

(2018) 12 CAL CK 0039

In the Calcutta High Court

Case No : General Application No. 510 Of 2018, Appeal From Order No. 63 Of 2018, Writ Petition No. 669 Of 2015

Sarvopari Impex Pvt. Ltd

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11
Constitution of India 1950 — Article 226

Citation : (2018) 12 CAL CK 0039

Hon'ble Judges : Debasish Kar Gupta, CJ;Shampa Sarkar, J

Bench : Division Bench

Advocate : P. Chatterjee, S. Banerjee

Final Decision : Dismissed

Judgement

The Court : This is an application arising out of an appeal preferred against the judgment and order dated January 10, 2018 passed in W.P. No.669 of 2015. By the said order impugned, the writ petition was dismissed with costs assessed at Rs.20000/-.

The learned Advocate on Record appearing on behalf of the appellant/petitioner once again prays for adjournment today. On the last occasion also, i.e. November 27, 2018, the learned Advocate on Record had prayed for an accommodation and he was given one last chance on that day. Today, when the matter is called on a similar prayer is made. It appears to us that the appellant is avoiding hearing of this appeal and the application. So the prayer for adjournment is rejected.

The learned Advocate appearing on behalf of the respondents submits that the writ petition itself was not maintainable inasmuch as the appellant had sought a writ in the nature of Mandamus against a private insurance company and the said company was not amenable to the writ jurisdiction under Article 226 of the Constitution of India. The learned Trial Judge, we find from the order impugned, also dismissed the writ petition on the said ground. We also find that the

appellant had already been paid a sum of Rs.9,64,78,868/- on January 25, 2011 which was the sum agreed to between the appellant and the insurance company. This point has not been denied by the learned Advocate on Record appearing on behalf of the appellant.

After two years from having received the aforesaid payment without any protest, the appellant invoked the arbitration clause. Thereafter it filed an application under section 11 of the Arbitration and Conciliation Act, 1996 before this Court which was dismissed. Once again, the appellant filed another application under section 11 of the 1996 Act which was also dismissed. In the meantime, the appellant was pursuing the writ proceeding before this Court suppressing the fact that it had already invoked the arbitration clause contained in the subject agreement.

From the order impugned, we find that the learned Trial Judge, upon considering the facts and circumstances of the case, had made the following observations:

"Obligation to adhere to statute by itself will not make a private authority discharge public function if it is otherwise not doing so. If the logic is to be accepted, then every company incorporated under the provisions of the Indian Companies Act, 1913 or the Companies Act, 1956 or the Companies Act, 2013 would, therefore, have a public law element involved as it is required to adhere to various statutory obligations under the provisions of the statute. A company carrying on the share broking business would also then become amenable to the writ jurisdiction, ipso facto, as it has to adhere to the regulations issued by the Securities and Exchange Board of India (SEBI). It is this misadventure that Binny Ltd. (supra) and Sagar Thomas & Ors. (supra) caution High Courts against."

As a consequence of the aforesaid, the writ petition was dismissed with costs of Rs.20000/- with certain directions.

Having considered the findings of the learned Single Judge and after going through the facts and circumstances of the case, we find that not only was the writ petition not maintainable but further the appellant had suppressed all the material facts in that having availed an alternative remedy prescribed under the law, it had moved the writ Court with unclean hands. We do not find any reason to stay the operation of the order impugned. Moreover, under the facts and circumstances of the case, we do not find any error or infirmity in the order impugned.

As nothing remains to be heard in the appeal, after treating the same on days's list, is dismissed along with the application.