

Developments Limited Vs. Union of India and ors.

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Court : Kolkata

Decided On : Dec-17-2012

Judge : I. P. Mukerji

Appellant : Developments Limited

Respondent : Union of India and ors.

Judgement :

TA NO.153 OF 201.WITH T NO.182 OF 201.IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE Developments Limited versus Union of India & ORS. BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date :

17. h December, 2012.

Mr.J.Saha, Mr.Raja Basu Chowdhury, Mr.B.Biswas, Mr.P.Mukherjeeappear.

Mr.S.Banerjeeappears.Mr.S.Pal Chowdhuryappears.The Court : Mr.Banerjee for the Railways, at the outset submits that this Court has no jurisdiction to entertain, try and determine the suit by virtue of clause 2703 of the IRS Conditions of Contract.

This clause stipulates that the place where the tender is accepted would alone have jurisdiction to decide any dispute arising out of the contract.

Now, the place of acceptance of tender is in dispute.

Mr.Raja Basu Chowdhury, learned advocate for the plaintiff submits that their offer was followed by a counter offer by the Railways which was accepted by the plaintiff in Kolkata within the jurisdiction.

Therefore, this Court has jurisdiction.

This question has to be tried on affidavits or at the time of trial of the suit.

But the plaintiffs cause for apprehension at this stage is a provision in the letter dated 20th November, 2012 of South Central Railway to them purporting to quantify the loss suffered by the Railways at Rs.75,21,175.23 as provisional loss and asking the plaintiff to deposit the sum with the Railways.

It is submitted that if the amount is not deposited, the Railways would deduct this amount from any sum payable by them to the plaintiff.

Assessing loss, even provisionally and then appropriating the amount from any money belonging to the person from whom the damages are claimed tantamount to adjudicating the damage and then executing it.

The Railways ought not to have taken this course.

Remedies are open to them in arbitration or in a court of law to establish this amount.

Only after obtaining a suitable order or decree or award of a court of law or an arbitrator should the Railways appropriate the above amount claimed as provisional loss.

Order accordingly.

Let affidavits be exchanged according to the following directions: Let affidavit in opposition be filed by 28th January, 2013.

List this application on 20th February, 2013.

Affidavit in reply, if any, may be filed in the mean time.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(I.P.MUKERJI, J.) pkd.

Asstt.Registrar (CR)

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