

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 3797 OF 2023**

M/s. Adip Enterprises } Petitioner
Versus
State of Maharashtra & Ors. } Respondents

Mr. C. T. Chandratre for the petitioner.

Mr. P. P. Kakade, Government Pleader with
Mr. O. A. Chandurkar, Additional Government
Pleader and Ms. R. A. Salunkhe, AGP for
respondents 1 to 3 (State).

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 2nd FEBRUARY 2024

P.C.:

1. Heard Mr. Chandratre, learned counsel for the petitioner and Mr. Chandurkar, learned Additional Government Pleader for the respondents.

2. By instituting the proceedings of this petition under Article 226 of the Constitution of India, the petitioner, who is a contractor, has prayed that the respondents be issued a direction to take action in respect of preparation and payment of final bills and further to disburse the amount of final bill within a period of two months.

3. The petitioner was awarded certain works through the tender process. As per the petitioner, two of the works allotted to it have been completed way back on 4th April 2022, however, the third work is in progress. The details of the works, the stage

of their completion and bills etc. are given in paragraph 5 of the writ petition in a tabular format, which is extracted herein below:-

Sr. No.	Name of work	Tender No.	Date of work order	Date of completion	Date on which SDO/petitioner has submitted the bills	Amount of final bill yet to be received month of submission of the bills
1	CCB@ Biladpada, Dongripada No. 1 Dongaripada No.2 Karticha Dahad, Panodapada-Chalnich Dahad, Tal. Dahanu, Dist. Palghar	B1/AC&CE/ 04/2020-21	18.01.2021	4.04.2022	19.04.2022	65,28,598/- 25.07.2022 (Adip Ent., petitioner submitted Bill dt.)
2	CCB@ Hadalpada & Sonarpada, Tal. Talasari, Dist. Palghar	B-1 RWCO/05/2020-21	18.01.2021	4.04.2022	19.04.2022	1,03,10,445/- 20.07.2022 (Adip Ent., Petitioner submitted bill dt.)
3	KT Weir at Eksal Tal Bhivandi	B-1/46 of 2019-2020	07.12.2019	In progress	Balance payment of 2 nd Running account bill	Rs. 39.64 (as per deptt. And as against Rs. 68.19 as per Bill dated 25.07.2022 submitted by petitioner

4. Learned counsel for the petitioner relies upon a Government Resolution dated 9th August 2012, whereby it has been provided that on completion of a work, within 15 days, a completion report shall be submitted and on receipt of the completion report, a completion certificate shall be submitted by the authority/officer concerned, whereupon, the defect liability is to be ascertained and fixed and thereafter, final measurement is to be taken. As per the said Government Resolution, the payment for the work done has to be made within two months from the detail measurement is taken.

5. It has been argued by the learned counsel for the petitioner that in terms of the aforesaid Government Resolution, the respondents are not processing the matter neither they have made payment as due against that.

6. The issue raised in this writ petition exclusively lies in the realm of a contract. The prayer made in the writ petition essentially is for issuing a direction for payment of bills. Thus, by filing the writ petition, what the petitioner claims in effect is a money decree. In such circumstances, in our opinion, a petition under Article 226 of the Constitution of India will not be maintainable.

7. Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of **Madras Aluminium Co. Ltd. vs. Tamil Nadu Electricity Board and Anr.**¹ as also a judgment of a coordinate Bench of this Court in the case of **M/s. Adip Enterprises vs. The State of Maharashtra & Ors.**² dated 16th August 2018 to impress upon the Court that even in contractual matters, writ jurisdiction of this Court can be exercised.

8. So far as the principle propounded by the Hon'ble Supreme Court in the aforesaid judgment is concerned, there cannot be any quarrel that even in contractual matters the State, its agencies and instrumentalities have to abide by the principles of non-arbitrariness as embodied in Article 14 of the Constitution of India. However, the writ jurisdiction of this Court, in our opinion, cannot be stretched to seek effectively a money decree.

¹ AIR 2023 SC 3353

² Writ Petition No. 11829 of 2015

9. The grievance of the petitioner, as raised in the writ petition, is that despite successfully completing the two works way back on 4th April 2022, neither the final measurement is being taken by the respondents nor the bills against the said works are being paid. The petitioner has even sought a direction to be issued by this Court in this writ petition for making balance payment of the running bills in respect of the third work which is still in progress.

10. In our opinion, for the prayer made in the writ petition seeking a direction for payment of the bills in relation to certain works executed and the work in progress, it will be impermissible for this Court to exercise its jurisdiction under Article 226 of the Constitution of India. The remedy, in fact, of the petitioner effectively lies in either instituting an appropriate suit with appropriate prayers before a competent Civil Court/forum or to invoke the remedy of arbitration, if it is available.

11. For the reasons aforesaid, we are not inclined to entertain this writ petition, which is hereby dismissed.

12. We, however, make it clear that notwithstanding the dismissal of the writ petition, it will be open to the petitioner to seek any other legal remedy, which may be available to the petitioner in law, including the remedy of approaching the administrative authorities.

JAYANT
VISHWANATH
SALUNKE

Digitally signed by
JAYANT VISHWANATH
SALUNKE
Date: 2024.02.02
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(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)