petitioner. There is also no dispute that of the three bank guarantees, and there were only three bank guarantees, two bank guarantees were subjected to an injunction against invocation by a Civil Court in proceedings under Section 9 of the Arbitration and Conciliation Act 1996. Equally, there is no doubt that in respect of the third bank guarantee, a Civil Court passed an order of status quo.

3. According to the Mr Prasad, there is no effective injunction against the two bank guarantees that were subject matter of the Section 9 Petition because there is an error in the order. Therefore, according to the Petitioner a Writ Petition can be maintained against the Bank of Maharashtra compelling it by issue of mandamus to make payment under the bank guarantee.

4. The submission is thoroughly misconceived. If there is an error in the wording of the Section 9 order, or a clarification is sought, or there is a question of a typographical error, it is for the parties to approach that Court for the necessary clarification. An error of this kind will not create an enforceable right in favour of the Petitioner. Indeed, in our view, it would be entirely wrong for a Writ Court to entertain such a Writ Petition and pass an order in circumstances such as these.

5. We do not find substance in the Petitioners' argument that it is the party seeking the injunction that must obtain the clarification. Perhaps the Nashik Municipal Corporation does not perceive there to be an error. Perhaps it feels that the error is immaterial given that there were only three bank guarantees, of which two were part of the Section 9 proceedings and one was part of another proceeding.

6. Mrs Maravarman for the Bank of Maharashtra is clear that the entire dispute between the Nashik Municipal Corporation and the Petitioner relates to three and only three bank guarantees. All three are covered by one or the other of these two proceedings.

7. In these circumstances, we see no merit in the Petition. It is rejected. There will be no order as to costs.

8. We leave it to the parties to make the necessary applications before the Section 9 Court or the Civil Court.

9. Any such application will be decided on its own merits uninfluenced by the present order.

(Vinay Joshi, J)

(G. S. Patel, J)