

Simplex Infrastructures Ltd. Vs. Oriental Bank of Commerce and ors.

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Court : Kolkata

Decided On : Oct-16-2012

Judge : I. P. Mukerji

Appellant : Simplex Infrastructures Ltd.

Respondent : Oriental Bank of Commerce and ors.

Judgement :

ORDER

SHEET TA NO.122 OF 201.T NO.117 OF 201.IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE SIMPLEX INFRASTRUCTURES LTD.Versus ORIENTAL BANK OF COMMERCE & ORS.BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date :

16. h October, 2012.

Mr.P.Chatterjee, senior advocate, Mr.Mr.A.Mitra, Mr.P.Sinhaappear.

Mr.A.K.

Routh, Mr.S.Pal Chowdhuryappear.

The Court : This interim application in aid of the suit, is moved citing very urgent circumstances at 2 p.m.today, after obtaining prior leave of this Court.

But at the time of granting leave this Court had made it clear that notice of this application should be given to the defendants.

It is submitted by Mr.Chatterjee, learned senior counsel that all the defendant banks have been duly served, the Union of India has been served through the Ministry of Law, Strand Road, Kolkata.

The only ground, which was taken at this stage was that each of the bank guarantees was in favour of the President of India acting through the Executive Engineer, Andaman Central Division, CPWD, Port Blair.

The termination notice dated 1st October, 2007 was issued by CPWD, Kamorta for and on behalf of the President of India.

However, the Letter of Invocation was made by the Executive Engineer, CPWD, Port Blair.

I was shown one of such Letters of Invocation being the letter dated 10th August, 2012 being part of Annexure-M of the petition at page 255 thereof.

Clearly, the notice of invocation was made by the Executive Engineer himself and not on behalf of the President of India.

This is a technical flaw, but nonetheless the invocation is bad.

This observation is prima facie.

On this prima facie case, I direct the defendants to maintain status quo regarding transfer of funds under the subject bank guarantees.

In case payment has already been made under the bank guarantees by debiting the account of the plaintiff and followed by remittance of the money, then in that case the fourth defendant will keep the sum received in a separate interest bearing account to the credit of the suit.

I record that Mr.Routh appears for fiRs.and third defendants.

This interim order will be valid till 23rd November, 2012.

I make this application returnable on 20th November, 2012.

Let one more notice be given to all the non-appearing parties by the advocate on record for the plaintiff.

Leave is granted to the advocate on record for the plaintiff to communicate the gist of this order by fax, e-mail or any other mode of swift communication.

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

(I.

Pkd.

Asstt.

Registrar [C.R.].P.MUKERJI, J.)

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