IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO/269/2026

TUAMAN ENGINEERING LIMITED
VS
RESERVE BANK OF INDIA AND ORS.

For the petitioner	:	Mr. Rajarshi Dutta, Adv. Mr. Soumava Mukherjee, Adv.
For the Union of India:		Mr. Subrata Santra, Adv.
For the HDFC Bank	:	Ms. Sweta Mukherjee, Adv.
Heard on	:	05.06.2026
Judgment on	**:**	**05.06.2026**.

<u>RAJA BASU CHOWDHURY, J. :</u>

1. Although the petitioner is only seeking a direction upon the respondent no. 1 to consider the complaint dated 22nd May, 2026 which is now pending before the respondent no.1, it would be relevant to note down the facts giving rise to the filing of the writ petition.

2. The petitioner claims to have been awarded with a contract by The Fertilisers and Chemicals Travancore Limited (hereinafter referred to as 'the employer') for construction of additional phosphoric acid storage tank at Q10 Berth, Wellingdon Island, Kochi vide order dated 480001487 dated 12th February, 2021. In terms of the contract, the petitioner was required to and had

accordingly, furnished a security deposit in the form of bank guarantee issued by the respondent no. 3 herein in favour of the employer.

3. In relation to the execution of the contract, certain disputes and differences having arisen, the petitioner had invoked the arbitration clause in the contract, however, prior thereto, the petitioner had approached the Hon'ble High Court of Kerala in WP(C) No. 46444 of 2024 apprehending invocation of bank guarantee.

4. By an order dated 7th April, 2025, the said writ petition was disposed of by taking note of the factum of the appointment of the Arbitrator and by reserving the right of the petitioner to move the Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the said Act"). The Court, however, by the above order had retained the interim order passed earlier on 27th December, 2024 for a period of 6 weeks which related to an order of injunction pertaining to encashment of the bank guarantee. In terms of the liberty so reserved, the petitioner had filed an application under Section 17 of the said Act before the learned Arbitrator. The said application came to be rejected by an order dated 7th July, 2025 with an observation that the rejection shall not be considered as an order to enforce the bank guarantee as it is a matter of the said employer to consider the same.

5. Records would reveal that after passing of the above order, the said employer had invoked the bank guarantee on 8th July, 2025. On this occasion, the petitioner instead of challenging the same in the arbitral proceeding had filed a civil suit before the Court of the Civil Judge, Senior Division, 4th Court at Alipore which was registered as Title Suit No. 1021 of 2025, inter alia, praying for a decree for declaration that respondent no. 3 has not been authorized by the plaintiff to pay any sum on behalf of the plaintiff to the proforma defendant

(being the employer) without there being any proof of breach of the terms of the contract on the part of the plaintiff and proof of any loss or damages. Although the petitioner did not succeed in getting an ex parte ad interim injunction, the petitioner did succeed in the miscellaneous appeal in getting an ad interim injunction restraining the invocation of the bank guarantee. The order, however, records that the said order was passed without prejudice to the order of the learned Arbitrator and without prejudice to the direction of the Hon'ble High Court of Kerala. In the later part of the order the learned Judge went further and recorded that the HDFC Bank is hereby restrained from releasing any money in favour of the said employer or the appellant in the appeal.

6. Mr. Dutta, learned Counsel appearing for the petitioner would submit that the interim order has been extended from time to time and is subsisting. In the interregnum, however, the petitioner has filed a complaint before the respondent no. 1. In paragraph 7 of the complaint, the petitioner has sought for specific direction from the respondent no. 1 to issue a directive on HDFC Bank and its agents to cease and desist from processing and making of any payment under the bank guarantee to the said employee. Other direction sought for in the complaint is to initiate a formal investigation into the conduct of the concerned officials of HDFC Bank Ltd. for their attempt to facilitate a fraudulent transaction and for their failure to adhere to prudent and ethical bank guarantee norms. The petitioner would insist that this Court should direct the respondent no. 1 to dispose of the aforesaid complaint. It is clarified by the learned Advocate for the petitioner that the petitioner is not seeking any interim order against encashment of the bank guarantee since, the petitioner is otherwise well protected.

7. Mr. Dutta, however, adds that since the matter is now pending before the respondent no. 1, the status quo as is prevailing should be directed to continue till a decision is taken by the respondent no. 1.

8. Ms. Mukherjee, learned Advocate appears for the HDFC Bank and submits that the petitioner is already enjoying an interim injunction. However, such proceedings are being contested by the parties. She submits that at this stage no further protection should be granted in favour of the petitioner.

9. Having regard submissions made on behalf of the learned Counsel appearing for the respective parties and considering the materials on record, I find that the petitioner had admittedly entered into a contract with the said employer. The terms of the contract required the petitioner to put in a security deposit. The petitioner had secured the deposit by a bank guarantee through the HDFC Bank. The bank guarantee issued by the HDFC Bank in favour of the said employer is an independent document. Later disputes and differences arose between the petitioner and the employer, apprehending the employer would invoke the bank guarantee, the petitioner approached the Hon'ble High Court of Kerala at Ernakulam. In the interregnum, the petitioner also invoked the arbitration clause. Records would reveal that the arbitrator was appointed through the intervention of the Hon'ble High Court at Kerala. The Hon'ble High Court at Kerala had thought it fit, while exercising its discretion, to permit the petitioner to raise all disputes before the learned Arbitrator by filing an interim application under Section 17 of the said Act, as would appear from the order dated 7th April, 2025. Notwithstanding aforesaid, the interim injunction granted by the Hon'ble High Court of Kerala was extended for a period of six weeks.

