

09.03.2026
Court No. 12
Item No. 01
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
F.M.A. 1705 of 2025
IA No : CAN 1 of 2025

Kunal Sharma
-Versus-
Union of India & Ors.

Mr. Arif Ali,
Mr. Sarban Bhattacharya
.....for the appellant
Mr. Rabi Prasad Mookierjee,
Mr. Rajesh Kumar Shah
....for the Union of India.

- 1) The appellant is aggrieved by an order dated July 30, 2025 passed by a learned single Judge, inter alia, dismissing the writ petition on the ground that the petitioner failed to approach the competent Court for the reliefs prayed for. Her Lordship was of the view that Calcutta High Court did not have territorial jurisdiction to entertain the writ petition.
- 2) According to the learned single Judge, the contract provided that the place from where the tender has been issued, shall alone have the jurisdiction to decide the dispute. The tender was issued from Bela, Bihar and accordingly the appellant should approach the competent Court at Bela, Bihar for adjudication of the dispute. Her Lordship referred to the Standard Conditions of Contract, 2022, stating that the mechanism for redressal of the dispute had been provided therein and the said contract

also specified the ouster of jurisdiction of other Courts.

3) Mr. Ali, learned advocate for the appellant submits that some of the materials supplied by the appellant under the contract were rejected by the respondents. The appellant requested a joint inspection. The date for joint inspection was fixed, but the appellant could attend the same on account of personal difficulty and had requested for another date for such inspection. However, the respondents did not pay any heed to the said request as the letter reached the respondents after the date for joint inspection was over.

4) According to Mr. Ali, even if the contract provides for ouster of jurisdiction of other courts, the Hon'ble Apex Court in Maharashtra Chess Association Vs. Union of India & Ors., reported in (2020) 13 Supreme Court Cases 285 held that, mere agreement between the parties with regard to exclusive jurisdiction of other Courts would not be an impediment for the High Court of another state to exercise jurisdiction if the situation required so.

5) It is further contended by Mr. Ali that the arbitration clause would not be a bar and he relies on the decision of the Supreme Court in Union Of India vs. Tania Construction Pvt. Ltd. reported in AIR Online 2011 SC 530. He submits that, the rule of exclusion of writ jurisdiction in view of the existence of an alternative remedy, was a rule of discretion and not one of compulsion. There could be exigencies, when the High Court could exercise jurisdiction in spite of an alternative remedy.

6) Further reliance has been placed on an unreported decision of this Court in MAT 806 of 2024 with FMA 375 of 2024 on the issue that in spite of existence of an arbitration clause between the parties, the writ Court can pass necessary orders.

7) Mr. Mookerjee, learned advocate for the respondents submits that the terms and conditions of the Standard Conditions of Contract, 2022 were applicable to the contract. The said contract provided for exclusive jurisdiction of the courts at Bela, Bihar in all matters arising out of the subject contract.

8) He further submits that the disputes are also covered by an arbitration clause.

9) We have considered the contention of Mr. Ali. The prayers in the writ petition are quoted below :

a. A writ of and/or in the nature of Mandamus commanding the respondent authorities, and each one of them to forthwith cancel/rescind/withdraw/set aside the letters dated 19th February 2025 being No. RWP-014540-24-00002/Bus Shelter, purported Test Report dated 7th February 2025, letter dated 28th March 2025 being no. RWP-014540-24-00002/Bus Shelter/01;

b. Alternatively, a writ of and/or in the nature of Mandamus commanding the respondent authorities, and each one of them to forthwith conduct a joint inspection of the materials;

c. A writ of and/or in the nature of Mandamus commanding the

respondent authorities, and each one of them to forthwith release the payment for the work done including the extra work by the petitioner;

