

AlguddIn Mallick Vs. State

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Court : Kolkata

Decided On : Aug-09-1995

Reported in : AIR1996Cal130

Judge : S.B. Sinha, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.O. No. 1130 (W) of 1995

Appellant : AlguddIn Mallick

Respondent : State

Advocate for Pet/Ap. : J.N. Biswas, Adv.

Judgement :

ORDER

1. In this writ application the petitioner has, inter alia, prayed for issuance of a writ of or in the nature of mandamus directing the respondents to make payment of all the dues payable to him. The petitioner admittedly had entered into a contract with the respondent No. 1. Pursuant thereto work order was issued in his favour on 5-2-90. According to the petitioner he had made various allegations with regard to the alleged breach of contract on the part of the respondent. The petitioner has furnished the particular of his claim in paragraph 17 of the writ application which reads thus :--

i).Rs. 2,54,351/-being the balance due from the bills submitted by the (plaintiff) petitioner accepted and acknowledged by the defendant.

ii).Rs. 2,50,000/-On account of extra cost involved for executing the work in the extended time and claimed as damages.

iii).Rs. 81,480/-On account of guarding charges from 10-12-92 to 14-7-1994.

Rs. 5,85,831/- Rs. 2,27,302.42 p.on account of interest @ 24% per annum simple from 10-12-1992 to 22-7-94.

Rs. 8,13, 133.42 p.

The petitioner also claims further interest @ 24% per annum from 10-12-1992 to the tune of Rs. 2,27,302.42 p. besides further interest and cost.'

2. The very basis of the petitioner's claim arises out of contract qua contract. More so it is pure money claim and thus in my opinion, this court has no jurisdiction to entertain this writ application under Article 226 of the [Constitution of India](#). The grievance of the petitioner is that the respondents have committed a breach of contract which cannot be entertained in a writ application.

3. However in view of the decisions of the Supreme Court of India it may be held that when a contract has been terminated mala fide or in violation of the principle of natural justice, a writ application may be maintainable. Reference in this connection may be made to the case of 1994 (1) Calcutta Law Times 138 (Abuzar v. Union of India); : [1994]1SCR939 and : [1994]3SCR163 . The Supreme Court in the case reported in 1994 (2) SCC 466 has held that no writ application is maintainable with regard to a pure money claim. The learned Counsel for the petitioner has strongly relied upon a decision in the case of Steel Authority of India Ltd. v. Steel Crackers, reported in 1994 (2) CLT 222. The main prayer of the petitioner in that writ application was in relation to delivery of 63,830 MT Cast Rolls and 246.25 MT of Steel Rolls in accordance with the sale orders. The learned Judge held that the Writ Court can interfere with a contractual matter if governmental agency acts arbitrarily or in unreasonable manner. The learned Judge however held in paragraph 30 of the said judgment as follows :--

'It is quite true that the Writ Court can interfere in contractual matter if governmental agency acts arbitrarily or in unreasonable manner as held by the learned Judge. However, it is well settled that Writ Court will not scrutinise in details the facts of disputed nature and will not enter into the question of interpretation of contracts involving close scrutiny.'

4. In the facts of the case the Division Bench itself held that as the fact of the case requires close scrutiny for the Court to make interpretation on different aspects of the contract and/or negotiation and also requires evidence to be taken into account the Writ Court should not interfere. In the case of *Abuzarv. Union of India*, reported in 1994(1) CLT 138, the writ petition was entertained absolutely on a different fact situation. In that case no dispute has been raised on the part of the respondent with regard to the claim. The learned Judge held that the stand taken by the respondent in the affidavit-in-opposition was not accepted. Such allegation was devoid of any particulars and has been made for the purpose of raising false and frivolous disputes. In the said case the learned Judge came to the conclusion that the respondents have infringed the fundamental right of the petitioner.

5. From the particulars of claims referred to hereinbefore it is evident that in the instant case the petitioner has not only claimed the balance amount due to him but also claimed extra costs for work and damages and interest at the rate of 24% per annum.

6. Admittedly there exists an arbitration clause. When there exists an arbitration clause, the Writ Court will not entertain the writ application. The said claim having arisen out of contract qua contract can be gone into by the arbitrator. Reference in this connection may be made in the case reported in 1993(2) PLJR 1308.

7. For the reason aforementioned, in my opinion, it is not a fit case in which this Court should exercise its discretionary writ jurisdiction under Article 226 of the Constitution in favour of the petitioner.

8. Accordingly the writ application is dismissed.

9. Petition dismissed.

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