

(2008) 09 AHC CK 0185

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 47218 of 2007

Shiv Security Services

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision: Sept. 9, 2008**Citation:** (2010) 7 RCR(Civil) 1860**Hon'ble Judges:** Amitava Lala, J and Arun Tandon, J**Final Decision:** Dismissed

Judgement

Amitava Lala, J.

This writ petition has been filed by the petitioner with regard to payment of the balance amount in pursuance of the agreement entered into by or between the parties dated 1st April, 2003 with interest @ 18% per annum with effect from 1st April, 2004 without any further delay. There is a further prayer for giving direction to the authority concerned to consider the representation of the petitioner within the specified time.

2. We are of the view that the dispute appears to be money claim simpliciter, which is a dispute of civil nature and which ought to have been decided by an appropriate Court of such nature. However, learned Counsel appearing for the writ petitioner has relied upon a judgment of the Supreme Court reported in 2004 (3) SCC 553, ABL International Ltd. and another v. Export Credit Guarantee Corporation of India Ltd. and others by saying that even in certain circumstances disputed question of facts cannot be an absolute ground for dismissal of the writ petition. We have no quarrel with such proposition of law, but from the judgment we find that the Court entertained the writ petition on the ground of levy and collection of tax/cess by holding that recovery was unconstitutional or without the authority of law. It was further held that it is one thing to say that the High Court has no power under Article 226 of the Constitution of India to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending upon facts and circumstances of each case. Thereafter it was held that in view of the case in hand the order was passed. We are of the view that such interpretation as given by the Supreme Court may not be applicable in

this case because in that case the question of unjust enrichment was involved and in such cases, normally the writ Court interferes. But the case before us is only in respect of the money claim simpliciter. Therefore, remedy is open elsewhere. Thus, we feel that the writ Court is not competent enough to pass such order. Hence, the writ petition is dismissed, however, without imposing any cost.

3. In any event, in view of the circumstances, as stated by the petitioner, in the letters dated 7th April, 2006 and 29th December, 2006 we are of the view that the petitioner is not debarred from approaching the authority concerned for the purpose of redressal of his grievance or from initiating the proceeding, if any, in accordance with law.

Hon"ble Arun Tandon, J.I agree.