

STATE OF BIHAR AND ORS.
v.
JAIN PLASTICS AND CHEMICALS LTD.

NOVEMBER 21, 2001

[M.B. SHAH AND B.N. AGRAWAL, JJ.]

Constitution of India, 1950—Article 226—Contract—Breach of—Writ petition for enforcing a contractual obligation—Held, writ is not the proper proceeding for adjudicating contractual obligations—Proper remedy is adjudication of dispute on the basis of evidence by filing a civil suit.

Appellants and respondent-company entered into a contract for supply of PVC pipes and fittings, There was certain delay on the part of the respondent-company to supply the fittings. Consequently, appellants terminated the contract and purchased the fittings at a higher price. Thereafter, while making the final payment to the respondent, the appellants deducted the extra money incurred by them for purchase of the fittings. Respondent-company filed a writ petition challenging the deduction contending that the non-supply of materials was due to failure or refusal on the part of the appellants to supply the road permits and thus, they cannot be faulted for such a non-supply. Appellants raised an objection that the respondent committed breach of contract and the court should not exercise its jurisdiction in such cases. Single Judge of High Court rejected the objection observing that there was no difficulty to decide the dispute on the basis of affidavit without any evidence of a civil suit. Thus, High Court allowed the writ petition. Appellants' Letters Patent Appeal was also dismissed by High Court. Hence the present appeal.

The issue involved in the present appeal was whether High Court should exercise its jurisdiction under Article 226 of the Constitution for granting relief in case of alleged breach of contract.

Allowing the appeal, the Court

HELD : 1.1. Writ petition under Article 226 is not the proper proceeding for adjudicating contractual obligations. Under the law, it was open to the respondent to approach the court of competent jurisdiction for appropriate relief for breach of contract. When an alternative and equally

A efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the Court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226. [314-H; 315-A-B]

B 2.1. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract.[316-C]

C 2.2. In the instant case, the question whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs. Thus, the order passed by the High Court in exercise of its jurisdiction under Article 226 of the Constitution is on the face of it illegal and erroneous. [316-C-E]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7932 of 2001.

From the Judgment and Order dated 11.1.2001 of the Patna High Court in L.P.A. No. 945 of 2000.

Kumar Rajesh Singh and B.B. Singh for the Appellant.

F Shri Narain, Sandeep Narain and Ms. Anjali for M/s. S. Narain & Co. for the Respondent.

The Judgment of the Court was delivered by

SHAH, J. Leave granted.

G Limited question involved in this appeal is—whether the High Court ought not to have exercised its jurisdiction under Article 226 of the Constitution of India for granting relief in case of alleged breach of contract.

H Settled law—writ is not the remedy for enforcing contractual obligations. It is to be reiterated that writ petition under Article 226 is not the proper

proceeding for adjudicating such disputes. Under the law, it was open to the respondent to approach the Court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the Court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226. A B

Despite the settled law, respondent filed CWJC No.3968 of 1997 before the High Court of Patna challenging the decision taken by the appellants to deduct a sum of Rs.15.24 lacs for the loss suffered, from the bills of respondent-Company while making the full and final payment. That writ petition was allowed despite the objection raised by the appellants that respondent committed breach of contract and the Court should not exercise its writ jurisdiction in such cases. L.P.A. No.945 of 2000 was also dismissed by the High Court by its judgment and order dated 11.1.2001. Hence this appeal. C D

The short facts are that the tender of respondent-Company having its registered office at Jalgaon, Maharashtra for supply of PVC Pipes and fittings at Patna and Hazipur was accepted and an agreement was executed on 22.2.1994. Estimated value for supplies was Rs.5,81,92,584.84 p. and Rs.7,37,27,421.96 p. at Patna and Hazipur respectively. As per the say of the appellants, respondent-Company delayed the supplies. By letter dated 2.4.1994, supply of PVC pipes and fittings was suspended in respect of certain fittings. However, for immediate use, some pipes were ordered to be supplied. On record, it appears that parties exchanged correspondence for a long period. It was contended by the respondent - Company that the authorities have wrongfully refused to return requisite road permits and other relevant papers and, therefore, it could not supply the PVC fittings within stipulated time. Finally, appellants terminated the contract on 10.12.1996 and purchased the fittings at a higher price. Thereafter, while paying the final bill to the respondent, the difference of amount which was required to be incurred by the appellants was deducted. E F

Respondent preferred the writ petition before the High Court. The learned Single Judge arrived at the conclusion that the respondent company was unable to supply the PVC fittings on account of failure or the refusal on the part of the appellants to supply the road permits and that the company cannot be faulted for non supply of PVC fittings. Hence, the appellants cannot realise or deduct the extra money which they had to spend over purchase of the same. G H

- A With regard to the adjudication of tangled question of facts in writ jurisdiction, the learned Single Judge observed: "This Court has not in the present case felt any difficulty in deciding the question of facts on the basis of affidavit evidence, and I have not felt the necessity of evidence of a civil suit in deciding the question of facts which is needed for disposal of the present writ petition".
- B Finally, the learned Judge directed the appellants to make the due amount of respondent - company with interest at the rate of 6%, within six months. The aforesaid order was confirmed in LPA.

- C In our view, it is apparent that the order passed by the High Court is on the face of it illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed
- D questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a Court exercising prerogative of issuing writs.

- E In the result, the appeal is allowed and the impugned order passed by the High Court is set aside. There will be no order as to costs. It would be open to the respondent to have recourse to other appropriate remedy.

S.V.K.

Appeal allowed.