

HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

* * *

CIVIL REVISION PETITION Nos.424, 425 and 437 OF 2023

Between:

M/s. Rolex Meters Pvt. Ltd.,
Through its Director Mr.Rohit Balasarla.

Appellant

Versus

Maharastra State Electricity Distribution Co. Ltd.
and two (2) others.

Respondents

DATE OF JUDGMENT PRONOUNCED : 04.06.2024

Submitted for approval.

THE HON'BLE SMT JUSTICE K. SUJANA

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K. SUJANA, J

*** THE HON'BLE SMT JUSTICE K. SUJANA**

+ CIVIL REVISION PETITION Nos.424, 425 and 437 OF 2023

% 04.06.2024

Between:

M/s. Rolex Meters Pvt. Ltd.,
Through its Director Mr.Rohit Balasarla. ... Appellant

And

Maharashtra State Electricity Distribution Co. Ltd.
and two (2) others. ... Respondents

! Counsel for the appellant : Sri C.Raghu, learned Senior
Counsel representing Sri B.Vijay
Kumar and Sri L.Ravinder.

^ Counsel for the respondents: Sri Vikram Poosarla, learned
Senior Counsel representing
Ms.L.Gayatry, learned counsel
for respondent No.1

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>HEAD NOTE:

? Cases referred:

1. (1976) 1 SCC 496
2. (1999) 8 SCC 436
3. (2013) 9 SCC 32
4. 1996 (2) Mh.LJ
5. ILR (2003) Delhi 662
6. 2015 SCC online Bom 279
7. 2009 (113) DRJ 36
8. 2021 SCC online SC 913

THE HON'BLE SMT JUSTICE K. SUJANA**CIVIL REVISION PETITION Nos.424, 425 and 437 OF 2023****COMMON ORDER :**

Civil Revision Petition No.424 of 2023 is filed by the revision petitioner aggrieved by the order, dated 18.01.2023 passed in CMA.No.5 of 2018 by the I Additional Chief Judge, City Civil Court, Secunderabad reversing the order of Injunction passed in I.A.No.222 of 2016 in O.S.No.268 of 2016 by the I Junior Civil Judge, City Civil Court, Secunderabad.

2. Civil Revision Petition No.425 of 2023 is filed by the revision petitioner aggrieved by the order, dated 18.01.2023 passed in CMA.No.4 of 2018 by the I Additional Chief Judge, City Civil Court, Secunderabad reversing the order of Injunction passed in I.A.No.223 of 2016 in O.S.No.269 of 2016 by the I Junior Civil Judge, City Civil Court, Secunderabad.

3. Civil Revision Petition No.437 of 2023 is filed by the revision petitioner aggrieved by the order, dated 18.01.2023 passed in CMA.No.6 of 2018 by the I Additional Chief Judge, City Civil Court, Secunderabad reversing the order of Injunction passed in I.A.No.211 of 2016 in O.S.No.265 of 2016 by the I Junior Civil Judge, City Civil Court, Secunderabad.

4. Since the parties in all the Civil Revision Petitions as well as the issue involved in all the revision petitions is one and the same, they are being heard together and being disposed of by way of this common order.

5. For the sake of convenience, the facts in C.R.P.No.424 of 2023 are hereunder discussed.

6. I.A.No.222 of 2016 is filed under Order 39 Rule 1 and 2 read with Section 151 of CPC by the petitioner/plaintiff praying the Court to grant temporary injunction restraining the respondents/defendant Nos.1 to 3 from invoking, honouring and releasing amounts under the Bank Guarantees.

