

OD – 33

ORDER

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/152/2023
VISHNU ENGINEERING CORPORATION & ANR.
VERSUS
NATIONAL JUTE MANUFACTURERS CORPORATION LTD. & ANR.

BEFORE :

THE HON'BLE CHIEF JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st May, 2024.

Appearance:
Mr. Mainak Bose, Adv.
Mr. Rishabh Karnani, Adv.
Ms. Sweta Gandhi, Adv.
...for the appellant

Mr. Rahul Karmakar, Adv.
Mr. Surya Prosad Chattopadhyay, Adv.
Mr. Ankit Chatterjee, Adv.
Mr. Sounak Mukherjee, Adv.
...for the respondent no.1

The Court : This appeal by the writ petitioner is directed against the order passed by the learned Single Bench dated 30th August, 2023 in WPO 1529 of 2023. The said writ petition was filed by the appellant praying for

issuance of a writ of mandamus to allow the appellant to immediately start demolition and dismantling the work of the items purchased in the auction including the factory sheds and the walls and chimney clearances which have been withheld by the respondents and for other reliefs which are incidental and ancillary to the said relief.

We have heard learned Counsel for the parties.

The claim of the appellant was that auction sale dated 31st January, 2023 which was confirmed in favour of the appellant and the appellant having been entrusted with the work of dismantling the materials in a jute mill, had approached this Court by filing the writ petition on 18th August, 2023 contending that the factory sheds are not covered in the exclusion list as mentioned in the bid document. The learned Writ court after considering the submissions on either side opined that the exclusion list is not exhaustive inasmuch as the same has to be read in conjunction with the goods which are actually put up for sale in the said document itself and if read in conjunction, the exclusion list as well as the materials put up for sale clearly show that the writ petitioners do not have any right as per the auction document to dismantle or take away any structure of permanent nature standing on the property including internal walls, dilapidated buildings etc. Further, it held that only the detachable factory shed was put up for sale, apart from the plant and machinery and other moveables. With certain other reasonings, the writ petition was dismissed.

The appeal was presented before this Court on 14th September, 2023 and the matter is pending till date. Affidavits have been exchanged. Reply has also been filed. While the appeal was pending, the appellants had written to the respondents requesting them to refund the security deposit which had been paid by the appellants when the tender was awarded in their favour by the e-mail dated 20th November, 2023. A reply has been sent by the respondent to the appellant on 23rd November, 2023 amongst other things stating that the allegations contained in their mail are inconsistent and self-contradictory and in view of this appeal being pending before this Court, all claims are subject to the outcome of the appeal. Further, it was stated since the appellants have requisitioned for refund of the security deposit, it is deemed that they have fulfilled their obligations and contract/tender is closed with no further claim against the respondents in connection with the sale rendering the purport of the appeal to have lost its effect. The appellants were advised to withdraw this appeal and claim NOC and refund of the security deposit.

First and foremost, we need to point out that the issue as to whether articles, structures which the appellants now claims to be covered under the tender documents, which is being disputed by the respondents, is required to be decided. This being wholly a factual issue cannot be decided solely based upon affidavits, that too, in a writ petition filed under Article 226 of the Constitution of India. Precisely for that reason, the tender document in clause 23 provides for a dispute resolution mechanism and any disputes arising out of

the contract shall be resolved in accordance with the Indian laws in force and before the Civil Courts at Kolkata within the Original Side of the Calcutta High Court. It also states that the parties may apply for amicable settlement of the disputes through discussion and mediation. Therefore, if the appellants still wish to contest the matter contending that the appellants are entitled to dismantle certain other sheds and structures as well as the chimney which is standing in the property, then necessarily that question has to be adjudicated before an appropriate forum and the Writ Court is not the appropriate forum to decide such disputed question of fact. As of now, the appellants seek for return of the security deposit and the respondents have also made their stand clear by their e-mail dated 23rd November, 2023.

Since the respondents are willing to return the security deposit subject to the terms and conditions of the contract, more particularly clause 3.0 which deals with the security deposit, this appeal can be disposed of with the following directions :

- i) The appellants shall be entitled to remove all their equipments, machinery, vehicles etc. which are lying in the factory premises for which the respondents shall grant appropriate permission. This shall be done within 15 days from the date of receipt of the server copy of this order.
- ii) The request for return of the security deposit shall be considered in terms of clause 3.0 of the tender document and appropriate action be taken by the respondents for release of the security deposit on being

satisfied about the successful completion of the contract in all respects as enumerated in clause 3.0 of the tender document. This decision be taken by the respondents within 30 days from the date of receipt of the server copy of this order.

Needless to say, if the appellants still are of the view that the matter needs to be proceeded further, it is well open to them to avail the dispute resolution mechanism provided in clause 23 of the tender document.

Since the respondents have taken a stand before us that for refund of the security deposit the respondents have to decide as to whether the work has been completed in terms of the contract awarded to the appellants within the time permitted, in any event the period from 18th August, 2023, when the writ petition was filed, cannot be taken into consideration by the respondents as if it has also contributed to the delay in the execution of the contract awarded to the appellants.

The appeal is accordingly disposed of.

(T. S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)