

D/L. 72.
May 15, 2024.
MNS.

WPA No. 26112 of 2023

Ranjit Pal @ Ranjit Kumar Pal
Vs.
The State of West Bengal and others

Mr. Jayanta Das,
Ms. Soumita Ghosh

... for the petitioner.

Mr. Priyankar Saha,
Mr. Rudrajit Saha

...for the State.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioner contends that the petitioner participated in a tender for felling trees. When an inconsequential number of trees were yet to be felled, the petitioner sought for an extension from the Tender Inviting Authorities, since such trees could not be felled due to exigencies beyond the control of the petitioner.
3. Subsequently, however, the extension being refused, a writ petition was moved. The writ court held that the dispute was civil in nature and turned down the petitioner's plea. Against the said order, an appeal was preferred, when

the Division Bench substantially took the same view. Liberty was, however, given to the petitioner to seek refund of the earnest money paid by the petitioner.

4. Now, upon a claim of the petitioner, such earnest money has not been refunded, due to which the present writ petition has been preferred.
5. However, even a cursory glance at the writ petition and on hearing learned counsel for the petitioner it is clear that the dispute involved in the present matter is as to whether the petitioner is entitled to get back the earnest money in view of the specific stand taken by the Tender Inviting Authorities that the work was not completed by the petitioner and extension was refused and upheld up to this court. As a consequence thereof, the Tender Inviting Authority also claims a right to forfeit the earnest money in terms of the tender clauses.
6. In such view of the matter, if the writ petition is entertained, it will entail a detailed enquiry which requires evidence to ascertain as to whether the petitioner is entitled to such refund as per the tender provisions, as to

whether there was any negligence on the part of the petitioner to disentitle the petitioner to such refund and alternatively as to whether the respondent authorities had some contribution to the work not being completed and/or whether there is an element of supervening impossibility in the work not being completed by the petitioner in due time. Such ingredients have to be decided upon taking detailed evidence, which is beyond the framework of the writ court to do.

7. In such view of the matter, WPA No. 26112 of 2023 is disposed of with the observation that the remedy of the petitioner lies before a competent civil court having jurisdiction.
8. Leave is thus granted to the petitioner to approach the competent civil court, setting up a plea that during pendency of the writ petition, the petitioner has proceeded *bona fide* under a mistaken notion as to the appropriate forum.
9. If such plea is taken, the suit court shall decide such issue on its own merits.
10. This court obviously has not gone into the merits of the contentions of either of the parties.

11. As no affidavits were invited, it is deemed that the none of the allegations made in the writ petition are admitted by the respondents.

12. There will be no order as to costs.

13. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)