

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY

PRESENT

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY**

WRIT APPEAL NO: 776 OF 2019

Writ Appeal under Clause 15 of the Letters Patent appeal preferred against order dated 17-06-2019 passed in W.P.No.40369 of 2017 on the file of the High Court.

Between:

1. Telangana State Christian (Minorities) Finance Corporation, Hyderabad, Rep. by the Managing Director At Flat No.104, Mughal Emami Mansion, Opp. Shadan College, Khairatabad, Hyderabad-04.
2. State of Telangana, Rep. by Principal Secretary, Department of Social Welfare, Secretariat, Hyderabad.

(Res.No.2 is not necessary party)

...Appellants/Respondents

AND

M/s. Raj Expedith Associates, Rep. by Raj Expedith, Plot No.78, Text Book Colony, Cantonment, Secunderabad - 500 009.

...Respondent/Respondent

IA NO: 2 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the orders passed by the Learned Single Judge in W.P.No.40369/2017, dated 17.06.2019.

**Counsel for the Appellants: SRI C. VENKAT YADAV
GP FOR SOCIAL WELFARE**

Counsel for the Respondent: SRI M. JAYARAM REDDY

The Court delivered the following: JUDGMENT

JUDGMENT: (For Hon'ble Mr. Justice B. Vijayen Reddy)

Challenging the order 17.06.2019, passed by the learned Single Judge in W.P. No.40369 of 2017, the Telangana State Christian (Minorities) Finance Corporation, has filed the present appeal before this Court. By the impugned order, the learned Single Judge allowed the writ petition filed by the respondent herein.

2. Heard Mr. C. Venkat Yadav, the learned Government Pleader for Social Welfare, appearing for the appellant and Mr. V. Ravinder Rao, learned Senior Counsel representing Mr. M. Jayaram Reddy, counsel for the respondent.

3. The appellant was the respondent No.2, and the respondent herein was the petitioner respectively, in W.P. No.40369 of 2017. But for the purpose of convenience, the parties hereinafter will be referred to as they were arrayed in the writ petition.

4. M/s. Raj Expedith Associates, respondent No.1, entrusted the task of construction of building known as 'Christian Bhavan' for the benefit of Christian minority people, in an extent of Acs.2.00 of land in Survey No.844/1 at Malkajgiri village of Maredpally Mandal, Hyderabad District, to the respondent No.2 (the appellant before this Court). In turn, respondent No.2 approached the petitioner for rendering professional advice and service as architect for construction of said building. It is stated that the petitioner has experience and specialization in architecture, structural and traffic management expertise. After having a detailed discussion about the nature of the building, its purpose and the amenities/facilities to be provided therein, the petitioner made suggestions to the respondent No.2 about the structures, layout etc. On being satisfied about the concept,

approach putforth by the petitioner, after due deliberation about the professional remuneration to be paid in accordance with the schedule prescribed by the Council of Architecture, a body incorporated under the Architects Act, 1972, on 12.08.2015 the petitioner and the respondent No.2 entered into an agreement. The agreement prescribed the scope of work, the schedule of services, the professional fee, the mode of payment, and the role and responsibilities of the employer (respondent No.2) and Architect (petitioner). Clause 6 of the agreement provided for staggered payment of part fee at different stages of the project.

5. Based on the extent of area available, nature of building, amenities to be provided and its location, the petitioner prepared two preliminary conceptual designs, and preliminary estimates, based on the plinth area rates adopted by CPWD. But pursuant to further discussion, the estimates were later revised. After considering both the conceptual designs, the respondents accepted one of them i.e. described as design-II. By letter dated 12.08.2015, the respondent No.2 informed that the respondent No.1 approved the proposed design-II for the project with certain modifications. On 04.08.2015, the petitioner raised a bill for a sum of Rs.28,12,302/-; the same was accepted by the respondent No.2. Accordingly, part payment of first installment of Rs.6,75,600/- out of Rs.28,12,302/- was released to the petitioner.

6. According to the petitioner, since the proposed site, in Sy.No.844/1 of Malkajgiri Village, Maredbally Mandal, is located within the Air Funnel i.e. flight path of aircrafts landing and taking off from Begumpet Airport, the building to be constructed required clearance from the Airport Authority of India. However, it appears that clearance sought for by the 2nd respondent from the Airport Authority

of India could not be secured for strategic and technical reasons. Hence, the project could not be continued in Sy.No.844/1; the site was abandoned.

7. Subsequently, the respondents finalized another site, namely, in Sy.No.124/1/2 of Yaprak village, Alwal Mandal admeasuring Acs.2.00. By letter dated 25.03.2017, the petitioner was requested to conduct survey, prepare a conceptual design, working drawing, and tender document etc., for the new site. In response to the said letter, the petitioner informed the 2nd respondent that survey of the land cannot be done within the scope of the architectural service and informed the same can be procured from the appropriate agency. By letter dated 13.04.2017, the petitioner, while explaining all previous services rendered and amount due and payable, informed the 2nd respondent that in view of change in the location of project, entire concept of design has to be changed and to be worked again from the scratch, after the survey of the site, by taking location and dimensions of the site into consideration.