d. A writ of and/or in the nature of Certiorari directing the respondent authorities, to forthwith transmit the entire records of the case present case particularly the letters dated 19th February 2025 being No. RWP-014540-24-00002/Bus Shelter, purported Test Report dated 7th February 2025, letter dated 28th March 2025 being no. RWP-014540-24-00002/Bus Shelter/01 so that the same may be quashed and conscionable justice may be rendered;

e. A writ of and/or in the nature of Prohibition prohibiting the respondent authorities, and each one of them from dismantling the work already done by the petitioner including the extra work till disposal of the present writ petition;

f. Rule NISI in terms of prayers above;

g. Direction upon the respondent authorities, and each one of them to forthwith

h. cancel/rescind/withdraw/set aside the letters dated 19th February 2025 being No. RWP-014540-24-00002/Bus Shelter, purported Test Report dated 7th February 2025, letter dated 28th March 2025 being no. RWP-014540-24-00002/Bus Shelter/01;

i. Alternatively, the respondent authorities, and each one of them to forthwith conduct a joint inspection of the materials;

Direction upon the respondent authorities, and each one of them to forthwith release the payment for the work done including the extra work by the petitioner;

j. Injunction restraining the respondent authorities, and each one of them from dismantling the work already done by the petitioner including the extra work till disposal of the present writ petition.

k. Ad-interim order in terms of prayers made above;

l. Such further or other order or orders as Your Lordship may deem fit and proper;

10) The petitioner has prayed for setting aside of the order dated February 19, 2025 and the test report dated February 7, 2025. The petitioner has also prayed for release of payment for the work already done, including the extra work. A writ in the nature of prohibition has been prayed for, restraining dismantling of the work already done and alternatively a further prayer was made to direct the parties to conduct a joint inspection.

11) We find that the contract between the parties is covered by the Indian Railways Standard Conditions of Contract, 2022. The contract provides for settlement of dispute first by conciliation and then by arbitration. The

writ Court held that there was an ouster of jurisdiction of other Courts.

12) However, even if we accept the contention of Mr. Ali that the jurisdiction clause would not be a bar and the writ petition could be entertained by the Calcutta High Court on the ground that the letter of rejection of the goods was received within the jurisdiction of this Court, we find that, the dispute arises out of a contractual relationship between the parties. The respondents allege breach of the terms and conditions of the contract. The test report with regard to deficiency in the quality of the materials supplied involve adjudication of disputed questions, which the writ Court cannot go into. Evidence has to be led. Thus, the arbitral tribunal is the appropriate forum. The appellant was always at liberty to approach the appropriate forum for reference of the dispute to arbitration.

13) Even if a joint inspection is allowed, the report would not be open to scrutiny by the writ court. The validity of the report, the method of testing etc. would have to be decided on the basis of evidence to be led by the parties, which is beyond the scope of judicial review. There is an efficacious remedy which the petitioner can avail of under the Standard Conditions of Contract. Although, it is a settled principle of law that the existence of an arbitration clause would not be a complete bar in all cases, but from the grounds stated in the writ petition, we do not find that allegations of the petitioner fall within the domain of the writ court. Rejection of articles supplied by the petitioner on the ground that the same did not

match the specifications provided in the tender document, is definitely a disputed question. Under such circumstances, the appeal is not entertained. The petitioner is granted liberty to approach the appropriate forum and also pray for interim relief under the relevant statute.

14) With regard to the decision of the Calcutta High Court, in MAT 806 of 2024, we find that the contract was between the appellant therein and the CWC, but the deduction of demurrage was done by the FCI. According to the Division Bench, deduction by FCI was beyond the scope of the arbitration clause, because CWC was ad idem with the appellant therein that the demurrage cost could not be deducted as per the conditions of the contract between the appellant therein and the CWC. Paragraph 16 thereof is quoted below :-

