(2019) 09 CAL CK 0136

In the Calcutta High Court

Case No : MA No. 025 Of 2019, Civil Application (CAN) No. 122 Of 2019

M/s Sabita Enterprises APPELLANT

Vs

Andaman & Nicobar Administration & Others RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 12

Citation : (2019) 09 CAL CK 0136

Hon'ble Judges : Ashis Kumar Chakraborty, J;Madhumati Mitra, J

Bench : Division Bench

Advocate : Anjili Nag, Shipra Mandal, N.A.Khan

Final Decision : Dismissed

Judgement

This is an appeal at the instance of the writ petitioner, in WP No. 298 of 2018 against the order dated July 16, 2019 passed by a learned Single Judge of this Court dismissing the said writ petition.

The brief facts giving rise to the filing of this appeal are that one Ajay Halder carries business, under the name and style of M/s Sabita Enterprises, as the sole proprietor thereof. It is, however, to be noted that the writ petition, as well as the present appeal have been filed in the name of the sole proprietorship firm which is not a legal entity.

In August 2015 the Directorate of Agriculture of the Andaman and Nicobar Administration issued a notice inviting offers from licensed suppliers to obtain supply various agricultural items mentioned therein. In response to the said notice, the proprietor of the appellant firm submitted his offer and on August 26, 2015 the Directorate of Agriculture issued a work order to the appellant firm for supplying 250 kgs of Vita Raaz Powder at the rate of Rs. 420/- per kg to Rs. 98,700/-. The appellant claims to have supplied the said 235 kgs of Vita Raaz Powder and raised an invoice dated September 16, 2015 upon the respondent no.4, the Director of the Directorate of Agriculture. Further, in October 2015 the department of Directorate of Agriculture issued another notice, inviting offers from eligible suppliers to supply vegetable seeds to the department. The appellant firm submitted an offer for supplying vegetable seeds to the Directorate of Agriculture. By a communication dated November 19, 2015 the Directorate of Agriculture, accepted the offer of the appellant firm and directed it to supply various types of vegetable seeds. The terms and conditions under which the appellant firm was required to supply the said vegetable seeds are recorded in the communication dated November 19, 2015. As a condition for supplying the said various types of vegetable seeds in terms of the said letter dated November 23, 2015 the appellant furnished a performance guaranteed of Rs. 51,540/- in favour of the respondent no.4 which was valid for September 11, 2016.

On December 30, 2015 the appellant firm raised an invoice upon the respondent no.4 on account of supply of various agricultural seeds to the respondent no.4 for Rs. 10,30,790/-. According to the appellant firm, it had successfully supplied various types of agriculture seeds and bio-pesticides to the respondent no. 4 and from April 27, 2016 made repeated requests to the respondent no. 4 for payment of the price of the said agriculture seeds and bio-pesticides amounting to Rs. 11,81,030/- as mentioned in the said two invoices dated 16.09.2015 and 30.12.2015. Since the respondent no. 4 did not make any payment on or about December 04, 2018 the appellant filed the writ petition before a learned Single Judge of this Court praying for writ of mandamus directing respondent authorities to release the sum of Rs. 11,81,030/-. The respondents were granted an opportunity to file their affidavit-in-opposition to the said writ petition but the respondents, filed their affidavit-in-opposition beyond the stipulated time upon service on the present appellant. On July 16, 2019 when the writ petition was taken up for hearing by learned Single Judge, the respondents were not allowed to rely on their affidavit-in-opposition.

After considering the arguments advanced on behalf of the present appellant and the respondents the learned Single Judge held that ordinarily, the writ court is not seen to be a debt- collecting court, particularly in respect of bills raised by contractors upon executing contracts awarded by the State or authorities within the meaning of Article 12 of the Constitution. However, there is no impediment to the writ court being approached in a case where the writ petitioner is able to demonstrate that there is no dispute as to the quantum of work done or when the writ petitioner can demonstrate that despite the admission on the part of the respondent authorities, the money due to the writ petitioner had been withheld on some arbitrary or extraneous consideration. The leaned Single Judge further held that ordinarily, and notwithstanding the judgment in ABL International Ltd vs. Export Credit Guarantee Corporation of India Ltd [(2004) 3 SCC 553], matters are decided in writ determination on affidavit evidence, disputed questions of fact are scarcely gone into since such disputed questions may not be amenable to an appropriate decision merely on affidavit evidence.

