



**IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI**

**HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE**

**&**

**HON'BLE MR. JUSTICE C. PRAVEEN KUMAR**

**WRIT APPEAL No.65 of 2021**

*(Taken up through video conferencing)*

Container Corporation of India,  
CONCOR Bhavan, C-3, Mathura road,  
New Delhi -110076 and another.

.. Appellants.

Versus

Devi Engineering & Construction Private Limited,  
A company incorporated under the provisions of  
the Companies Act, 1956, having its registered office  
at Plot No.20, Flat G1, JVY Grand Ground Floor,  
Narasanna Nagar, Suryarao Peta, Kakinada-534004  
and another.

..Respondents.

Counsel for the Appellants : Mr. J. Prabhakar

Counsel for respondent No.1 : Mr. Naumene Suraparaj Karlapalem

**ORAL JUDGMENT**

**Dt: 17.02.2021**

per Arup Kumar Goswami, CJ

Heard Mr. J. Prabhakar, learned Counsel for the appellants. Also heard Mr. Naumene Suraparaj Karlapalem, learned Counsel for respondent/writ petitioner.

2. This writ appeal is directed against the order dated 03.02.2021 passed by learned single Judge in W.P.No.23282 of 2020.



3. The operative portion of the aforesaid order reads as follows:

*"In these circumstances, the present writ petition is dismissed, leaving it open to the petitioner to avail of such remedies, as are available to the petitioner. As far as bank guarantee dated 01.06.2018 drawn on the 3<sup>d</sup> respondent is concerned, there shall be an injunction restraining the respondent Nos.1 and 2 from invoking the said bank guarantee for a period of three (3) weeks. There shall be no order as to costs."*

4. At the outset, it will be relevant to take note of the essential facts for the purpose of disposal of this writ appeal. Appellant No.1 had invited tenders for construction of Ware House, retaining Wall cum Compound Wall, CC Pavement, RCC Kerb Wall, Chain Link Fencing, Approach Road and Bridge, Electrical Sub-Station and Admin Building in connection with development of MMLP at Kakinada, vide notification dated 27.02.2018. It is to be noted that initial estimate of the contract was Rs.32,67,22,247.97. As the writ petitioner had emerged as the lowest bidder, a Letter of Acceptance (LOA) was issued to the writ petitioner. As per the terms of the contract, the contract was to commence on 15.05.2018 and was to be completed in 18 months, and thus, the scheduled date of the completion of the original contract was 14.11.2019. As per Clause 16.4 of the General Conditions of the Contract (GCC), the writ petitioner had submitted a Performance Bank Guarantee for an amount of Rs.1,63,36,113/-. As the execution of the contract was not completed within the stipulated date, extensions were granted from time to time and thereafter, a notice of termination dated 20.11.2020 was issued requiring the writ petitioner to



complete the execution of contract within seven days from the date of the notice, failing which, it was indicated that the contract would be terminated. Thereafter, another termination notice, dated 04.12.2020, was issued directing the writ petitioner to complete the balance works within 48 hours, failing which, it was indicated that the contract shall be rescinded, Security Deposit shall be forfeited and the Performance Bank Guarantee shall be encashed. Being aggrieved, the writ petitioner approached this court by filing the writ petition.

5. By an order dated 07.12.2020, the learned single Judge restrained respondents No.1 and 2 (appellants herein) from invoking the bank guarantee dated 01.06.2018. The said interim order was extended from time to time.

6. Mr. J. Prabhakar, learned Counsel for the appellants, has assailed the order of the learned single Judge only on one count, which is to the effect that once the writ petition was dismissed as not maintainable, the order of injunction granted by the learned single Judge restraining the appellants from invoking the bank guarantee for a period of three weeks, could not have been passed. In support of his submission, the learned Counsel for the appellants relies on a decision of the Constitution Bench of the Hon'ble Supreme Court in the case of ***The State of Orissa v. Madan Gopal Rungta***, reported in ***AIR 1952 SC 12*** and in the case of ***Bharat Coking Coal Limited v. Indian Newspaper Society and others***, reported in ***(2011) 14 SCC 140***.

7. Mr. Naumene Suraparaj Karlapalem, learned Counsel for respondent/writ petitioner, on the other hand, submits that the writ petition



was not dismissed as being not maintainable, but by the order impugned, the writ petitioner was relegated to alternative remedy, and therefore, no objections can be taken to the injunction order passed by the learned single Judge. In support of his submission, he places reliance on the judgment of the Hon'ble Supreme Court in the case of ***Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and others***, reported in ***(2017) 7 SCC 678*** with particular reference to paragraph No.20.

