

Vs. M/S. Integral Construction Company Ltd. ..Respondent

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SooperKanoon Citation : sooperkanoon.com/1061282

Court : Kolkata

Decided On : Jul-04-2012

Judge : Banerjee

Respondent : M/S. Integral Construction Company Ltd. ..Respondent

Judgement :

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ORDER

SHEET APO.T.No.319 of 2012 ACO No.136 of 2012 ACO No.137 of 2012 C.P.No.297 of 2009 IN THE HIGH COURT AT CALCUTTA CIVIL APPELLATE JURISDICTION ORIGINAL SIDE -Hindustan Copper Ltd.Appellant Versus M/S.Integral Construction Company Ltd.Respondent BEFORE The Hon'ble Justice BANERJEE The Hon'ble Justice SHUKLA KABIR (SINHA) Date:

4. h July, 2012 Mr.Amitava Ghosh, Advocate, Mr.Bijon Majumder, Advocate for the Appellant.

Mr.Suprio Bose, Advocate, Mr.respondent.

appear and submit M.N.Ghosh, Advocate for the The Court: The appeal is barred by 90 days as claimed by Mr.Ghosh.

Causes being sufficient, delay is condoned.

The appeal is taken on record.

The application for stay is taken up for hearing.

We have heard Mr.Amitava Ghosh, learned counsel for the appellant and Mr.Suprio Bose, learned counsel for the respondent.

The facts would depict that the appellant company being a wholly owned Central Government Undertaking entrusted certain work to the respondent.

Dispute arose with regard to the working of the same.

Mr.Bose appearing for the respondent, however, disputes such contention of the appellant.

According to him, the work was completed.

Only the dues are to be cleared by the company.

According to him, a sum of Rs.1.34 crores approximately would be due and payable by the appellant company to the respondent- petitioning creditor.

We also find that the agreement contained an arbitration clause.

The parties participated in arbitration proceeding.

Mr.Bose submits that the arbitration was abandoned.

Mr.Ghosh, however, disputes such contention.

According to him, it was adjourned on the issue of change of venue.

During pendency of the arbitration proceeding, the respondent approached petition the after learned Single serving a Judge statutory by filing notice of a winding-up demand upon the company.

The contract was entered into and was to be performed at Madhya Pradesh.

However, the registered office of the company is situated within the State of West Bengal, that would maintain the winding up proceeding before this Court.

We being are a constrained wholly owned to observe Central that the Government appellant Undertaking company were so callous in its attitude, particularly, in defending a winding up proceeding they were affidavit-in-opposition according to jurisdiction them to not at they Madhya entertain all took Pradesh the serious a jurisdiction High said about Court was application.

it.

In the clause having The as the basic knowledge in the corporate law was lacking in the appellant.

They failed to appreciate that the company was having its registered office within the State of West Bengal.

They did not approach the learned Judge for stay of the winding up proceeding on the ground of pending arbitration.

They not even appeared before His Lordship when the matter was heard at the admission stage.

Mr.Majumder, learned Advocate-on-Record, however, submits that he was out of station on that date.

But what prevented the company to engage another lawyer on the said date is a question, answer of which is not forthcoming.

Facts would depict that the company did not take the proceeding seriously.

Misery continued.

Learned Judge passed an exparte order of admission.

The company allowed the advertisement to be published in the newspaper.

They did not go back to the learned Judge for recall of the said order on the ground of Mr.Majumder.

They preferred a defective appeal which was later on withdrawn with liberty to prefer afresh.

In the process they allowed advertisement to be published.

On May 14, 2012 the matter appeared before the learned Single Judge after advertisement.

affidavit.

The They appellant did not file company any took direction affidavit.

The for filing matter again appeared on July 2, 2012 when Mr.Ghosh prayed for one weeks extension, that was not allowed by the learned Judge.

The learned Judge passed the order of winding up.

In this backdrop, Mr.Bose rightly contends that the appeal is infructuous.

Mr.Ghosh, however, contends that the company was not properly advised at the appropriate level, that caused difficulty as elaborately furnish a bank discussed guarantee above.

He securing is, however, the entire prepared claim of to the respondent.

We have considered the rival contentions.

We are unable to conceive as to how a Government Company would take a winding up proceeding so lightly, particularly when already an arbitration proceeding was going on at Madhya Pradesh.

The last sitting of the arbitration was held on April 6, 2012 as we find from the minutes of the meeting.

The learned Single Judge was never told about such proceeding.

Hence, there was no other alternative, but to pass an order of winding up.

His Lordship was not properly assisted by or on behalf of the appellant company.

However, for the ends of justice we wish to test the bonafide of the appellant company and give them an opportunity to contest the proceeding before His Lordship.

Mr.Bose, however, submits that we should consider such issue at the time of final hearing of the appeal.

He wants the appeal to be finally heard and disposed of.

In this backdrop and as per the prayer of Mr.Supriya Bose appearing for the respondent we direct expeditious hearing of the appeal.

The appellant must file informal paper book incorporating all papers used before the Court below positively within 3 weeks from date.

As soon as the paper book is filed let the appeal be placed for hearing in the list.

The order of admission and the subsequent order of winding up would remain stayed upon furnishing of a bank guarantee by the appellant for Rs.1.34 Crore in favour of the Registrar, High Court Original Side to be furnished positively within 3 weeks from date.

We grant liberty to the respondent company to encash the said bank guarantee by giving a counter guarantee in favour of the Registrar, Original Side to be kept renewed from time to time till disposal of this appeal.

Unconditional stay would continue for three weeks.

We once again make it clear that we would hear the appeal only after the bank guarantee is furnished by the Company.

In default of furnishing of the guarantee by the appellant, this order would stand recalled and the appeal would stand dismissed.

Both the applications being ACO No.136 of 2012 and ACO No.137 of 2012 are disposed of on the above terms. There would be no order as to costs.

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

(BANERJEE, J. (SHUKLA KABIR (SINHA).J.km/dg

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