“16. The existence of an arbitration agreement between the writ petitioner and CWC is put against the writ petitioner to state that the writ petition was not maintainable. Firstly, it is to be noted that the arbitration agreement is between the CWC and the writ petitioner. From the averments made in the affidavit-in-opposition filed by CWC to the writ petition, as set out above, it is evidently clear that CWC disputed and denied the claim for huge demurrage charges and deduction thereof as done by FCI. Thus, the CWC was in ad-idem with the writ petitioner to state that in the given facts and circumstance no demurrage charges was leviable or deductible. The deduction of the demurrage charges was done by FCI in the bills raised by CWC and consequently CWC effected the deduction in the bills submitted by the writ petitioner. Thus, when there is no dispute or differences with regard to the deduction of the demurrage charges between the CWC and the writ petitioner, the question of

invoking the arbitration clause would not arise and the existence of such a clause cannot operate as a bar for filing the writ petition with specific reference to the facts and circumstances of the case on hand. While on this issue, it is relevant to take note of the various correspondents between CWC and FCI and CWC and the writ petition. By a letter dated 14.09.2012 the Warehouse Manager of CWC had addressed the Area Manager, FCI, Jalpaiguri stating that on the date of opening, balance of utilization space was 88% and one rake is being unloaded and on receipt of the complete rake the occupancy level will reach to 104% and request was made to FCI to take necessary step to restrict the further rake placement, if any in the pipelines unless and until good quantity is issued out (cleared), and under no circumstances further rake can be accommodated. Further it was clearly stated that in case of minimum placement (of rakes) and for non-clearance of rakes CWC will not be held responsible for demurrage charges, if any, so accrued. FCI did not deny or dispute the contents of the said letter dated 14.09.2012. From the said letter it was evidently clear that at the earliest point of time CWC informed FCI that their storage capacity will exceed 100% that is 104% and further rake placement was directed to be restricted/ stopped and they also made it clear that in case of any placement of rake is done, for non-clearance CWC will not be responsible for payment of demurrage charges. CWC by letter dated 14.09.2012 informed the writ petitioner that as per the assurance given by the Area Manager, FCI, Jalpaiguri no demurrage charges will be levied on CWC so accrued prior to the takeover of the rake by CWC. Accordingly, no demurrage charges will be deducted or withheld from the writ petitioner's admitted bills and this is as per the telephonic discussion had with the Regional Manager of CWC on 13.09.2012. CWC reiterated the stand regarding no liability towards demurrage charges by letter dated 14.09.2012 addressed to the Area Manager, FCI, Jalpaiguri."

15) With regard to the decision of the Hon'ble Supreme Court in Maharashtra Chess Association (supra), we find that the Hon'ble Supreme Court reiterated the principle that existence of an exclusive jurisdiction clause in the byelaws of the society with which the appellant therein had an agreement, would not ipso facto amount to ouster of jurisdiction of the writ Court and the Bombay High Court ought to have delved deeper into the matter in order to ascertain whether the jurisdiction of the writ Court would be a total bar to entertain the writ petition. Accordingly, the writ petitions were remanded for fresh hearing.

16) With regard to interim prayer for joint inspection, also, the appellant has an efficacious remedy under the Arbitration and Conciliation Act, 1996. This is a commercial contract. The duty of the Court must be to uphold the arbitration clause on the principle of competence-competence. We have already discussed that issues raised in the writ petition are disputed questions, inasmuch as, the same involve determination of the quality of materials supplied by the appellants, and whether they were of inferior quality or not. The writ Court does not have the expertise to decide such issues and the remedy lies elsewhere. We do not exercise our discretion as there is no apparent injustice in the way the appellant was treated.

17) Accordingly, the appeal and the connected application are disposed of without any interference with the order impugned. .

18) The appellant is at liberty to approach the appropriate forum. Alternative remedy will not be a bar under certain circumstances as held in the matter of ***Whirlpool Corpn. v. Registrar of Trade Marks***, reported in **(1998) 8 SCC 1**, the Hon'ble Apex Court held as follows:-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

19) In this case, none of the above exceptions have been demonstrated.

20) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings. The order impugned is set aside.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)