8. In the meeting held on 09.05.2017, it was agreed that a fresh agreement for a new site has to be entered into since the entire work already undertaken for the previous site was rendered useless. It was also explained to the respondents about the necessity to undertake work afresh by taking into consideration the location of the site and its dimensions and other parameters. In the said meeting, the respondents were also requested to pay the balance amount of Rs.21,46,970/- for services already rendered by the petitioner. However, the respondent No.2 sent a letter, dated 09.05.2017, totally distorting the discussion and conclusion reached in the meeting held on 09.05.2017. Being surprised about the distorted version received from the respondent No.2, the petitioner sent a detailed reply dated

18.05.2017. In the said letter, the petitioner explained the correct factual situation of what has transpired in the meeting held on 09.05.2017. However, the respondent No.2 did not reply. In fact, after the letter dated 18.05.2017, there was no correspondence between the petitioner and the respondent No.2.

9. W.P. No.40369 of 2017 was filed seeking to declare the failure of the respondents to pay the outstanding undisputed amount of Rs.22,02,979/- arising out of the bill dated 04.08.2015 (revised on 05.07.2017) in terms of agreement dated 12.08.2015 as illegal and arbitrary and consequently direct the respondents to forthwith pay the amount due.

10. According to the petitioner, merely due to change in the site plan, the respondent is not absolved of its responsibility to pay the petitioner for the professional service rendered by the petitioner. Although, the petitioner repeatedly requested the respondents to pay the outstanding amounts but to no avail. Only once, the respondent No.1 by letter dated 01.06.2017 requested the respondent No.2 to examine the claim of the petitioner and take necessary action. But even the said request fell on deaf ears. Hence, the petitioner approached the High Court for a direction to pay the outstanding undisputed amounts of Rs.22,02,979/- inclusive of goods and services tax.

11. In its counter affidavit, the respondent No.2 has raised a preliminary objection as to the maintainability of the writ petition. The writ petition relates to a monetary claim, pursuant to the written agreement, thus requires evidence, both oral and documentary. In view of the serious disputes of facts and law, the recourse to

extraordinary jurisdiction under Article 226 of the Constitution of India is not proper. Hence, the writ is liable to be rejected.

12. In its counter affidavit, the respondent No.2 admitted that the petitioner was appointed as an Architect for rendering various services for construction of Christian Bhavan in the site allotted to it by the Government. It is also admitted that the agreement dated 12.08.2015 was made between the petitioner and the respondent. It is also pleaded that the construction of Christian Bhavan was not taken up due to stay orders passed by the Hon'ble High Court in W.P.No.27918 of 2014, and W.P. No.40593 of 2014. Such stay was granted in connection with a land dispute and a detailed counter and stay vacate petition was filed by the Tahsildar, Maredpally of Hyderabad district and Tahsildar of Malkajgiri R.R. District. And the said writ petitions are pending.

13. It is further claimed that there is an arbitration clause in the agreement contained in clause 13. It is further reiterated by the 2nd respondent that in view of the title dispute, and on account of interim orders passed by the High Court in W.P. No.27918 of 2014 and W.P. No.40593 of 2014, the petitioner agreed to receive an amount of only Rs.6,75,600/- as part of first installment. Thus, the petitioner is estopped from claiming Rs.28,12,302/-. In para 8 of the counter affidavit, the respondent No.2 referred to scope of the work to be performed by the petitioner, and claimed that each and every stage of construction, as regards the services of the petitioner, is connected to the other services. It is also submitted by the respondent No.2 that the very project became frustrated by reason of title dispute raised by the third party. The Government has made alternate arrangement in allotting the land for construction of Christian Bhavan at Yapral. The petitioner is fully aware of the impediments faced by the

Government. In the meeting held on 06.05.2017, the petitioner has orally agreed for rendering services for construction of Christian Bhavan at the alternate site. But although he had agreed for the same, the petitioner is now denying oral promise, and is litigating for oblique reasons. There is no concluded contract, and the proposals of the Government for construction of Christian Bhavan remains standstill on account of unforeseen title dispute raised against the Government. Thus, the petitioner cannot claim amount under an agreement in piece-meal, which is integrally connected to other numerous jobs under the agreement, which cannot be enforced for the various reasons stated in the counter affidavit.

14. Reply affidavit was filed by the petitioner denying the adverse averments in the counter affidavit.

15. The learned Single Judge having appreciated the rival contentions of the petitioner and the respondent No.2, recorded a finding that there is no dispute with regard to the parties entering into agreement dated 12.08.2015 whereunder the petitioner agreed to render architectural services for the construction of Christian Bhavan at Sy.No.844/1 of Malkajgiri Village, Marredpally Mandal. Vide proceedings dated 12.08.2015, the petitioner was paid Rs.6,75,600/- towards first installment out of office invoice amount of Rs.28,12,302/- raised by the petitioner. The learned Single Judge also held that there is no dispute that the petitioner has completed the work regarding the Stage-I, and the fee payable on completed work as per agreement 6.1 is 30% of 5%. It was also observed that since the petitioner has completed the Stage-I work, the respondents have determined the fees of the petitioner and paid an amount of Rs.6,75,600/-, vide proceedings dated 12.08.2015. In the said

proceedings, it is also stated that the said payment is the first installment out of total payment of Rs.28,12,302/-.