10. In terms of the liberty so reserved the petitioner filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 before the learned sole arbitrator. Such application came to be rejected by order dated 7th July, 2025. However, the arbitrator made it clear that the rejection would not be construed as an order to enforce the bank guarantee as it was a matter of the said employer to consider. The records would reveal that the company while exercising its rights, had invoked the bank guarantee on 8th July, 2025 that is subsequent to passing of the order by the learned arbitrator. On this occasion the petitioner did not challenge the same in the arbitral proceedings despite previously having acted on the basis of the liberty reserved in their favour by the order dated 7th April, 2025 by the Hon'ble High Court of Kerala. Instead approached the learned Civil Judge, Senior Division, 4th Court, Alipore in Title Suit No. 1021 of 2025, inter-alia, praying for the following:

"(a) A decree for declaration that the defendant no. 1 has not been authorized by the plaintiff to pay any sum on behalf of the plaintiff to the proforma defendant without there being any proof of breach of the terms of the said contract on the part of the plaintiff and proof of any loss or damages being suffered by the proforma defendant in respect of the said contract on account of the plaintiff;

(b) A decree for declaration that the defendant no. 1 has not been authorized by the plaintiff to pay any sum on behalf of the plaintiff to the proforma defendant without there being an adjudication by an appropriate forum with regard to the allegation of breach of the terms of the said contract on the part of the plaintiff an adjudication by an appropriate forum

with regard to the allegation of loss or damages being suffered by the proforma defendant in respect of the said contract on account of the plaintiff;

(c) A decree for injunction against the defendant no. 1 restraining the defendant no. 1 from releasing any money to the proforma defendant under the said Bank Guarantee till the time it is decided by an appropriate forum that there has been breach of the terms of the said contract on the part of the plaintiff and it is decided by an appropriate forum that loss and damages have been suffered by the proforma defendant in respect of the said contract on account of the plaintiff;

(d) Ad-interim injunction in terms of the prayers above;

(e) Costs;

(f) Receiver;

(g) Such further and/or other reliefs or reliefs;"

11. The petitioner did not succeed in getting an ex parte injunction, however, in a miscellaneous appeal the learned District Judge, Alipore by an order dated 10th July, 2025 restrained the respondent no. 3, HDFC Bank from releasing any amount in favour of the employer. The said order on the basis of the submissions made by the petitioner is valid and subsisting. Now, the petitioner has approached this Court, inter alia, praying for a direction that this Court should direct the respondent no. 1 to consider the complaint of the petitioner dated 22nd May, 2026. To more fully appreciate the reliefs as prayed for in the said complaint, the same is extracted herein below:

"a. Issue an immediate directive to HDFC Bank Ltd. its officers and agents to cease and desist from processing and making any payment under Bank Guarantee No. 469GT02210570003 to The Fertilisers and Chemicals Travancore Ltd.

b. Direct HDFC Bank Ltd. to await the final adjudication of the disputes pending in Title Suit No. 1021 of 2025, Misc. Appeal No. 218 of 2025, and the related arbitration proceedings before taking any further steps concerning the said Bank Guarantee.

c. Initiate a formal investigation into the conduct of the concerned officials of HDFC Bank Ltd. for their attempt to facilitate a fraudulent transaction and for their failure to adhere to prudent and ethical banking norms.

d. Pass any other order or direction as may be deemed fit and proper in the interest of justice and to prevent the abuse of the banking system."

12. Incidentally, the petitioner notwithstanding seeking specific direction against the HDFC Bank so as to cease and desist from processing any payment under the bank guarantee in favour of the said employer, the petitioner has chosen not to add the said employer as a party in the present petition through the employer would directly be affected by the order to be passed herein. It is well settled that ordinarily, an injunction against a bank guarantee is not to be issued unless special circumstances exist. The petitioner has already challenged the invocation of bank guarantee and, in fact has sought for a decree before the Competent Civil Court for a declaration that the HDFC Bank had not been authorized by the plaintiff to pay any sum in favour of the employer. Without going into the maintainability of such a suit or the prayers

thereof, this Court finds that there is a subsisting order of injunction passed in favour of the petitioner. At this stage when the injunction application is about to be decided, the petitioner wants the extension of the injunction by making an application before the respondent no. 1.

13. It is well settled what can be permitted directly should not be allowed to be done indirectly. The prayers sought for by the petitioner in terms of prayers (a) and (b) of the complaint, in my view constitutes as an injunction against bank guarantee which cannot be allowed to be considered by the respondent no. 1, inasmuch as, such issue is already subject matter of a civil proceeding. In so far as the prayer (c) is concerned, I am of the view such prayer can be considered by the respondent no. 1. Thus, without going into the merits of the claim, the respondent no. 1 shall decide the complaint in accordance with law.

14. The instant writ petition, thus, stands disposed of.

15. There shall be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be made available to the parties, on priority basis, upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

S. Seal/DB