8. We have considered the submissions of the learned Counsel for the parties and perused the material available on record.

9. Perusal of the order of the learned single Judge goes to show that the appellants herein raised preliminary objections as to the maintainability of the writ petition. No categorical finding, however, was given with regard to the question of maintainability raised by the appellants. It was noted in the order under appeal that there are questions of fact into which, the writ Court cannot go into, in as much as such issues require a proper hearing and that apart, it would be necessary to adduce evidence to that effect. It was also observed that there is an adequate remedy to the writ petitioner by way of Clause 17-B of the GCC, which provides for reference of all disputes to arbitration.

10. Learned Counsel for the parties, however, submit that Clause 17-B was wrongly quoted and it ought to have been Clause 63 and 64 of the GCC.



11. In the case of ***Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited*** (supra), the Delhi High Court issued notice on the interim application under Section 9 of the Arbitration and Conciliation Act, 1996, and restrained the appellant before the Hon'ble Supreme Court from transferring, alienating or creating any third party interests in respect of the subject property. The Delhi High Court also confirmed the order of injunction. It was opined by the Delhi High Court that only the Courts of Delhi, Chennai and Amritsar would have jurisdiction to entertain the dispute. The Hon'ble Supreme Court, taking note of the fact that the juridical seat of arbitration is at Mumbai, held that the Mumbai Courts alone have jurisdiction to the exclusion of all other Courts in the country, and in that circumstance, while setting aside the impugned judgment of the Delhi High Court, had directed that the injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of the judgment, so that the respondents may take necessary steps under Section 9 of the Arbitration and Conciliation Act, 1996 in a Mumbai Court.

12. In the case of ***Bharat Coking Coal Limited*** (supra), the Hon'ble Supreme Court observed as follows:

*"We are of the view that since the writ petition itself was not maintainable, no interim order for deposit or payments, etc. could have been made and while dismissing the writ petition as not maintainable, the High Court ought to have restored the parties to their original position."*



13. In the case of ***The State of Orissa v. Madan Gopal Rungta*** (supra), the Hon'ble Supreme Court at paragraph No.6 observed as follows:

*"On behalf of the appellant, it was urged that the Court had no jurisdiction to pass such orders under Article 226, under the circumstances of the case. This is not a case where the Court before finally disposing of a petition under Article 226 gave directions in the nature of interim relief for the purpose of maintaining the status quo. The question which we have to determine is whether directions in the nature of interim relief only could be granted under Article 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a like nature could be issued. In our opinion, Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and in our opinion that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of*



*any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution. In our opinion, the language of Article 226 does not permit such an action. On that short ground, that judgment of the Orissa High Court under appeal cannot be upheld.”*

14. Perusal of the above mentioned paragraph No.6 of the judgment of the Hon’ble Supreme Court would go to show that when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution. In other words, the Hon’ble Supreme Court had decided that when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a like nature could be issued, in the exercise of powers under Article 226 of the Constitution, no interim relief would have been granted.

15. At paragraph No.9 in the order under appeal, the learned single Judge observed as follows:



*"However, since the petitioner is being relegated to an alternative remedy, it would only be appropriate to grant an opportunity to the petitioner to raise such issues, as may be permissible, to protect the interest of the petitioner relating to the invocation of the bank guarantee."*

Having observed so, the learned single Judge passed the order as extracted in paragraph No.3 of this judgment.

16. We are of the considered opinion that that the judgment in the case of ***The State of Orissa v. Madan Gopal Rungta*** (supra) is squarely applicable to the present case. The learned single Judge had not gone into the adjudication of the lis between the parties and had relegated the writ petitioner to avail alternative remedy. In that view of the matter, while dismissing the writ petition, no injunction could have been issued restraining the appellants from invoking the bank guarantee for a period of three weeks.

17. In view of the above discussion, we set aside the order of the learned single Judge to the extent of issuance of injunction restraining the appellants herein from invoking the bank guarantee.

18. Accordingly, the Writ Appeal is allowed to the extent indicated above. No costs. Pending miscellaneous applications, if any, shall stand closed.

**ARUP KUMAR GOSWAMI, CJ**

**C. PRAVEEN KUMAR, J**





**HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE**  
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**Nn**