7. The contention of the petitioner/plaintiff in I.A.No.222 of 2016 in O.S.No.268 of 2016 is that petitioner/plaintiff is a manufacturer of electricity meters and respondent/defendant No.1 issued three (03) tenders and one extension order on different dates for supply of energy meters and the petitioner/plaintiff had submitted its bids in response to all those tenders and became successful bidder. Consequently respondent/defendant No.1 issued letters of acceptance in favour of the petitioner/plaintiff in respect of all the tenders/extension orders, thereafter, the contracts were entered into it and as per the terms and conditions of the contracts, the petitioner/plaintiff has to furnish bank

guarantees @10% of the cost of the contract in favour of respondent/defendant No.1. Accordingly, the petitioner/plaintiff furnished five bank guarantees in favour of respondent/defendant No.1 and then the petitioner/plaintiff supplied the material as per the terms and conditions of the contracts after strictly adhering to the mandatory pre-dispatch testing and the equipment was installed at the location of customers of respondent/defendant No.1 after mandatory post-dispatch testing. Further, the products supplied by the petitioner/plaintiff under the contracts were also tested at NABL accredited to the Government and owned independent test labs at various locations and after due certifications of the fitness of the equipment only, the equipment was supplied by the petitioner/plaintiff. After completion of the supply of the energy meters under each contract, respondent/defendant No.1 issued separate letters acknowledging receipt of the same.

8. Further, on 18.04.2016, respondent/defendant No.1 issued letter to the petitioner/plaintiff stating that 10 lakhs LT AC single phase 5-30 Amps static energy meters without enclosure with internal low power radio frequency for communication are showing erratic behaviour, like abrupt fall in consumption, stopping of meters at low loads, commissioning problems etc., among

6,00,000 meters which have been supplied at Kalyan and Bhandup Zones. Therefore, the petitioner/plaintiff was directed to submit unconditional undertaking on stamp paper worth Rs.200/- that in future if the meters which were supplied against replacement are utilized and behave erratically, the petitioner/plaintiff should compensate respondent/defendant No.1 for the loss and secondly to remit revenue loss of Rs.28.523 cores on account of faulty single phase RF meters supplied by the petitioner/plaintiff which are installed at Kalyan and Bhandup Zones and in case of failures, the same will be recovered by encashment of the available bank guarantees with respondent No.1. The petitioner/plaintiff furnished 12 bank guarantees against 11 purchase orders for various types of electricity meters specified in the tender condition/extension orders issued by the respondent/defendant No.1. The 10 lakh LT AC single phase 5-30 Amps static energy meters without enclosure with internal low power radio frequency for communication were supplied under SP/L-81/T-1007/1111/06235/000474 dated 07.02.2014, but the letter of respondent/defendant No.1 mentions that all the bank guarantees available with them would be encashed irrespective of the fact that there is no complaint against the functionality of the different kinds of electricity meters supplied under different tenders/extension orders.

9. On 25.04.2016, the petitioner/plaintiff addressed a letter explaining that the electricity meters supplied to the stores at Nashik were fully commissioned and functional with no problems and certificates were also issued to that effect and the defective electricity meters which were returned to the petitioner/plaintiff were replaced. Further, in the letter it was mentioned that the defective meters were replaced by the petitioner/plaintiff and handed over at Kalyan stores by respondent/defendant No.1, similarly, a quantity of 47,568 meters were replaced and handed over at Bhandup Zone by respondent/defendant No.1 and respondent/defendant No.1 does not mention as to how the loss was arrived to them and in the absence of quantification of loss, respondent/defendant No.1 cannot seek encashment of bank guarantees furnished by the petitioner/plaintiff and the tender specific electricity meters installed at Kalyan and Bhandup Zones are not only the ones installed by respondent/defendant No.1 and there are electricity meters received from various other companies which were installed by respondent/defendant No.1 even before issuing the tender in favour of the petitioner/plaintiff.