The Learned Single Judge further held as follows:-

"When a contractor claims that bills have been submitted but the bills remain unpaid, the necessary assessment would involve issues as to whether the bills have been raised in accordance with the rates provided in the contract, whether the supplies have been made or the services rendered in accordance with the standards contracted for and whether all the other criteria have been met by the writ petitioner to entitle the writ petitioner to payment. In the everyday case, the Court may not be able to appropriately assess such matters in this jurisdiction. However, to repeat, when there is no doubt that a certain amount is due or there is an admission of an amount to be due and the respondent authorities do not make the payment of such admitted amount, this jurisdiction can be invoked for realisation of the payment. Indeed, in appropriate cases, this jurisdiction has also been invoked for claims in damages.

Since it is not clear from the best arguable case of the petitioner as evident from its petition that the petitioner is indisputably entitled to the money that is claimed herein, the claim of the petitioner is relegated to a suit. It is made clear that the observations herein are only for the purpose of assessment of this petition and nothing herein should prejudice either party in the event a suit is instituted by the writ petitioner in pursuance of the claim."

As mentioned earlier, it is the said order dated July 16, 2019 which has been assailed by the appellant in this appeal. In the appeal, the appellant has filed an informal paper-book disclosing the copy of the writ petition together with all annexures thereto as well as a copy of the affidavit-in-opposition which was served upon it by the respondents. After admission of the present appeal by order dated August 19, 2019 the Division Bench directed the respondents/ A & N Administration to deposit Rs. 9,89,530/- with the Registrar of the Circuit Bench at Port Blair within a period of fortnight from date. The said sum shall be kept in a fixed deposit in a nationalized bank for short term durations to be renewed from time to time. The Division Bench stayed the impugned order dated July 16, 2019 until further orders.

Today when the appeal is taken up for hearing, learned counsel appearing for the appellant strenuously contended that even in their affidavit-in-opposition the respondents did not dispute that the appellant had supplied the required quantity of agriculture seeds and bio-pesticides or receipt of any of the said two invoices dated September 16, 2015 and December 30, 2015. The only ground which has been urged by the respondent in their said affidavit-in-opposition is that there was some procedural irregularity in issuance of the said purchase orders in favour of the appellant, in violation of the General Financial Rules of the respondent no.4. It was submitted that when the respondents have not disputed either supply of the said agriculture seeds and bio-pesticides or the receipt of the said invoices dated September 16, 2015 and December 30, 2015 respondents have not been able to raise any bona fide dispute to the claim of the petitioner for payment of the said sum of Rs.98, 700/- and Rs. 10, 30, 790/-, respectively.

Learned counsel appearing for the appellant relied on an unreported decision of the Supreme Court dated March 8, 2019 passed in Civil Appeal No. 2610 of 2019 (M/s Surya Construction vs. State of Utter Pradesh and others). According to the appellant in the said decision M/s Surya Construction vs. State of Utter Pradesh and others (supra), the Supreme Court followed the earlier decision in the case of ABL International Ltd vs. Export Credit Guarantee Corporation of India Ltd (supra) and reiterated the power of the Writ Court to issue a writ of mandamus for payment of money when the claim of the appellant is a admitted claim. It was strongly contended that in the present case the learned Single Judge fell into an error in law in dismissing the writ petition. Learned counsel for the appellant pressed for setting aside of the impugned order passed by the learned Single Judge and issuance of a direction upon the respondent no.4 to pay the said sum of Rs.11,81,030/-

