

(2004) 12 JH CK 0033

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5135 of 2004

Engineering Projects (India) Ltd.

APPELLANT

Vs

Branch Manager, Syndicate Bank and Others

RESPONDENT

Date of Decision : 09-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 BC 607 : (2005) 1 JCR 127

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : V. Shivnath, for the Appellant; A.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for issuance of a writ in the nature of direction restraining the respondents from acting pursuant to the letter dated 1.9.2004 issued by respondent No. 2, Executive Engineer, Ranch! Regional Development Authority (in short RRDA") asking the Syndicate Bank, Branch 26, Shakespeare Sarau, Kolkata to transfer the amount covered under Bank Guarantee (shortly BG) No. 47/2003 dated 17.10.2003 in favour of RRDA.

2. The facts of the case lie in narrow compass :

Pursuant to a tender floated by RRDA for construction of Birsa Bus Terminal at Khadgarha, Ranchi including some civil works, viz.; water supply, sanitary installation and drainage etc., the petitioner submitted his tender. By letter dated 30.9.2003 the petitioner was informed under a letter of intent that the aforesaid work was acceptable subject to furnishing performance guarantee of the tender amount. The petitioner furnished performance bank guarantee dated 15.10.2003. It is alleged by the petitioner that despite repeated letters and reminders draft agreement for execution of the contract work was finalized. Finally it was found that the terms and conditions of the agreement was at

variance of the notice inviting tender. It is contended by the petitioner that in the meantime price of cement, steel and labour charges have gone up and a suitable clause of price escalation was required to be incorporated in the said agreement. The petitioner, accordingly, requested the respondents to incorporate the price escalation clause in the agreement. Instead of acceding to the request of the petitioner respondent No. 3, RRDA invoked the bank guarantee submitted by the petitioner.

3. It has been categorically stated by the petitioner in the writ petition that for the sell" same relief a suit has been filed being Title Suit No. 99/2004 in the Court of the Subordinate Judge, Ranchi and an application for grant of injunction has been filed. Paragraphs 40 and 41 of the writ petition read as under :-

"40. That the petitioner has filed a T.S. No. 99/2004 against the respondents restraining the respondent Nos. 3 or the employees or servant against any body acting under them for any manner whatsoever from invoking and/encashing and/or realizing and/or receiving any amount from respondent No. 1 and also a relief of a permanent injunction and against the respondent No. 1 the servant and/or agent or in any manner making any payment whatsoever to the respondents No. 1 under the aforesaid guarantee. The petitioner craves leave of the Hon"ble Court to refer the plaint of Title Suit No. 99/2004.

41. That after the filing of the suit the petitioner was required to pay further amount of court-fees. The next date fixed in this case is 7.10.2004. The Presiding Officer of the Court of Sub-Judge, Ranchi has now been transferred and unless another person is posted as Sub-Judge the petitioner is not in position to move for an appropriate relief of temporary injunction in the suit. The petitioner has also deposited the requisite amount of D.C.F., in the treasury. The petitioner craves leave to refer the copy of challan of deposit at the time of hearing of the writ petition."

4. Since the Presiding Officer of the Court of Sub-Judge, Ranchi has now been posted and is functioning, it is desirable for the petitioner to prosecute the suit and make a prayer for interim relief.

5. Having regard to the pendency of the suit this Court is not inclined to entertain this writ petition which is, accordingly, dismissed.