10. The respondent/defendant No.2 bank is located within the territorial jurisdiction of this Court as such the part of cause of action arose on the day when the bank guarantee was provided by

respondent/defendant No.1 at the instance of petitioner/plaintiff. The bank guarantee being tripartite agreement between bank, petitioner/plaintiff and respondent/defendant No.1 having been executed within the territorial jurisdiction of this Court and under Section 20 of CPC the trial Court has territorial jurisdiction to entertain this suit and no clause restricting the territorial jurisdiction of this Court is unenforceable as the same would be opposed to public policy. Apart from this, the alleged loss of revenue is not within the scope of tender conditions and as such the restrictive clause on territorial jurisdiction in the tender condition is not applicable to the dispute canvassed in this suit. The petitioner/plaintiff is a small scale industry and if respondent/defendant No.1 invokes and encash the bank guarantees, it would suffer enormous loss and the manufacturing process would be severely affected and no irreparable loss is going to be caused to the respondents if the bank guarantees are not invoked till the disposal of the suit. Therefore, the petitioner/plaintiff filed the petition and prayed the Court to grant temporary injunction restraining the respondents/defendants from invoking the bank guarantees.

11. Respondent/defendant No.1 filed the detailed counter affidavit admitting the averments with regard to the awarding of

the contract in favour of the petitioner and also admitted that the petitioner/plaintiff supplied the energy meters as per the terms and conditions of the contracts and completed the entire supply. The meters supplied were also subjected to pre-dispatch and post-dispatch tests and the meters having passed through these tests were duly installed at various locations in Maharashtra and were also commissioned. However, after installation of the Rolex make single phase RF meters at consumer premises, initially the meters recorded actual consumption of the electricity used by the consumers, but over a period of time, they started deteriorating from its performance i.e., slow or stop at low-load and as per their *prima facie* investigation, it appears to be software problem and these issues are being faced by Kalyan and Bhandup Zones, due to which huge revenue loss on account of energy consumption is occurred and both the Zones incurred revenue loss of Rs.28.523 crores, as such respondent/defendant No.1 vide letter, dated 18.04.2016, informed the petitioner/plaintiff to submit an unconditional undertaking on stamp paper of worth Rs.200/-. The petitioner/plaintiff vide letter, dated 25.04.2016, informed that the meters supplied to the stores at Nashik were fully commissioned and functional with no problems and certificates were also issued to that effect and that the defective meters which were returned to the petitioner/plaintiff were replaced and the reply submitted by

the petitioner/plaintiff was not satisfactory, therefore, notice, dated 18.04.2016, was issued to the petitioner/plaintiff to remit the loss incurred to respondent/defendant No.1 at Kalyan and Bhandup Zones.

12. Further, it is submitted that as per the clause 26 of Annexure-A, if the materials found defective within the guarantee period shall be replaced/repared by supplier at free of cost within one month of receipt of intimation and if the same is not done, then the purchaser shall recover an equivalent amount plus 15% supervision charges from any of the bills of the supplier. Further, if, in case of repeated failures the purchaser reserves the right to disqualify the supplier for future tenders. In this case, the supplied meters were found technically suitable and accepted during various tests conducted. However, after installation the meters behave erratically after a period of 6 to 12 months, which is unpredictable. Hence the said clause of replacement is not applicable and the purchaser has full rights to recover the loss incurred to them.

13. Further, as per clause 33 of Annexure-A, the purchaser is entitled to cancel the contract if the supplier fails to deliver the material within the contract period or the material is not in accordance with the specifications and can also recover the

damages under the General Law of India. The petitioner/plaintiff admitted that the supplied meters are suffering from defects and on account of supply of the defective meters by the petitioner/plaintiff, huge revenue loss was incurred by respondent/defendant No.1, as such, respondent/defendant No.1 is legally entitled to recover the actual revenue loss and that the encashment of the bank guarantee or pending bills is within the terms of contract and the petitioner/plaintiff was given sufficient time to rectify the defects but the petitioner/plaintiff failed to do so and also failed to give an undertaking. As per the guidelines of the competent authority, Field Officers were requested to take the campaign for verification of Rolex make faulty meters, replacement of faulty meters, assessment of revenue loss incurred and as per meter cost of replacement of these Rolex make faulty meters was confirmed by the zonal officers at Kalyan and Bhandup, the loss was calculated as per the energy consumption pattern and the Chief Engineer, Kalyan Zone informed that due to erratic behaviour of Rolex make meters, they suffered a revenue loss of Rs.16.043 crores similarly Bhandup Zone suffered revenue loss of Rs.12.48 crores and that the total loss incurred is approximately Rs.28.523 crores.

