(2006) 08 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No. 5353 of 2006

Melco Precisions Pvt. Ltd. APPELLANT

Vs

Kundremukh Iron Ore Co. Ltd. and Another RESPONDENT

Date of Decision : 08-08-2006

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 08 KAR CK 0023

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Raghu, for A.R. Sharadamba, for the Appellant; K.C. Shivasubramanian, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Shylendra Kumar, J.—This writ petition filed under Article 226 of the Constitution of India, is a clear abuse of this Court. Though the petitioner described as one invoking the provisions of Article 227 also, I do not find anything to invoke the provisions of Article 227 as the proceedings are original proceedings before this Court, seeking for a restraint order from this Court, to restrain the first respondent M/s Kudremukh Iron Ore Company Ltd., from enforcing certain bank guarantees that the petitioner had issued in favour of the first respondent through its bankers-second respondent-Indian Bank.

2. Submission of Sri Raghu, Learned Counsel for the petitioner, is that the first respondent is not justified in invoking the bank guarantees when the petitioner has fully performed all its obligations under the contract entrusted to the petitioner and in such circumstance the petitioner was constrained to approach this Court for relief.

3. To make good the case of the petitioner, considerable material is also placed before the court.

4. The matter has come up for orders on the application filed by the first

respondent seeking for vacating the interim order granted by this Court on 4-5-2006, where under the first respondent had been restrained from invoking or enforcing as many as 16 bank guarantees that the petitioner had issued in favour of the first respondent.

5. It is the version of the first respondent-applicant that the first respondent is justified in invoking the bank guarantees; that the petitioner has not performed the contracts to the satisfaction of the first respondent; that the petitioner had been apprised of such non-performance even in terms of communication dated 22-2-2006, a copy of which is produced as Annexure-Rl to the statement of objections filed by the first respondent, and also apprising or putting on notice the petitioner that the first respondent had suffered a loss of Rs. 57,89,5907- because of the breaches committed by the petitioner and in this view of the matter, the first respondent was constrained to invoke the bank guarantees and adjust the amount guaranteed, against the amounts payable by the petitioner to the first respondent on account of such loss/ damage etc.

6. I have heard Sri Raghu, learned Counsel for the petitioner and Sri Shivasubramanian K.C. Learned Counsel for the first respondent, who has filed the application for vacating the interim order.

7. The subject matter of the writ petition is bank guarantees which have been furnished by the petitioner in favour of first respondent and as submitted by the Learned Counsel for the first respondent, unconditional bank guarantees. It could be invoked and enforced by the 1st respondent at any point of time and the prayer is for a restraint order against the first respondent not to invoke the bank guarantees and consequential return of bank guarantees also.

8. A relief of this nature even is a civil suit, cannot be granted, unless the terms of the guarantees themselves are examined and a declaration is sought for by the plaintiff and made good. If at all, it can only be after a determination of the merits/ inter se condition of the bank guarantees etc. etc., it can be considered, which necessarily involves detailed investigation into the terms of the guarantee, facts and circumstances pleaded by the parties and the consequential finding etc. This is not an exercise that is required to be undertaken in writ jurisdiction.

9. In fact not a fit matter at all for issue of a writ under Article 226/227 of the Constitution of India. A prohibitory order is granted in writ jurisdiction only to restrain a judicial or quasi-judicial or statutory authority, if it is established that the authority acts in excess of the jurisdiction conferred either by the statute or otherwise. The dispute in this case arises essentially between the petitioner and the first respondent in the context of a contract between the parties. That in itself is not a fit matter for investigation in writ jurisdiction. Added to this, the bank guarantees are unconditional one and honouring of which is inevitable by the third party bank, who has guaranteed. Relief sought for is not one which may be examined for granting or being allowed in writ jurisdiction. Obviously attempt is only to avoid or postpone the evil day and more and abuse of the writ

jurisdiction of this Court.

10. There is absolutely no justification to continue the interim order restraining the enforcement of the bank guarantees by the beneficiary of the bank guarantees, more so, when the bank guarantees are unconditional one. It is open to the petitioner to avail of such other remedies in law.

11. In the result, this petition is dismissed levying cost of Rs. 10,0007- (Rupees ten thousand only) payable by the petitioner to the first respondent.

12. The cost to be paid in four weeks from today, failing which on an application made by the first respondent, the Registry is directed issue a certificate for recovery of the amount as though it is a decree passed by the civil court.