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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
&
HON'BLE SHRI JUSTICE PRANAY VERMA
ON THE 29th OF SEPTEMBER, 2023
WRIT PETITION No. 14252 of 2023**

BETWEEN:-

**COMMISSIONER, MUNICIPAL CORPORATION, UJJAIN
(MADHYA PRADESH)**

.....PETITIONER

(SHRI KULDEEP BHARGAVA, COUNSEL FOR THE PETITIONER).

AND

- 1. MP MICRO AND SMALL INDUSTRIES
FACILITATION COUNCIL, MINISTRY OF
INDUSTRIES, MADHYA PRADESH VINDHYACHAL
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. M/S SHUBHAM ELECTRICALS, C.H.-6, JUNIOR LIG,
MR 10 ROAD, SUKHLIYA, CHANDRAGUPT
CHAURAH, NEAR HDFC BANK, INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

.....
*This petition coming on for admission this day, Justice Sushrut Arvind
Dharmadhikari passed the following:*

ORDER

Heard on the question of admission and interim relief.

This writ petition under Article 226/227 of the Constitution of India has
been filed by the petitioner being aggrieved by the order dated 07.10.2022
(Annexure P/1) passed by the respondent No.1/ M.P.Micro and Small
Industries Facilitation Council in Case No. MSIFC/896/2020 whereby the

petitioner was directed to pay Rs. 1,15,31,583/- to respondent No.2.

2. The brief facts of the case is that the petitioner had floated e-tender regarding upkeep and maintenance work during Ujjain Simhastha (Kumbh) 2016. The tender of respondent No.2 was accepted. Accordingly the work order was issued to respondent No.2 and an agreement was entered into with the petitioner. Respondent No.2 had to stop the work in between for some reasons. However, the payment was due for the part work which was carried out by respondent No.2. Thereafter, petitioner constituted a third party committee to examine the work carried out by respondent No.2 and some insufficiencies were found due to which reductions were made in the payment due. Respondent No.2 preferred a reference before respondent No.1 under Section 18 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 (referred to as 'MSMED Act' hereinafter). The respondent No.1 vide impugned order dated 07.10.2022 (Annexure P/1) directed the petitioner to pay Rs. 1,15,31,583/- (principal amount of Rs. 33,64,970/- along with interest of Rs. 77,10,123/-) to respondent No.2 within 30 days from the date of order. Being aggrieved, the petitioner has filed the instant writ petition.

3. Learned counsel for the petitioner contended that the reference was not maintainable in view of Section 69 of the Indian Partnership Act. It is settled law that the works contract is outside the purview of the MSMED Act and therefore, the respondent No.1 had passed the impugned order without jurisdiction. In view of the aforesaid, prayer is made to quash the impugned order passed by respondent No.1.

4. Heard learned counsel for the petitioner.

5 . The Apex Court in the case of *Hindustan Coca Cola Beverage Private Limited vs. Union of India and others (2014) 15 SCC 44* held that when the statute provides for statutory appeal, the said remedy is to be availed by the litigating parties. In *Hameed Kunju vs. Nizam (2017) 8 SCC 611* the Apex Court held that any petition under Article 227 of Constitution of India should be dismissed in limine when there is statutory provision of appeal. In another case *Ansal Housing and Construction Limited vs. State of Uttar Pradesh and others (2016) 13 SCC 305* it is held that when statutory appeal is provided, then the said remedy has to be availed. For this purpose, the decision of Apex Court in the case of *Shalini Shyam Shetty Vs. Rajendra Shankar Patil (2010) 8 SCC 329* is worthy of reference.

6 . The Hon'ble Apex Court in the case of *Shalini Shyam Shetty (supra)* has held as under :-

"(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

.....

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

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(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and

the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

.....

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

7. In view of the aforesaid and also looking to the fact of availability of an efficacious alternative remedy under Section 19 of MSMED Act, 2006 we do not find it proper to entertain this petition. However, petitioner would be at liberty to avail the alternative remedy in accordance with law, if so advised.

8. Consequently, writ petition being bereft of merits and substance is hereby dismissed.

(S. A. DHARMADHIKARI)
JUDGE

vidya

(PRANAY VERMA)
JUDGE