14. Further, it is submitted that as per clause 32 of Annexure 'A' of the contract any dispute or difference arising under, out of or in connection with this tender or contract, if concluded, shall be subject to the exclusive jurisdiction of the "Courts" in Mumbai, suppressing the same, the petitioner approached the Court. Therefore, respondent/defendant No.1 prayed this Court to dismiss the petition.

15. In trial Court, respondent/defendant No.2 remained *ex parte* and respondent/defendant No.3 filed memo adopting the counter of respondent/defendant No.1.

16. After hearing both sides, basing on the averments in the petition, counter affidavit and the documents, the trial Court allowed the petition and the *ex parte ad-interim* injunction granted on 28.04.2016 is made absolute.

17. Aggrieved by the order of the trial Court, respondent/defendant No.1 filed the CMA.No.5 of 2018 under Order 43 Rule 1 of CPC praying the Court to set aside the order and decree dated 20.04.2017 passed in I.A.No.222 of 2016 in O.S.No.268 of 2016.

18. After hearing both sides, the appellate Court came to conclusion that the Courts in Secunderabad has no jurisdiction,

as the jurisdiction is confirmed with the Courts at Mumbai both in the contract entered into between the parties as well as in the bank guarantee given by the bank, the jurisdiction of any other Courts including the Courts at Secunderabad is ousted and allowed the said CMA by setting aside the order passed by the trial Court. Aggrieved by the same, the revision petitioner/plaintiff filed the present CRP.

19. Heard Sri C.Raghu, learned Senior Counsel representing on behalf of Sri B.Vijay Kumar and Sri L.Ravinder, learned counsel for the revision petitioner in all the C.R.P.s and Sri Vikaram Poosarla, learned Senior Counsel representing Ms.L.Gayatri, learned counsel for respondent No.1 in all the C.R.Ps.

20. Learned Senior Counsel for the revision petitioner/plaintiff would submit that appellate Court failed to address the principal question as to whether the dispute between the parties hereto comes under the contract and merely relied on the restrictive clause with regard to territorial jurisdiction in the contract and further submitted that the petitioner/plaintiff had specifically pleaded in the plaint as well as in the I.A. that the alleged loss of revenue is not within the scope of tender conditions and as such the restrictive clause of territorial jurisdiction is not applicable to the present case and the appellate Court also failed to examine the

pleadings of the respondents/defendants before allowing the CMA and also failed to see that there was a specific plea taken in the plaint as well as in the I.A. that loss of revenue is due to faulty single phase RF meters, which is not within scope of contract for invocation of bank guarantee. The appellate Court also failed to see that the bank guarantee is provided for due compliance of terms and conditions of the contract and in the present case the bank guarantees were sought to be invoked even though there is no allegation of non-compliance of any of the terms and conditions of the contract and the appellate Court also failed to see that the dispute between the parties cannot be categorized as a dispute under the contract or out of contract. The appellate Court also failed to give any reasons for invocation of bank guarantees with regard to electricity meters supplied under other contracts/other tenders even though a tabular statement was provided to the appellate Court and also failed to assign reasons as to why all other bank guarantees have to be invoked by the respondents/defendants even though there is admittedly no default committed by the petitioner/plaintiff with regard to the compliance of the terms and conditions of other contracts.

21. Further, it is submitted that the additional bank guarantees and revenue loss are not in the contract and the revenue loss is

beyond the contract and there are no terms with regard to the revenue loss in the original contract. Therefore, the jurisdiction clause does not apply to the bank guarantees furnished to them and also submitted that as the banks are located in this jurisdiction, according to the Section 20 CPC, this Court has jurisdiction to try the same. As such, there are no merits in the order of appellate Court in CMA.No.5 of 2018 and prayed the Court to set aside the same.

