

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11117 of 2023

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M/s KEC-DELCO-VARAHA (JV) through its Authorised Representative, Shri Amarjeet Kumar Singh, Male, aged about 37 years, son of Shri Hare Ram Singh, resident of House No. 158, Sector 09, Pocket-01. Near Shiksha Bharti School, Dwarika, Bagdola, South West Delhi, Delhi, Pin Code-110077.

... .. Petitioner/s

Versus

1. East Central Railways Hajipur through its General Manager.
2. General Manager, East Central Railways, Hajipur.
3. Chief Administration Officer, Construction, North, East Central Railway, Bihar, Patna.
4. Chief Engineer, Construction, North, East Central Railway, Bihar, Patna.
5. Deputy Chief Engineer, Construction, East Central Railway, Samastpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate Mr. Krishna Murari, Advocate Mr. Pushkar Bhardwaj, Advocate
For the Respondent/s	:	Mr. Additional Solicitor General

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

10 13-09-2024 Heard the parties.

2. The present writ petitioner has been filed for grant
of the following relief/s:-

i. For issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities to take steps towards releasing the security deposit amount to the tune of Rs. 2,15,48,967/- as has been deposited as security deposit against the bills raised by the petitioners in respect of agreement no. ECR/CAO/CON/WT/AGT/553 dated 11/09/2010 executed between the



petitioner and respondent Railways;

ii. Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case.

3. Learned counsel for the petitioner has stated that the authorities without any valid reason are not releasing the security deposit in respect of an agreement dated 11.09.2010. Counsel has stated that though the contract has been foreclosed way back in the year 2017, the authorities are not taking any steps to release the security deposit. That the petitioner had approached the respondents by way of representations and also made oral requests, but till date they did not take any steps to refund the security deposit. That the petitioner invoked the arbitration clause, and the learned arbitrator has passed an award in favour of the petitioner on 16.07.2019 in which it was directed to release the security deposit.

4. Counsel has further stated that as against the arbitration award, the respondents have preferred proceedings under Section 34 of the Arbitration and Conciliation Act, before the District Judge Patna, and the same was also dismissed on 28.05.2024 confirming the award passed. Learned counsel has therefore prayed this Hon'ble Court to allow the present writ petition.



5. Per contra, the learned counsel appearing on behalf of the respondent has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has an alternate and efficacious remedy of approaching the Hon'ble Civil Court for execution of the award under Section 36 of the Arbitration and Conciliation Act. Counsel has stated that the arbitrator had exceeded the jurisdiction by granting relief to the petitioner, though the same was not the subject matter of the arbitration proceeding. Learned counsel has stated that the authorities are yet to take a decision as to whether they want to challenge the order passed by the Additional District Judge-14 Patna, in Miscellaneous (Arbitration case no. 173 of 2019) dated 28.05.2024 or not. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

6. Having regard to the fact that an award has been passed in favour of the petitioner and the application filed under Section 34 of the Arbitration and Conciliation Act, preferred by the respondents has already been dismissed, the prayer sought for in the present writ petition has to be necessarily allowed. Admittedly the contract between the parties was foreclosed way back in the year 2017, and there was no reason for the



authorities to keep the security deposit with them. More so, when the contract had been foreclosed, without any penal action on the claimant.

7. Though the learned counsel for the respondents has opposed the present writ petition on the ground of availability of alternate remedy. The Hon'ble Supreme Court in the case of **Assistant Commissioner (CT) LTU, Kakinada and others v Glaxo Smith Kline Consumer Health Care Limited, Whirlpool Corporation v. Registrar of Trademarks, Mumbai²¹ and Harbanslal Sahnia v Indian Oil Corpn. Ltd.** has held that availability of alternate remedy is not a ground for dismissing the writ petition.

8. The Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others v Glaxo Smith Kline Consumer Health Care Limited** has held as under:-

The High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so that when an aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental



principles of judicial procedure: or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

9. In Whirlpool Corporation v. Registrar of Trademarks, Mumbai²¹, The Hon'ble Supreme Court after reviewing the case law on this point has held as under:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise



its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

(emphasis supplied)

10. The Hon'ble Supreme Court in **Harbanslal Sahnia v Indian Oil Corpn. Ltd.** has held as under :-

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of



principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1])

11. Having regard to the above mentioned facts and circumstances the present writ petition is allowed. Respondents are directed to release the security deposit in favour of the petitioner as expeditiously as possible preferably within a period of 6 weeks from the date of receipt of the copy of this order. In case the security deposit is not released in favour of the petitioner within the stipulated time, the authorities are liable to pay simple interest @7% per annum, from the date of foreclosure till the date of actual payment of the amount.

12. With the above directions, the present writ petition stands allowed to the extent indicated above.

(A. Abhishek Reddy, J)

Ankit Kumar/-

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