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Union of India and anr. Vs. M/S Maa Vindhya Vasini Steel Traders and ors.

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Court : Kolkata

Decided On : Jan-04-2012

Judge : Sanjib Banerjee

Appellant : Union of India and anr.

Respondent : M/S Maa Vindhya Vasini Steel Traders and ors.

Judgement :

AP No.921 of 2011 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE UNION OF INDIA & ANR.

Versus M/S MAA VINDHYA VASINI STEEL TRADERS & ORS.BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

4. h January, 2012.

Appearance : Mr.Partha Sarathi Bose, Sr.Adv., Mrs.Aparna Mukherjee, Adv., for the petitioner.

The Court : None appears to oppose the petition even at the second call.

Directions were issued for affidavits to be filed in presence of advocate representing the respondents.

No affidavit-in-opposition has been filed.

The petition is under Section 34 of the Arbitration and Conciliation Act, 1996 to challenge an award dated July 22, 2011.

The reference arose following an auction purchase of scrap by the respondents at a railway sale.

The only ground which has been urged on behalf of the petitioners is that the arbitrator acted contrary to the terms of the agreement under which he derived authority.

The petitioners say that the agreement and the special conditions governing the agreement clearly provided that upon the respondents failing to take delivery or deposit the balance amount within a specified date, the earnest money would be forfeited.

The petitioners demonstrate from the award that the arbitrator held against the auction purchaser and found that no ground had been made out by the auction purchaser to justify the prayers made for extension of time and ultimately the non-payment of the balance amount.

The petitioners contend that if there was no justification for the auction purchaser to not make the balance payment, the arbitrator could not have held that the earnest money was liable to be refunded to the recalcitrant auction purchaser merely because the railway authorities had not specified that the goods were in a deliverable state.

There is substantial basis to the submission on behalf of the petitioners. Neither the agreement nor the special conditions governing the agreement required the railway authorities to intimate the auction purchaser that the goods were in a deliverable state.

Indeed, as pointed out on behalf of the petitioners, the auction purchases are conducted on an as-is-where-is basis and there is hardly any scope for the railways to notify the auction purchaser of the state of the goods.

Since the respondents have chosen not to appear and have also chosen not to deal with the contents of the petition and since it appears that the award, to the extent that it required the earnest money deposited by the respondents to be refunded, is contrary to the terms of the agreement and the special conditions governing them, such part of the award is set aside.

AP No.921 of 2011 is allowed to the above extent without any order as to costs.

Urgent certified photocopies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.) S.Das AR[CR].

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