22. In support of petitioner/plaintiff contentions, learned Senior Counsel for the petitioner/plaintiff relied on judgments of Hon'ble Supreme Court in ***the case of The Premier Automobiles Ltd. vs Kamlekar Shantaram Wadke of Bombay and Others along with Automatic Electric Pvt. Ltd. vs Engineering Mazdoor Sabha and Others***¹, he also relied on the judgment of ***the Hindustan Construction Co. Ltd. Vs State of Bihar and Others along with State of Bihar and Others Vs Hindustan Construction CO.LTD and Others***², wherein, the Apex Court in para Nos.8 and 9 held as under:

8. Now a bank guarantee is the common mode of securing payment of money in commercial dealings as the beneficiary, under the guarantee,

¹ ***(1976) 1 SCC 496***

² ***(1999) 8 SCC 436***

is entitled to realise the whole of the amount under that guarantee in terms thereof irrespective of any pending dispute between the person on whose behalf the guarantee was given and the beneficiary. In contracts awarded to private individuals by the Government, which involve huge expenditure, as for example, construction contracts, bank guarantees are usually required to be furnished in favour of the Government to secure payments made to the contractor as "advance" from time to time during the course of the contract as also to secure performance of the work entrusted under the contract. Such guarantees are encashable in terms thereof on the lapse of the contractor either in the performance of the work or in paying back to the Government "advance", the guarantee is invoked and the amount is recovered from the bank. It is for this reason that the Courts are reluctant in granting an injunction against the invocation of bank guarantee, except in the case of fraud, which should be an established fraud or where irretrievable injury was likely to be caused to the guarantor. This was the principle laid down by this Court in various decisions. In U.P. Coop.Federation Ltd. V. Singh Consultants & Engineers (p) Ltd. The law laid down in *Bolivinter Oil SA v. Chase Manhattan Bank* was approved and it was held that an unconditional bank guarantee could be invoked in terms thereof by the person in whose favour the bank guarantee was given and the Courts would not grant any injunction restraining the invocation except in the case of fraud or irretrievable injury. In *Svenska Handelsbanken v. Indian Charge Chrome Larsen & Toubro Lt. v. Maharashtra SEB, Hindustan Steel Workers Construction Ltd. V. G.S.Atwal & Co. (Engineers) (p) Ltd., National*

Thermal Power Corpm. Ltd. V. Flowmore (p) Ltd., State of Maharashtra v. National Construction Co., Hindustan Steelworks Construction Ltd. V. Tarapore & Co. as also in U.P.State Corpn. v. Sumac International Ltd. The same principle has been laid down and reiterated.

9. What is important, therefore, is that the bank guarantee should be in unequivocal terms, unconditional and recite that the amount would be paid without demur or objection and irrespective of any dispute that might have cropped up or might have been pending between the beneficiary under the bank guarantee or the person on whose behalf the guarantee was furnished. The terms of the bank guarantee are, therefore, extremely material. Since the bank guarantee represents an independent contract between the bank and the beneficiary, both the parties would be bound by the terms thereof. The invocation, therefore, will have to be in accordance with the terms of the bank guarantee, or else, the invocation itself would be bad.

23. In para No.9 of the said judgment, it is observed that the bank guarantees should be in unequivocal terms, unconditional and recite that the amount would be paid without demur or objection and irrespective of any dispute that might have cropped up or might have been pending between the beneficiary under the bank guarantee or the person on whose behalf the guarantee was furnished.

