

Jammu & Kashmir High Court - Srinagar Bench

M/S Venos Furnitures vs Sidcop Through General Manager on 23 December, 2022

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

Reserved on:- 21.12.2022

Pronounced on:- .12.2022

LPA No. 170/2021

CM No. 1777/2022

CM No. 8027/2021

M/S Venos Furnitures

...Petitioner/ Appellant(s)

Through: Mr. Salih Pirzada, Advocate with  
Ms. Sharaf Wani, Advocate

V/s

SIDCOP through General Manager  
and Ors.

...Respondent(s)

Through: Mr. F.A Bhat, AAG & with  
Mr. S.A Naik, Advocate

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.  
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE.

JUDGMENT

.12.2022

1. The appellant is a registered small scale industrial unit. The respondent no. 1 (SICOP) vide communication Nos. SICOP/GMP-K/11-12/356-57 and SICOP/GMP-K/11- 12/358-59 dated 11th May 2012, issued two supply orders in favour of the appellant.

2. First supply order was for providing fixing of wooden frames, shutters for doors/windows for lab Office, Block-B Wing at Main Campus, SKUAST Shalimar and the second supply order was for providing fixing of Deodar wood frames and shutters for doors/windows and conference table set for administrative/ lecture hall Block, at Faculty of Fisheries Rangil SKUAST-K.

3. The appellant made the supplies to respondent no. 1 in terms of first supply order and accordingly received the payment of Rs. 52,57,151/- as was due to him. However, in respect of second supply order, the appellant claims that he had executed the works at his place but the supply items could not be delivered to respondent no. 1 due to inability of respondent no.2 to provide requisite space for dumping the material. The appellant claims that the works executed by him and the material manufactured was not lifted by the respondent no. 1 and in the meanwhile there were

unprecedented floods in the year 2014 in the Kashmir Valley. The entire material prepared by the appellant for making supplies in terms of the second supply order got submerged and extensively damaged in floods. The appellant places reliance upon a police report dated 28.07.2015.

4. Since the appellant could not deliver the goods as per second supply order and, as such, no payment was released in his favour. The appellant having suffered loss because of breach of contract on the part of respondent no.1 filed OWP No. 792/2016, which came up for consideration before learned Single Judge of this Court ["writ Court"].

5. The writ court after taking note of the case set-up by the appellant and the response filed thereto by the respondent nos. 1 & 2 came to the conclusion that the writ petition involved complicated disputed questions of fact which required evidence for determination. Replying upon the judgement of Hon'ble Supreme Court in case of State of U.P. and Ors. Vs. Bridge Roof Company (India) Limited (1996) 6 SCC 2022, the writ court dismissed the petition vide its judgment dated 24.09.2021. It is this judgment of the writ court, which the petitioner is aggrieved of and is before us in this intra court appeal.

6. Mr. Salih Pirzada, learned counsel appearing for the appellant submits that the writ court has failed to appreciate that a constitutional court exercising the powers of judicial review under Article 226 of the Constitution of India is well within its powers to resolve, even the disputed questions of fact. He argues that in the instant case one of the parties to the contract was instrumentally of State and was therefore, expected to act in a just, fair and transparent manner.

7. He further argues that in compliance to the second supply order, the appellant had prepared all the material and items to be supplied to respondent no. 1 and it was because of inability of respondent nos. 1 & 2 to make available the requisite space to stock these items, the manufactured goods/ material was not lifted in time, and in the meanwhile, by intervention of the nature, the entire material prepared by the appellant after investing huge sum got damaged in the devastating floods of 2014. He, therefore, submits that it was clear case of breach of contract by the respondent no. 1, and, therefore, the appellant was entitled to be compensated by payment of amount, which the appellant was entitled to receive had he been permitted to make the supplies in terms of second supply order.

8. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the writ court is perfectly valid and does not suffer from any legal infirmity. The appeal filed by the appellant does raise complicated disputed questions of fact which require oral as well as documentary evidence for their determination.

9. From reading of the response filed by the respondent no. 1 before the writ court, it clearly transpires that the respondent no. 1 has in fact denied that the appellant had executed any work at site as per the second supply order. The respondent no. 1 has also disputed the fact that the appellant after manufacturing the items of supply had ever intimated it for lifting the same. The reply of respondent no. 1 in paragraph 8,9 and 10 of the objections is clear and emphatic in this regard. Whether the appellant had manufactured the goods in compliance to the second supply

order; Whether the items, if any, manufactured by the appellant were as per the specifications contained in the second supply order; Whether the items claimed to have been manufactured by the appellant were of the required standard; Whether the items claimed to be so manufactured by the appellant suffered any damage due to the floods; Whether there was any left out damaged material or salvage available at site; Whether at any point of time, after the goods were ready with the appellant, the appellant had made a request to the respondent no. 1 to pick up the material; and, Whether there was reluctance on the part of respondent no.1 to receive the goods claimed to have been manufactured in compliance with the second supply order, are all the questions which are complicated disputed questions of fact and would require documentary as well as oral evidence for their determination.

10. Such disputed questions of fact, as is rightly observed by the writ court, cannot be gone into by the writ court while exercising the power of judicial review vested in it by Article 226 of the Constitution of India. We are aware that judicial review is not completely debarred in all the cases which required their adjudication by determining some disputed question of fact. If the disputed question of fact involved for determination in the writ petition is such as can be resolved or decided on the basis of documentary evidence on record, or by requisitioning additional documentary evidence from the parties, the writ court may not relegate the petitioner to the remedy of civil suit. However, where the facts are complicated and require full-fledged trial for their determination, the writ petition under article 226 of the Constitution is not the appropriate remedy to be availed of. Legal position on the subject as is pretty settled, and, therefore, needs no reiteration.

11. We are in full agreement with the writ court that having regard to the complicated disputed questions of fact involved in the writ petition, the appellant needs to be relegated to the remedy of civil suit. This appeal is, therefore, found without any merit and is accordingly dismissed.

(MOKSHA KHAJURIA KAZMI)

JUDGE

(SANJEEV KUMAR)

JUDGE

SRINAGAR

. 12 . 2022

"Nuzhat"