

Form No. J (2)
Item No.5
Court No.26

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**F.M.A. 636 of 2022
IA NO: CAN/1/2022
CAN/2/2024**

**M/S Joyguru Nigamananda Pharmacy & anr.
VS.
The State of West Bengal & ors.**

For the Appellants : Mr. Saptangsu Basu, Ld. Sr. Advocate
Mr. Amitava Mukherjee, Advocate
Ms. Arpita Saha, Advocate
Ms. Ankita Ghosh, Advocate

For the
State Respondents : Mr. Pantu Deb Roy, Ld. A.G.P.
(in virtual mode)
Mr. Pannalal Bandyopadhyay, Advocate

Heard on : 01.08.2024

Judgment on : 01.08.2024

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the writ petitioners and directed against an order dated March 4, 2022 passed in WPA 15072 of 2021.

2. Learned Senior Advocate appearing for the appellants submits that, the appellants filed writ petition for the purpose of receiving the balance amount due and payable in respect of price of goods sold and delivered. He submits that, such a writ petition is maintainable. In support of such contention, he relies upon **(2004) 3 Supreme Court Cases 553 (ABL International Ltd. And Another versus Export Credit Guarantee Corporation of India Ltd. And Others)** and **(2023) 2 Supreme Court Cases 703 (M.P. Power Management Company Limited, Jabalpur versus Sky Power Southeast Solar India Private Limited And Others).**

3. Learned Senior Advocate appearing for the appellants submits that, there is no dispute with regard to the claim made by the writ petitioners. In support of such contention, he draws the attention of the Court to the averment made in paragraphs 11 and 12 of the affidavit-in-opposition used by the respondents in CAN/2/2024. He submits that, there are letters issued by the respondents authorities admitting and acknowledging a sum in excess of Rs. 51 Lakh as due and payable. He submits that, although the affidavits refers to a Committee being formed for the purpose of looking into the claim of the appellants, in effect, no Committee was formed. In any event, appellants were not called for a hearing by the Committee.

4. Relying on various letters issued by the respondents authorities from time to time, learned Senior Advocate appearing for the appellants submits that, such respondents authorities sought sanction of the diverse amount from higher authorities for payment of the outstanding bills of the

appellants. Those letters according to him, are unconditional acknowledgment of liability.

5. State is represented.

6. Writ petitioners approached the Writ Court seeking payment of their outstanding bills. In course of the hearing of the appeal, we invited the learned Senior Advocate for the appellants to draw our attention in any averments made in the writ petition where, the total value of the supplies effected were quantified as also the payment received, if any.

7. Learned Senior Advocate appearing for the appellants could not draw our attention to any averments made in the writ petition which quantifies the value of the goods supplied, the period during which the supplies were made and the payments, if any made.

8. In our view, any claim for payment of price of goods sold and delivered would necessarily require consideration of the issue of limitation. Claim petition must contain necessary averments supported by cogent evidence relating to the limitation issue.

9. The claim of the appellants in the writ petition is that, the appellants sold and delivered medicine, medical equipments and apparatus in accordance with orders placed from time to time by the respondents authorities. As noted above, the value of supplies is not pleaded. There is no pleading as to the exact date on which the supplies commenced. The details of payment received and dates of payments are also not pleaded in the writ petition.

10. As the writ petition stands, issue of limitation cannot be decided. Issue of limitation is a mixed question of facts and law.

11. Although laws of limitation are not attracted to a writ petition nonetheless Writ Courts are required to consider the delay, if any, in approaching the Writ Court. Ordinarily where the claim is barred by limitation Writ Courts are slow to interfere.

12. The issue of limitation by itself raises sufficient ground to relegate the parties to a civil suit.

13. Both ***ABL International Ltd. (supra)*** and ***M.P. Power Management Company Limited (supra)*** are of the view that, a writ petition is maintainable in respect of non statutory contract where, the action of the State is said to be arbitrary. ***M.P. Power Management Company Limited (supra)*** explains what could constitute arbitrariness in paragraph 75 thereof.

14. In the facts and circumstances of the present case, since, the writ petition itself does not contain material particulars, it is impracticable if not impossible to decide on the alleged liability, if there be any, of the respondents authorities. Unless a liability is culled out labeling the action of the State authorities in not discharging such alleged liability as arbitrary would be improper.

15. There are diverse views emanating out of the State authorities with regard to the alleged liability. One view is the alleged acknowledgement of liability. The other view is that, there is Committee looking into the liability, if there be any, of the State authorities. Given such divergence of

views, we are not in a position to return a conclusive finding that, there is an unconditional acknowledgement of liability on the part of the respondent authorities.

16. Letters of alleged admission issued by the State are subsequent to the impugned order. Obviously, such letters were not placed before the learned Single Judge. Learned Single Judge exercised discretion on the basis of the materials placed before His Lordship. On the basis of such materials, we are not in a position to say that, the discretion exercised by the learned Single Judge was irregular.

17. In such circumstances, we find no merit in the present appeal.

18. FMA 636 of 2022 along with connected applications being IA NO: CAN/1/2022 and CAN/2/2024 are dismissed without any order as to costs.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

20. I agree.

(Md. Shabbar Rashidi, J.)

CHC