
(1993) 11 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Appeal No. 24 of 1975

Jamna Auto Industries

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 26-11-1993

Acts Referred:

Citation : (1994) 53 DLT 585

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Rajesh Banati, P.K. Sharma, Rajeev Chopra and Madan Lokur, for the Appellant;

Judgement

P.K. Bahri, J.

(1) The facts, in brief, are that the petitioner had been awarded a contract for supply of goods on February 12, 1973 and the petitioner had furnished a bank guarantee of Rs.27,000.00 as security for due performance of the said contract. The respondents invoked the said bank guarantee by issuing-letter dated July 19, 1974 (Annexure P3) and required the Manager of the Central Bank of India to pay the amount of the bank guarantee to the respondents. It was mentioned in this letter that the petitioner had defaulted in the contract inasmuch as period for delivery of the goods was extended up to May 15, 1974 but the petitioner had failed to complete the supplies before that date and thus, the contract had been cancelled at the risk and cost of the petitioner. Simultaneously the respondents had issued letter to the petitioner cancelling the contract as the petitioner had failed to make supplies before the extended date of delivery mentioning that the time was the essence of the contract.

(2) The contention of the learned Counsel for the petitioner is that the bank guarantee had not been invoked in terms of the bank guarantee bond inasmuch as it was stipulated in the guarantee bond that the bank guarantee could be invoked only if the respondents were to suffer any loss on account of any breach

of contract by the petitioner but the respondents have not even alleged in the letter by which the contract was cancelled and the letter by which the bank guarantee was invoked that the respondents had suffered any damages on account of the alleged breach of contract on the part of the petitioner.

(3) There appears a lot of merit in this contention. The guarantee bond, copy of which is Annexure A (appearing at page 41 of the file) mentions that the Central Bank of India undertook a promise to pay the amount due and payable under the guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of any breach by the said contractor of any of the terms or conditions contained in the said agreement or by reasons of the contractor's failure to perform the said agreement.

(4) In the letter issued to the bank the only thing mentioned is that the time of delivery was extended till May, 15, 1974 but still substantial supplies were outstanding which amounted to defaulting the contract and thus, the contract stood cancelled at the risk and cost of the petitioner. There is not even a mention that any damage or loss had occurred to the respondents or is likely to occur in future on account of the alleged breach of contract by the petitioner. So, on the face of it, it is quite evident that the bank guarantee had not been invoked in terms of the bank guarantee bond and thus, the action of the respondents in invoking the bank guarantee is vitiated in law.

(5) The Rule in this writ petition was issued on January 7, 1975, but no counter affidavit has been filed by the respondents. So, in this manner the writ petition is not being opposed by the respondents. I had highlighted to Counsel for the petitioner that this writ has been brought for seeking a remedy which lies in the realm of contract. Counsel for the petitioner has argued that if on such technicalities the petitioner is deprived of his legal remedy at this stage the petitioner would not be able to even institute any suit for obtaining the relief which is due to him as the suit must have become time barred by this stage. He has argued that if the writ petition had not been admitted at the initial stage, possibly the petitioner would have had his legal remedy by filing a suit at that stage in the year 1975 and he has further argued that it would not be fair to the petitioner that on technical ground this relief should be denied to the petitioner when the petitioner has a strong case on merits.

(6) It is true that normally the writ jurisdiction cannot be invoked for seeking reliefs which arise out of any contract but in the rare case such like the present one the Court is not debarred from granting the relief under Article 226 of the Constitution of India. In this case Rule had been issued and interim order had been made in favor of the petitioner in the year 1975, now it would not be in the interest of justice that the petitioner should be denied the relief on mere ground that normally writ jurisdiction cannot be invoked in the realm of contract.

(7) I make the rule absolute and quash the impugned letter invoking the bank

guarantee. The respondents are free to proceed against the petitioner in accordance with law on the basis of the said contract or the bank guarantee. The parties are left to bear their own costs.