

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

ON THE 21st OF APRIL, 2022

WRIT APPEAL No.359 of 2021

Between:-

**MOHAMMAD DAUD KHAN SON OF LATE
SHRI MOHAMMAD YUSUF KHAN AGED
ABOUT 32 YEARS OCCUUPATION-
CONTRACTOR R/O HOUSE NO.21, NEHRU
COLONY, NEAR RAILWAY STATION,
BHOPAL DISTRICT BHOPAL (M.P.)**

.....APPELLANT

(BY SHRI MUKHTAR AHMAD - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH THE PRINCIPAL SECRETARY,
FISHERIES DEPARTMENT, MINISTRY,
VALLABH BHAWAN, DISTRICT BHOPAL
(M.P.)**
- 2. COLLECTOR BHOPAL, DISTRICT BHOPAL
(M.P.).**
- 3. MADHYA PRADESH MATSYA MAHASANGH
(COOPERATIVE) MARYADIT, BHOPAL,
THROUGH ITS CHIEF GENERAL
MANAGER, DISTRICT BHOPAL (M.P.)**
- 4. REGIONAL MANAGER, MADHYA PRADESH
MATSYA MAHASANGH (COOPERATIVE)
MARYADIT, BHOPAL, DISTRICT BHOPAL
(M.P.)**

.... RESPONDENTS

(BY SHRI S.S.CHAUHAN - GOVERNMENT ADVOCATE FOR RESPONDENTS NO.1 AND 2 AND SHRI PUSHPENDRA YADAV- ADVOCATE FOR RESPONDENTS NO.3 & 4)

WRIT PETITION No.27968 of 2021

Between:-

MOHAMMAD DAUD KHAN SON OF LATE SHRI MOHAMMAD YUSUF KHAN AGED ABOUT 36 YEARS R/O HOUSE NO.21, BEHIND SIKANDARI SARAI, NEHRU COLONY, NEAR RAILWAY STATION, BHOPAL DISTRICT BHOPAL (M.P.)

.....PETITIONER

(BY SHRI MUKHTAR AHMAD - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY, FISHERIES DEPARTMENT, MINISTRY, VALLABH BHAWAN, DISTRICT BHOPAL (M.P.)**
- 2. COLLECTOR, BHOPAL, DISTRICT BHOPAL (M.P.).**
- 3. THE MANAGING DIRECTOR, MADHYA PRADESH MATSYA MAHASANGH (COOPERATIVE) MARYADIT, BHADBHADA ROAD, BHOPAL, DISTRICT BHOPAL (M.P.).**
- 4. THE REGIONAL MANAGER, MADHYA PRADESH, MATSYA MAHASANGH (COOP.) MARYADIT, BHADBHADA ROAD, BHOPAL, DISTRICT BHOPAL (M.P.)**

...RESPONDENTS

(BY SHRI S.S.CHAUHAN – GOVERNMENT ADVOCATE FOR RESPONDENTS NO.1 AND 2 AND SHRI PUSHPENDRA YADAV– ADVOCATE FOR RESPONDENTS NO.3 & 4)

This appeal and connected petition coming on for admission this day, Hon'ble Shri Justice Purushaindra Kumar Kaurav, passed the following:

ORDER

This *intra* Court appeal takes exception to order dated 01.02.2021, passed by the learned Single Judge in Writ Petition No. 8057 of 2020, whereby, petition preferred by appellant-petitioner, has been disposed off.

2. The case of the appellant-petitioner is that he is engaged in the business of Fisheries with the respondent-Department. He entered into a contract on 17.07.2019 for a period expiring on 31.12.2024 with respect to Halali Dam situated at District Raisen. The appellant-petitioner was required to pay regular installments to the respondent as per the terms of the contract. There was certain correspondence between the appellant-petitioner and the respondent with respect to extension of time and relaxation in depositing the installments. However, vide order dated 03.06.2020, the appellant-petitioner was directed to deposit 4th installment of Rs.30.7464 Lacs which was due on 15.02.2020. It was stated that the appellant was in arrears of the amount of 3rd installment which was Rs.15.34 Lacs and, therefore, the same was also required to be deposited. The appellant-petitioner challenged the notice of demand dated 03.06.2020 before the learned Single Judge with a further prayer to direct the respondents to exempt him from paying certain amount looking to the critical circumstances and heavy loss in the business. The learned Single Judge vide order dated 01.07.2020 directed the respondent not to take any coercive action against the appellant till next date of hearing. The said interim

order continued vide order dated 08.07.2020 and, thereafter, by subsequent orders till the disposal of writ petition. The learned Single Judge vide order dated 01.02.2021 found that since the respondents have disputed various calculations suggested by the appellant, therefore, in view of the disputed facts being involved in the matter, it would be appropriate to avail the arbitration clause as contained in the agreement of contract. Accordingly, the directions were given firstly to approach the Managing Director of the respondent-department to satisfy him with the calculations suggested by the appellant and if the grievance of the appellant is not redressed, liberty was given to take recourse to arbitration clause.

3. Vide order dated 25.01.2022, this court issued notices to the respondents and directed the parties to maintain *status quo* till next date of hearing. Thereafter, respondent No.3 and 4 have filed an application for vacation of interim order dated 25.01.2022. The petitioner was granted time to file the reply to the said application. The appellant filed various documents alongwith an application for taking the documents on record.