Per contra, learned counsel appearing for the respondents i.e. the Andaman and Nicobar Administration and the Director, Directorate of Agriculture at the very outset submitted that a proprietorship firm has no legal entity and, as such, neither the writ petition was nor the present appeal is maintainable. On the said ground alone the respondents prayed for dismissal of the appeal. It was further submitted, in any event, the impugned order passed by the learned Single Judge suffers from no infirmity of law which can be interfered by this Court in appeal. He referred to various paragraphs of the affidavit-in-opposition affirmed by the Assistant Director (Admin) of the Directorate of Agriculture and submitted that since issuance of the purchase order upon the appellant firm was in violation of the provision of GFR 144 and the relevant file of the appellant firm were referred to the Vigilance Department. The Vigilance Department in their finding has stated that officials who moved the proposal for procurement of different verities of vegetables seeds in the department, as also those who processed the proposal till the stage of placing the supply order and receipt of the different varieties of vegetable seeds may have to share the responsibilities for the lapses and irregularities in issuance of such purchased orders. It was contended that in the case of Surya Construction (Supra) there was a clear admission by the Uttar Pradesh Jal Nigam that payment of the said sum of Rs. 113.29 lakhs would be paid to the contractor writ petitioner after availability of money from the Government. According to the respondents, in view of the said clear and an unambiguous admission of the liability of the Uttar Pradesh Jal Nigam to pay the said sum of Rs. 113.29 lakhs to the contractor, the Supreme Court upheld the maintainability of the writ petition at the instance of the contractor and directed payment of the said amount by the Uttar Pradesh Jal Nigam. It was strenuously argued that in the present case the appellant firm has not been able to show any admission of any liability by any of the respondents to pay the amount claimed by the appellant firm. It was further pointed out that in any event, the writ petition was filed on December 4, 2018 and the first invoice of the appellant is dated September 16, 2015 and as such the claim of the appellant on basis of said invoice is barred by laws of limitation. Urging all these facts the learned counsel for the respondents prayed for dismissal of the appeal.

In the appeal, today an application has been filed by the appellant, being CAN No. 122 of 2019 for permitting it and to treat the affidavit-in-opposition affirmed by the Assistant Director (Admn.) as disclosed in the paper book as part of records of the present appeal. By consent of the parties the said application, CAN No. 122 of 2019 is treated as on day's list and is taken up for hearing. Since the appellant has already disclosed a copy of the said affidavit-in-opposition in the paper book, we treat the said affidavit affirmed by the Assistant Director (Admn.) as part of the appeal record. Accordingly, the application , CAN No. 122 of 2019 stands allowed.

We have considered the facts of the case as well as the materials on record. In the present case, at the very outset, we find that the writ petition as well as the present appeal has been filed by the proprietorship firm which has no legal entity and the proprietorship firm cannot enjoy any constitutional right. Therefore, we find strong force in the contention raised by the respondents to the maintainability of the writ petition, as well as the present appeal at the instance of the proprietorship firm.

Further, in any event, the affidavit affirmed by the Assistant Director (Admn.) on behalf of the respondents which is relied upon by the appellant firm in this appeal does not contain any admission of any liability to pay the amount claimed by the appellant firm. Not only the claim raised by the appellant firm on the basis of the first invoice dated September 16, 2015 is barred by the limitation. Even in the affidavit-in-opposition the respondents have specifically mentioned about the objection raised by the Vigilance Department with regard to the issuance of the purchase orders to the appellant. This is evident from the statements made by the respondents in sub-paragraphs (i), (m), (n), (o) and (r) of paragraph 3 of the said affidavit. In view of the allegations made by the respondents in their affidavit in opposition the adjudication of the claim in this case cannot be decided on affidavits only. It is to be noted that the appellant has not disputed the allegations made by the respondents in their affidavit-in-opposition.

So far as the decision in the case of M/s Surya Construction (supra), we find that the decision of the Supreme Court directing Uttar Pradesh Jal Nigam to pay dues of the contractor in a writ petition is based on the following representation made by Uttar Pradesh Jal Nigam :-

"Due to aforesaid facts and description it is clear that Rs. 113.29 lacs has to be released by Government/Mela Administration against the Budge presented by U.P. Jal Nigam, Magh Mela 2008-09. There is no money available under account of Magh Mela 2008-09 of U.P. Jal Nigam. And could not obtained the rest of amount from the Mela Administration/ Government. Therefore, payment regarding M.s. Surya Construction, 323/3, Alopibagh, Allahabad will be paid after availability of the money from the Government."

With above representations, Uttar Pradesh Jal Nigam expressly admitted its liability to pay the dues of the writ petitioner contractor, and as such, in the said case the claim of the writ petitioner contractor did not require any further adjudication. However, in the facts of the present case after going through the affidavit of the respondents we do not find any admission of liability to pay the dues of the appellant firm.

For the reasons as aforesaid, we do not find any reason to interfere with the impugned order passed by the learned Single Judge.

For all the reasons as aforesaid, the appeal, MA No. 025 of 2019 stands dismissed. All interim orders passed in the appeal stands vacated.

There shall, however, be no order as to costs.