24. On the other hand, learned Senior Counsel for the respondents would submit that there is no illegality in the order of appellate Court as the bank guarantees submitted by the petitioner/plaintiff show that in case of any dispute arising out of or in connection with the extension or encashment of bank guarantee, the Courts in Mumbai will have the jurisdiction which shows that there is an unconditional performance of the bank guarantees submitted by the petitioner/plaintiff as there is a clause that any disputes or difference arising under, out of or in connection with this tender or contract if concluded, shall be subject to the exclusive jurisdiction of the "Courts" in Mumbai. Therefore, a bare perusal of the clauses mentioned above, incorporated in the bank guarantee and contract, it is clear that only the Courts in Mumbai has jurisdiction to decide any dispute between the parties arising out of any dispute/encashment of bank guarantee. As such, the Courts in Secunderabad had no jurisdiction. Therefore, prayed the Court to dismiss the present CRP.

25. In support of respondent/defendant contentions, learned Senior Counsel for the respondents/defendants relied upon the following judgments of Hon'ble Supreme Court:

a) *Swastik Gases P. Ltd vs Indian Oil Corporation*³

b) *Balaji traders Amravati vs Indian Bank and Others* ⁴

c) *Akash Optifibers ltd. Vs BSNL and Others*⁵

d) *Essel Vidyut Vitran (Ujjain) ltd. Vs MP Paschim Kshetra* ⁶

e) *Alfa Yherm Ltd Vs Canara Bank and Others* ⁷

26. Having gone through the rival submissions made by both the parties and the material placed on record, it shows that the dispute is with regard to the jurisdiction and in view of the clause in the tenders, the jurisdiction is conferred in the Court of Mumbai. The contention of the revision petitioner is that the revenue loss and additional bank guarantees are beyond the scope of the contract, therefore the said clause is not applicable to the present case, as such, the Secunderabad Court has jurisdiction.

27. On the other hand, learned Senior Counsel for the respondents/defendants would submit that as the bank guarantees are given unequivocal bank guarantees, and there is a

³ ***(2013) 9 SCC 32***

⁴ ***1996 (2) Mh.LJ***

⁵ ***ILR (2003) Delhi 662***

⁶ ***2015 SCC online Bom 279***

⁷ ***2009 (113) DRJ 36.***

clause in the contract with regard to the bank guarantees which shows that the Courts in Mumbai will have jurisdiction as such the Courts in Secunderabad has no jurisdiction. As per clause 32 of Annexure-A of the contract, any dispute or difference arising under out of or in connection with this tender or contract, if concluded, shall be subject to the exclusive jurisdiction of the Courts in Mumbai. Therefore, the Courts in Mumbai have the jurisdiction for adjudication of any dispute between the parties arising out of any dispute/encashment of bank guarantee.

28. According to the revision petitioner, there are no terms in the contract for revenue loss and only in the two places the meters were faulty and the bank guarantees of the whole contract are not applicable to the case and further stated that the revenue loss is not a condition in the contract. Now the question is whether the revenue loss or the additional bank guarantee is not a part of the contract or not arising out of the contractual terms. The record shows that the revision petitioner supplied energy meters and installed in various places and as per the terms of the contract, the respondents informed him that after six months some of the energy meters were not working properly and there is a loss, due to which he replaced the meters, whereas there is a revenue loss to the respondents due to the faulty meters. Respondent herein

wrote a letter under Ex.P14 to the revision petitioner when some meters behaved erratically and the averments of the letter are that "To submit conditional undertaking on stamp paper of Rs.200/- that in future if the meters supplied by you against replacement are utilized and behave erratically then you will compensate to MSEDCL for incurred losses. Accordingly please submit fresh security/bank guarantee of Rs.43.76 Crs. i.e. in proportionate to 7,20,000 Nos. towards utilization of meters supplied/to be supplied against replacement of defective meters at Kalyan (3,20,000 Nos.), Bandup (2,80,000 Nos.) and Nashik (1,20,000 Nos.) zone. To remit revenue loss of Rs.28,523 crs. Already incurred on account of faulty single phase RF meters supplied by you and installed at Kalyan Zone (Rs.16.043 crs) & Bhandup zone (Rs.12.48 crs.) In case of failure, the same may be recovered by encashment of your available bank guarantees with MSEDCL. Please submit unconditional undertaking, fresh security/bank guarantee and remittance of revenue loss mentioned as above within seven days from date of receipt of this letter.", for which revision petitioner gave reply stating that "Beside this we have replaced the total quantity handed over to us by Nashik Zone as desired by C.E. (Nashik). Now no quantity is available at Nashik for replacement. Similarly, whatever quantity was available and handed over to us at Kalyan and Bhandup zone are lifted and replaced by us. You will please