4. We have taken into consideration the documents produced by the appellant-petitioner. Since the respondents have made a submission that the appellant has obtained interim protection on 25.1.2022 without disclosing the complete facts before this Court, therefore, we have heard the learned counsel appearing for the parties at length on merits of the case.

5. The case of the respondents No.3 and 4 is that W.P.No.8057/2020 from which the instant writ appeal has arisen was dismissed by the learned Single Judge on 01.02.2021. After dismissal of the said writ petition, the respondents vide letter dated 13.08.2021

directed the appellant to deposit the arrears of due installment. It is stated that against the letter dated 13.08.2021, the appellant filed W.P.No.20846-2021 and the Division Bench of this Court vide order dated 08.10.2021 refused to entertain the said writ petition holding therein that the matter relates to contractual obligation and, therefore, it would be appropriate if the Managing Director of respondent No.3 decides the application of the appellant-petitioner within a period of three months from the date of receipt of such application. It is further stated that pursuant to the directions given by the Division Bench of this Court in W.P.No.20846-2021, a detailed application was made by the appellant on 25.10.2021 which was considered by the Managing Director of respondent No.3 and vide speaking order dated 07.12.2021, the same was rejected. The appellant has challenged the said rejection in a separate connected W.P.No.27968-2021. Since the entire dispute relates to one contract, therefore, the appellant in all fairness should have disclosed the aforesaid subsequent development on the date of passing of the interim order on 25.01.2022. Since the appellant has suppressed the material facts, therefore, he does not deserve for grant of any relief from this Court.

6. Refuting the aforesaid submission, learned counsel appearing for the appellant justifies his conduct stating that in W.P.No.27968-2021, he is not engaged as a counsel and secondly; the said writ petition was filed subsequent to filing of the present writ appeal, therefore, there was no occasion for the appellant to disclose such facts.

7. A person invoking extra ordinary jurisdiction of the High Court under Article 226 of the Constitution must come with clean hands and must make full and complete disclosure of facts to the Court. It is

settled proposition of law that parties are not entitled to choose their own facts to put forward before the Court. The parties can be refused for a hearing on merits or rule *nisi* can be discharged, if it appears that the party has made concealment of facts with a view to mislead the court. If the conduct of a litigant shows lack of good faith and an intention to frustrate the administration of justice, such party does not deserve any relief. The Hon'ble Supreme Court in the matter of ***Prestige Lights Ltd. Vs. State Bank of India***¹ has held that the parties whose hands are soiled, cannot hold the writ of the court. However, we are conscious of the fact that before arriving at such a conclusion, adequate analysis of the facts is required to be done. We take note of the fact that after passing of *ex parte* interim order on 25.01.2022, the contesting respondents No.3 and 4 filed an application for vacation of stay alongwith an affidavit on 05.04.2022. A copy of the said application was served on the learned counsel appearing for the appellant. A specific averment with respect to suppression of the facts has been made therein. It is also stated that as on the date of such application, the total outstanding dues against the appellant was Rs.221 Lacs. No reply has been filed to such an application and the matter was taken-up for hearing on 18.04.2022. At the request of learned counsel appearing for the appellant, the matter was directed to be taken-up on 20.04.2022. When the matter was taken-up on 20.4.2022, the learned counsel for the appellant made a request to hear this appeal alongwith W.P.No.27968-2021. Accordingly, both the matters are heard on 21.04.2022.

8. We are unable to accept the explanation putforth by the appellant. It is not the counsel who is expected to know all facts of

¹ (2007) 8 SCC 449.

the case but it is the party-litigant approaching the court who is expected to disclose all relevant facts before the court. Engagement of different lawyers in different cases cannot be an excuse for non-disclosure of material facts. In the instant case, admittedly, on the date of passing of the interim order on 25.01.2022, another round of litigation was taken-up in W.P.No.20846-2021 and secondly in W.P.No.27968-2021. Both the aforesaid writ petitions relate to demand of installments from the same contract. Whether it was third or fourth installment, that does not distinguish the nature of dispute and subject matter. The fact remains that the appellant-petitioner was in arrears of the amount of installments and an action against him was contemplated by the respondents. In all fairness, he should have disclosed all the facts on the date of passing of the interim order dated 25.01.2022. We find that since the appellant has not approached this court with clean hands, therefore, he is not entitled for any relief under equitable jurisdiction of this court. Accordingly, we dismiss Writ Appeal No.359-2021.

9. The overall facts and circumstances of the case show that in the present proceedings, disputed question of facts are involved. Admittedly, there is an arbitration clause in the agreement. Repeated efforts are being made to invoke the extra ordinary jurisdiction of this court without availing the remedy, by way of arbitration. Writ jurisdiction cannot be invoked to avoid contractual obligations voluntarily incurred. Whether demand raised by the respondents is unreasonable or in contravention to the terms of the contract; such are the disputes being of civil nature, no writ petition under Article 226 of the Constitution would lie. The rights and liabilities of the parties are governed by the terms of the contract. No writ or order can be issued

under Article 226 of the Constitution compelling the authority to remedy the breach of contract pure and simple. The contract itself provides for appropriate remedy of arbitration, therefore, no interference is warranted. Accordingly, W.A.No.359-2021 and W.P.No.27968-2021 both are dismissed with cost of Rs.25,000/- to be deposited with the Registry of this Court within a period of 30 days from today, failing which Office is directed to place the matter before this court for execution of cost as PUD.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MKL