

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt**

**MAT 1514 of 2025
with
IA No. CAN 1 of 2025
with
IA No.: CAN 2 of 2025**

**Union of India & Ors.
Vs.
Moonline Express Cargo Pvt. Ltd.**

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For the Appellants : Mr. Dwijadas Chakraborty, Advocate
Mr. Pradip Kumar Kundu, Advocate

For the Respondent : Mr. Saptarshi Roy, Advocate

Hearing & Judgment on : **August 11, 2026**

DEBANGSU BASAK, J.:-

1. IA No.: CAN 1 of 2025 is an application for condonation of delay in making and preferring the appeal.
2. Department reports that the delay is of 84 days.
3. For the ends of justice, the causes shown in the application for condonation of delay are accepted as sufficient.

4. The delay of 84 days in making and filing the appeal is condoned.
5. IA No.: CAN 1 of 2025 is allowed.
6. Appeal is taken up for hearing by consent of the parties.
7. Appeal is directed against the impugned judgment and order dated May 13, 2025 passed in WPA 12139 of 2023.
8. By the impugned judgment and order, the learned Single Judge allowed the writ petition of the private respondent and directed refund of the security deposit.
9. Learned Advocate appearing for the appellants submits that, the railways awarded a contract to the private respondent for a parcel van on the Howrah Mumbai Mail. The lease agreement was executed on March 27, 2023 to be effective on and from April 15, 2023.
10. Learned Advocate appearing for the appellants submits that, in terms of the contract between the parties, the private respondent created a security deposit of Rs.56,94,274/-.
11. Learned Advocate appearing for the appellants submits that, by a letter dated May 10, 2023, the private respondent sought to raise various issues with regard to the operation of the parcel van. Before the appellants could take a decision on the letter dated May 10, 2023, the private respondent filed a writ petition on May 15, 2023. He points out that, by the letter dated May 10, 2023, the private respondent gave the appellant 7 days' time to rectify the defects. However, before expiry of the period of 7 days

as specified in the letter of the private respondent dated May 10, 2023, the private respondent filed the writ petition.

12. Learned Advocate appearing for the appellants submits that, the private respondent obtained an interim order in such writ petition on June 26, 2023. He submits that, the appellants could not take any decision with regard to the representation dated May 10, 2023 by reason of the interim order passed on June 26, 2023.
13. Learned Advocate appearing for the appellants submits that, the internal Memo dated May 11, 2023 cannot be construed to be an admission of any allegations made by the private respondent in the letter dated May 10, 2023. He refers to the letters dated May 10, 2023 of the private respondent and the Internal Memo dated May 11, 2023 of the appellants. He submits that, the Memo dated May 11, 2023 noted the grievances of the private respondent as contained in the letter dated May 10, 2023 and requested the private authority to look into such issues and if found correct to take ameliorative measures.
14. Learned Advocate appearing for the appellants submits that, the learned Trial Judge drew adverse inference on the alleged no decision being taken on the representation dated May 10, 2023 and, therefore, directed refund of the security deposit. He submits that, there was no basis for the learned Single Judge to draw any adverse inference in the factual matrix as noted above.

15. Learned Advocate appearing for the appellants submits that, the Freight Marketing Policy which is applicable contains Clause 28 governing the security deposit and its refund. He submits that, there was no occasion in terms of Clause 28 of such Freight Marketing Policy of 2022 for the railway authorities to refund the security deposit. On the contrary, the railway authorities are entitled to forfeit the security deposit. He submits that, process for forfeiture could not be undertaken in view of the interim order passed on June 26, 2023.
16. Learned Advocate appearing for the private respondent submits that, the parties are governed by the Freight Marketing Policy of 2022. He submits that, in terms of such Marketing Policy, the respondent authorities are not entitled to forfeit the security deposit.
17. On the issue of binding nature of the Freight Marketing Policy, learned Advocate appearing for the private respondent relies upon **(2007) 8 Supreme Court Cases 1 (Reliance Energy Ltd. and Another vs. Maharashtra State Road Development Corpn. Ltd. and Others)**.
18. On the issue of maintainability of the writ petition, learned Advocate appearing for the private respondent relies upon **(2020) 9 Supreme Court Cases 356 (Hari Krishna Mandir Trust vs. State of Maharashtra and Others)**.
19. Learned Advocate appearing for the private respondent draws the attention of the Court to the contents of the letter dated May 10, 2023. He submits that, the parcel van was not made available to the private respondent

during scheduled time. He refers to Clause 24 of the Comprehensive Parcel Leasing Policy dated April 15, 2014 in support of his contention.

20. Learned Advocate appearing for the private respondent draws the attention of the Court to the letter dated May 11, 2023 of the appellants. He submits that, by such writing the appellants recognize that, there were issues with regard to the placement of the parcel van during scheduled time for the business exploitation thereof by the private respondent.
21. Learned Advocate appearing for the private respondent submits that, no show-cause notice was issued by the appellants for forfeiture of the security deposit. Private respondent is entitled to a show-cause notice prior to the appellants deciding to forfeit the security deposit. He submits that, in absence of such show-cause notice and a decision being taken thereon, appellants are not entitled to forfeit the security deposit.
22. Learned Advocate appearing for the private respondent submits that, without terminating the subsisting contract the railway authorities put up the same parcel van for tender and awarded the same to another party. Such other party also rescinded such contract. He submits the security deposit of the second party was refunded. He submits that, the adverse inference drawn by the learned Trial Judge was on the basis of this factor also.
23. Appellants floated a tender dated March 27, 2023 for leasing of 24 tonne carrying capacity of parcel van in connection to Train No.12810/12809 Howrah to CSMT by Mumbai Mail for a period of two years. Private

respondent participated in such tender process and became the highest bidder. Tender for the 24 tonne carrying capacity of parcel van in connection to Train No.12810/12809 Howrah to CSMT by Mumbai Mail for a period of two years was granted in favour of the private respondent.

