

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

APO/6/2024
IA NO: GA/1/2024
FOOD CORPORATION OF INDIA AND ORS.
VS
KOTHARI MEDICAL CENTRE

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : November 08, 2024.

Appearance :
Mr. Joy Saha, Adv.
Mr. Devajyoti Barman, Adv.
Ms. Sanjukta Basu Mallick, Adv.
...for appellant
Mr. Suddhasatva Banerjee, Adv.
Mr. Shashwat Nayak, Adv.
Ms. Rituparna Chatterjee, Adv.
Ms. Khushboo Choudhary, Adv.
...for respondents

The Court :- We have heard the learned Advocates for the parties.

This appeal has been filed by the respondent in WPO/1664/2023 challenging the interim order dated 14.12.2023.

By the said interim order the positive direction has been issued to the appellant to disburse the dues to the writ petitioner in terms of the bills for the period other than pertaining to the financial year 2018-19 and also the appellant has been restrained till the disposal of the writ petition from refusing to accept the bills which has been filed by the writ petitioner for the subsequent period including the current years.

We find that relief granted to the writ petitioner is in fact the relief which has been prayed for by the writ petitioner in prayers (f) and (g) of the writ petition. The

learned Single Bench was also conscious of the fact that to decide the matter finally affidavits have to be called for and, accordingly, issued appropriate direction.

The issue raised before us which is in the nature of preliminary objection is with regard to maintainability of the writ petitioner which admittedly is a money claim. We find that the show cause notice was issued to the writ petitioner sometime in 2021 alleging that the fraud has been committed with regard to certain bills submitted by the writ petitioner for treatment said to have been given to the workers of the appellant Organization or their family members.

The writ petitioner submitted reply to the show cause notice and ultimately an order has been passed on November 18, 2021 by which the appellant withheld the amount of Rs.1,79,67,988/- payable to the writ petitioner as full and final amount pending outstanding against appellant Corporation incorporating the bills already submitted and the outstanding bills for expenses incurred for the relevant year and for which the bills yet to be submitted by the hospital is forfeited in full without prejudice to any other right and remedy, the Corporation may have under the agreement and law and further reserving its right to recover pecuniary loss in accordance therewith.

We find that the matter requires examination on various aspects including whether a writ petition with a prayer as sought for was maintainable with regard to the money claim. Secondly, even assuming such a writ petition was maintainable whether such a money claim was barred by limitation or not if the writ petitioner had chosen a common law remedy which could be made in a writ petition filed under Article 226 of the Constitution.

Thus, we find that the relief granted at the interlocutory stage is virtually allowing the main writ petition. So far as prayers (f) and (g) in the writ petition, which

in our opinion, could have been done after affidavits were exchanged and the matter was heard finally.

Therefore, we are inclined to interfere with the impugned order and, accordingly, the appeal is allowed and the impugned order is set aside and there will be a direction to the appellant, who is the respondent in the writ petition, to file their affidavit-in-opposition not later than 19.11.2024, reply thereto, if any, by 22.11.2024 and the writ petition shall be listed before appropriate learned Single Bench in the week commencing 25th November, 2024.

Liberty is granted to the learned Advocates to mention before the appropriate learned Single Bench about this order and requesting the matter for an early hearing.

If the appellant does not file the affidavit-in-opposition within the time fixed, and any extension is sought for, the same will be subject to the condition that the appellant pays a sum of Rs.10 lakhs to the writ petitioner.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.