

(1990) 05 CAL CK 0004
In the Calcutta High Court
Case No : Matter No. 379 of 1990

Amiya Corporation and Another

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 18-05-1990

Acts Referred:

Arbitration Act, 1940 — Section 20, 41
Constitution of India, 1950 — Article 136, 226, 226(3), 227

Citation : 95 CWN 243

Hon'ble Judges : A.M. Bhattacharjee, J

Bench : Single Bench

Advocate : Sujit Sinha, for the Appellant; N.N. Gooptu, P.K. Mallick and U. Sen, for the Respondent

Judgement

A.M. Bhattacharjee, J.—After hearing Mr. Sinha, the Learned Counsel for the Petitioner and the learned Advocate-General appearing for the Respondents I have not been able to find any reason to deviate from the view taken by me in my order passed on 8th May, (sic) in Krishen Kumar Agarwala vs. Reserve Bank of India, (Matter No. 2328 of 1989) that, for the reasons stated in some details in that order in Krishen Kumar Agarwala (supra) the provisions of Article 226(3) providing for automatic vacation of an ex-parte interim order on the ground of non-disposal of the application for its vacation within the period specified therein, are mandatory. As a result, I must hold the interim order passed in this case has already stood vacated as the application for its vacation has not been disposed of within the period specified in Article 226(3). The additional ground urged by Mr. Sinha in this case is that if the application for vacation of the interim order comes up before the Court and the Court passes any order thereon, including an order that the application shall be disposed of along with the main Writ Petition, the application shall be deemed to be disposed of within the meaning of Article 226(3), to arrest the automatic vacation of the interim order under the aforesaid provisions. No such order could be brought to my notice to have been made in this case. But that apart, I have not been able to agree that an application, not

actually disposed of, but postponed for disposal to a later date or stage, must nevertheless be deemed to have been disposed of within the meaning of the provisions of Article 226(3). But such automatic vacation would not, as it cannot, prevent me from considering, now that I have heard both the parties and gone through affidavits, as to whether the materials on record warrant any interlocutory interdiction.

2. As I have pointed out in *Krishen Kumar Agarwala*, relying on a Division Bench decision of this Court in *Ashalata Mitra Vs. A.D. Viz*, the fact that the very same question would have to be determined at the final hearing of the lis, is, by itself, no reason not to consider, if necessary, the same question at the interim stage also; but any such determination cannot obviously take the place of the determination of that question at the final hearing and the matter would require final determination afresh at the final stage, may be on further and on more detailed materials. Even the question of the maintainability of the proceeding can, and very often cannot but, be taken into consideration, while considering the question of granting interim relief, for if the maintainability of a proceeding *prima facie* appears to be doubtful, an interim interdiction should not ordinarily be imposed. Needless to repeat, refusal of interlocutory relief in such a case cannot be taken to be a final determination of the question of maintainability.

3. The case at hand relates not to a statutory, but a purely commercial contract already entered into. On the materials as on record at present, no question of promissory estoppel or infraction of any statutory provision appears to have been made out. That being so, under the law as laid down by the Supreme Court in *Radha krishan Agarwal (AIR 1977 SC 1946)*, reiterated rather recently in *Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others*, a writ may not be available so as to compel the authorities to remedy a breach of such a non-statutory concluded contract, except in the rarest of cases. Any interlocutory interdiction at this stage would therefore be not justified and should accordingly be declined.

4. Mr. Sinha has very strongly relied on a rather recent decision of *Ajit Kumar Sengupta, J.*, sitting singly, in *Nellimarla Jute Mills vs. Jute Corporation of India (1989 -2 CLW 252)* and also on the decision of the Supreme Court in *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, and has urged that contractual disputes are not necessarily a "no entry" zone for the Writ Court under article 226. I have never suggested that disputes arising out of contract are necessarily prohibited areas for Writ Courts and can never be gone into and dealt with in a proceeding under article 226. It is now probably settled beyond any pale of controversy that even in respect of disputes relating to contracts, a writ would lie if the petitioner can make out a case of promissory estoppel or breach of the relevant provisions of law in respect of statutory contracts and I have already indicated the same hereinbefore. I have therefore no reason to differ from the view of *Sengupta, J.* in *Nellimarla Jute Mills (supra)* to the effect that "the proposition that there is an absolute bar to entertaining a Writ Petition

under Article 226 of the Constitution of India when the action of the Government challenged pertains to the domain of concluded contract" is not correct. But I do not think that the decision of the Supreme Court in *Dwarkadas Marfatia* (supra) can help the petitioner on this question. *Dwarkadas Marfatia* (supra) arose out of Suits for eviction and not Writ proceeding under Article 226 and the Suits having been dismissed by the trial court, but decreed by the appellate Court, the appellants moved the High Court under Article 227 and not Article 226. And the High Court having declined to interfere with the decision of the appellate Court, the matter came to the Supreme Court in appeal with special leave under Article 136. The landlord, Bombay Port Trust, was exempted from the operation of the Rent (Control) Act and "special privileges, powers and benefits were statutorily conferred on the Bombay Port Trust" and it "was held that the landlord Port Trust "which enjoys this benefit without being hidebound by the requirements of the Rent Act, must act for public benefit" and "even in respect of its dealings with its tenant, it must act in public interest" and an infraction of such duty can be the subject-matter of adjudication". It was pointed out that though "the field of letting and eviction of tenants is normally governed by the Rent Act", "the Port Trust is statutorily exempted from the operation of the Rent Act on the basis of its public/governmental character" and that "this legislative assumption.....cannot make such conduct a matter of contract pure and simple".

5. It has been alleged by the Respondents, and not disputed by the petitioner, that the Petitioner has already initiated a proceeding u/s 20 of the Arbitration Act over this dispute and has also invoked therein the provision of Section 41 for appropriate interim relief. This is also a matter which has been, as it should be, taken into consideration by me in declining interim relief.

6. The five-Judge unanimous decision of the Supreme Court in *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, still holds the field and rules that if adequate remedies are available even in a suit or other proceeding, a Writ Court may justifiably decline to be invoked. The stereo-typed and usual Court jargon, however, is that a civil suit is a long-drawn and time-consuming process and as observed by Sengupta, J. also in *Nellimarla Jute Mills* (supra, at 231), "the suit may take years and years". I think that with a very large number of original writ proceedings still pending in our Court for trial since even 1979, it is high time that we get rid of this impression that Writ proceedings are necessarily expeditious and suits are obviously dilatory. This however would not, as it cannot, prevent the petitioner from obtaining appropriate relief at the final hearing, on a fuller consideration of further materials, if any, or in any other appropriate forum. Interim order is accordingly declined.