24. In terms of the tender, a lease agreement dated March 27, 2023 was entered into between the parties. The lease agreement contemplated that, the lease would become effective on and from April 15, 2023.
25. In terms of the lease agreement dated March 27, 2023, private respondent commenced operating the parcel van on and from April 15, 2023. However, by a letter dated May 10, 2023, private respondent raised various issues for consideration by the rail authorities. Essentially by such letter, the private respondent raised operation inconvenience due to the late running of the concerned train as also the time consumed for the purpose of loading and unloading of the parcel van. In such letter, the private respondent stated that, if the operational inconveniences as detailed in such letter are not addressed in the coming 7 days from the date of receipt of the letter, the private respondent will suspend the lease temporarily. Private respondent also stated that, such letter be treated as a prior notice in terms of the concerned policy.
26. It is admitted at the bar that the subject lease is governed by two policies of the railways. Such policies are the Comprehensive Parcel Leasing Policy dated April 15, 2014 and the Freight Marketing Circular No.11 of 2022.

27. ***Reliance Energy Ltd. and Another*** (supra) is of the view that, notice on the previous authorities of the Supreme Court where it is stated that Article 14 of the Constitution of India applies to matters of government policy. If the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.
28. In the facts and circumstances of the present case, there is a lease which was entered into between the parties dated March 27, 2023. The lease was to come into operation on and from April 15, 2023. Alleged operational inconveniences arose which prompted the private respondent to issue a letter dated May 10, 2023.
29. There is a writing dated May 11, 2023 which is an inter-department Memo of the railway authorities. By such Memo, the railway authorities were corresponding with each other with regard to the letter dated May 10, 2023 of the private respondent. The internal Memo dated May 11, 2023 noted that, there were allegations of alleged operational inconveniences made by the private respondent and that, a request was made by one authority to the other to look into such allegations and if found correct, to take possible measures of remedying the same.
30. The letter dated May 11, 2023 which is an internal Memo cannot be construed to be an admission of the allegations contained in the letter dated May 10, 2023 of the private respondent. At no point of time the railway authorities acknowledged that, there were operational

inconveniences caused to the private respondent which were within the control of the railway authority.

31. Significantly, the letter dated May 10, 2023 of the private respondent gave 7 days' time to the railway authorities to remedy the breach, if there be any. Before expiry of 7 days from May 10, 2023, private respondent filed the writ petition in which the impugned judgment and order was passed. Such writ petition was filed on May 15, 2023.
32. In the writ petition filed by the private respondent, an interim order dated June 26, 2023 was passed restraining the respondent authorities from taking any coercive measures as against the private respondent. It is not in dispute that such interim order continued till the disposal of the writ petition by the impugned judgment and order.
33. Therefore, prior to the notice of the 7 days' period which the private respondent itself provided to the railway authorities to remedy the breach, if there be any, by the letter dated May 10, 2023, the writ petition was filed on May 15, 2023 in which the interim order dated June 26, 2023 was passed.
34. Railway authorities, therefore, in such factual matrix could not take steps in accordance with the two freight circulars which bind the parties. No show-cause notice was issued for forfeiture. On one hand the private respondent sought redressal of the grievances enumerated in its letter dated May 10, 2023 while on the other hand it held the railway authorities back from taking any decision thereon by filing the writ petition and

obtaining the interim order on June 26, 2023 to accuse them of acting unreasonably.

35. No doubt, even in contractual matters, a writ petition is maintainable. Approach to the High Court under Article 226 of the Constitution of India as against an Authority under Article 12 of the Constitution of India cannot be curtailed merely on the ground that the writ petition relates to contractual matters. It is a self-imposed restriction which a Writ Court exercises in contractual matters where, there exists disputes between the parties.
36. As noted in ***Hari Krishna Mandir Trust*** (*supra*), existence of a dispute by itself does not oust the jurisdiction of a High Court in respect of contractual matters where an Article 12 authority is involved.
37. In the facts and circumstances of the present case, the learned Judge, drew an adverse inference on the basis of the non-reply to the letter dated May 10, 2023. Such drawl of adverse inference is recorded in the paragraph 23 of the impugned judgment and order.
38. As discussed above, the appellants were never given time of 7 days to respond to the letter dated May 10, 2023 of the private respondent. In terms of such letter itself, the private respondent filed the writ petition prior to the expiry of 7 days and obtained the order dated June 26, 2023 thereon. Question, therefore, drawl adverse inference from the non-reply to the letter dated May 10, 2023 cannot be sustained.

39. So far as action of the railway authorities in putting up the subject parcel van for a fresh tender and the new tenderer, rescinding the contract with the new tenderer being refunded the security deposit, the same may be decided before the appropriate forum, if at all railway authorities decide to forfeit the security deposit of the private respondent.
40. Mechanism for forfeiture of security deposit is available in the two freight circulars which the parties relies upon heavily. Railway authorities are yet to invoke the same.
41. In view of the discussions above, we set aside the impugned judgment and order and permit the parties to act in terms of the two Circulars and the Contract between the parties in dealing with each other.
42. **MAT 1514 of 2025** and **IA No.: CAN 2 of 2025** are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

43. I agree.

(Aryak Dutt, J.)

(AD)