16. The contention of the respondents that there is no concluded contract has been rejected by the learned Single Judge. According to the learned Single Judge, the same cannot be accepted for the reason the respondent No.2 has made part payment of the fees amount. Moreover, the respondents have categorically admitted in their counter affidavit that Stage-I work was completed; they have also made part payment. These facts prove that there is no dispute with regard to completion of the Stage-I work. Hence, the petitioner need not resort to arbitral proceedings.

17. The learned Single Judge referred to **ABL INTERNATIONAL LIMITED AND ANOTHER Vs. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LIMITED AND OTHERS** ((2004) 3 SCC 553), **STATE OF KERALA AND OTHERS Vs. M.K. JOSE** ((2015) 9 SCC 433) and **HARBANSLAL SAHNIA Vs. INDIAN OIL CORPORATION LIMITED** ((2003) 2 SCC 107) in order to buttress his reasoning.

18. The principle of law laid down in the said three judgments of the Hon'ble Supreme Court is that existence of alternative remedy does not preclude exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. In **Harbanslal** (3 supra), the Hon'ble Supreme Court held that existence of arbitration clause does not exclude the jurisdiction of the High Court. The Hon'ble Apex Court held as under:-

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be

dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

19. In the instant appeal, the main grounds urged by the learned Government Pleader are that the petitioner agreed to receive Rs.6,75,600/- as part of first installment. Therefore, he is estopped from claiming Rs.28,12,302/-. The petitioner orally agreed to render services for planning and designing of the Christian Bhavan in the meeting held on 06.05.2017. There is no concluded contract. The proposal of construction of Christian Bhavan remains standstill on account of title dispute. There is an arbitration clause in the agreement and in case of any dispute, difference of question arising out of or touching upon concerning of the execution of the work, the case shall be referred to arbitration by Council of for Architecture and shall be conducted as per the provisions of the Arbitration and Conciliation Act, 1996; the decision of such Arbitrator shall be final and binding on the parties. In view of clauses 12 and 13 of the agreement,

the petitioner has alternative remedy by way of Arbitration and therefore, the writ petition was not maintainable.

20. The submissions of the learned Government Pleader do not convince this Court so as to differ with the opinion of the learned Single Judge. There is no dispute with regard to the entering into agreement dated 12.08.2015. And project site being abandoned by the respondents due to some legal complications. Towards the bill amount of Rs.28,12,302/- raised by the petitioner, part payment of Rs.6,75,600/- was released. The bill amount represents 5% of the 30% value of the total project. It is nobody's case that the petitioner is in any way responsible for the abandonment of first site allotted by the Government at Malkajgiri.

21. There is no confusion with regard to the respondent No.2 accepting the bill amount of Rs.28,12,302/-. If there was any dispute with regard to the quantification or stage of payment or installment etc., it would not have been indicated sum of Rs.6,75,600/- was paid towards part amount. The very fact that it was part amount out of Rs.28,12,302/- indicates that the 2nd respondent never disputed the bill amount of Rs.28,12,302/-.

22. There is a concluded contract between the petitioner and the respondents relating to architectural services evidenced by agreement dated 12.08.2015 entered into; It contains various terms and conditions. Undisputedly, a bill for Rs.28,12,302/- was raised by the petitioner; part payment of an amount of Rs.6,75,600/- was paid. Thus, it does not lie in the mouth of the respondent No.2 to contend that there is no concluded contract. Hence, such contention of the respondents is liable to be rejected.

23. The plenary power of High Court in exercising power of judicial review under Article 226 of the Constitution of India is one of discretion. It is settled law, depending on facts of particular case, that in order to do substantial justice to the party concerned, writ jurisdiction can always be invoked in spite of existence of alternate remedy. Since there is no dispute at all with regard to the factual scenario, and payment of part amount of the amount of Rs.6,75,600/-; relegating the parties to arbitration would be unjust and improper in the facts and circumstances of the case.

24. For the reasons stated above, this Court does not find any merit in this appeal; the same is liable accordingly dismissed.

As a sequel, the miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

//TRUE COPY//

SD/- K.SRINIVASA RAO
DEPUTY REGISTRAR

SECTION OFFICER

To,

1. Two CCs to Sri C. Venkat Yadav, GP for Social Welfare, High Court for the State of Telangana at Hyderabad. (OUT)
2. One CC to Sri M. Jayaram Reddy Advocate [OPUC]
3. Two CD Copies

CHR



HIGH COURT

DATED:30/09/2020



JUDGMENT

W.A.No.776 of 2019

DISMISSING THE WRIT APPEAL
WITHOUT COSTS

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MIA
10-25/10/2020.