note that we have been lifting and replacing the meters immediately on availability of the same at stores offices, hence your comment that the progress of replacement is not adequate is not correct." In the last paragraph of Ex.P-15, the petitioner stated that they are not responsible for any revenue loss since they have replaced the faulty meters and further stated thus *"We further assure that we shall replace the meters within stipulated time as and when the same is handed over from stores office. Further, we agree to submit unconditional undertaking on Rs.200/- stamp paper that in case the meters being replaced by us behave erratically we shall be held responsible for the losses incurred to MSEDCL."* As the revenue loss is caused due to faulty meters, it cannot be said that it is out of the contractual terms. Further though the bank guarantees furnished by the revision petitioner is from Secunderabad and they are furnished in accordance with the terms of the contract. The clause in the contract clearly indicates that if the disputes arising between the parties, the jurisdiction will be decided in Mumbai Courts only.

29. Further in the case of **Swastik Gases P. Ltd (3 supra)**, the Apex Court has categorically held that if any agreement provides for a clause which categorically gives the name of the Court as like the clauses mentioned above, then that amounts to an ouster

clause, therefore, any Court other than the one mentioned in the contract has no jurisdiction to try any dispute arising out of the contract. It is well established that where the contract specifies the jurisdiction of the Courts at a particular place and such Courts have jurisdiction to deal with the matter and the remaining Courts shall stand excluded and it is a settled position of law that only in the case of fraud or irreparable harm or injustice, the invocation of unconditional bank guarantee can be stayed by the Courts and a bare perusal of the original plaint, it is clear that the said suit has no averment or pleading whatsoever if fraud or special equities.

30. Further the revision petitioner relied on the judgment of the Hon'ble Apex Court in the case of ***The Premier Automobiles Ltd. (1 supra)*** only to canvas that the jurisdiction of Civil Court is not barred if the legal right which is under threat falls within the common law. When there is a contract which is in jurisdiction and thus the above judgment has no applicability to this case. Further, it is also a settled position of law that the Courts cannot be allowed to rewrite a contract entered between the parties, but must only interpret the obligations as set out in the agreement and in the case of ***Maharashtra State Electricity Distribution***

Company Limited vs Maharashtra ERC⁸ the Hon'ble Supreme Court of India has reiterated the aforementioned settled position of law regarding giving effect to contractual obligations as stipulated in the PPA, wherein it is observed that it is well settled that Courts cannot substitute their own view of the presumed understanding of commercial terms by the parties, if the terms are explicitly expressed. The explicit terms of a contract are always the final word with regard to the intentions of the parties.

31. From the above, it is *prime facie* evident that the question of jurisdiction especially in PBG (which are distinct and separate contract between parties) when specifically provided, acts or an ouster clause and thus, no Court that the one mentioned in the agreement will have a jurisdiction. As there is a contract between the parties and the specific clause under clause 32 Annexure-A the Courts in the Mumbai has only have jurisdiction therefore, it cannot be said that the revenue loss or the bank guarantees are apart from the contract. Therefore, there is no illegality in the order of the appellate Court in CMAs and there are no merits in these revisions and the same are liable to be dismissed. However, it is made clear that this Court is not expressing any opinion on

⁸ **2021 SCC online SC 913**

the merits of case, only on the jurisdiction aspect, these cases are disposed of.

32. Accordingly, all Civil Revision Petitions are dismissed. There shall be no order as to costs.

Miscellaneous applications, if any, pending shall stand closed.

Date : 04.06.2024

Note: Mark L.R. copy.

B/o.Kgk

K. SUJANA, J