

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jul-16-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP NO.484 OF 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF : M/S.ESS DEE ALUMINIUM LTD AND MALAY KAMDAR BEFORE: The Hon'ble JUSTICE PATHERYA Date : 16th July, 2014.

MR.M.S.TIWARI, MR.A.K.SHUKLA, MR.R.K.PANDEY, MR.V.K.TIWARI,
ADVOCATES FOR PETITIONING CREDITOR MR.RATNANKO
BANERJEE,SR.ADVOCATE, MR.D.CHOWDHURY, MR.S.MITRA,
MR.S.CHOWDHURY, MR.S.BHATTACHARYYA,
MS.P.CHOWDHURY,ADVOCATES FOR COMPANY The Court : This application
has been filed for realisation of sums for services rendered.

The claim is based on purchase orders issued and bills raised by the petitioning creditor for works done.

For non-payment by the company a statutory notice was issued on 30th August, 2012 to which a reply was given on 20th September, 2012 by the company.

For continued non-payment this winding up petition has been filed.

On a perusal of the pleadings of the parties what appears is that some of the bills do not match with the purchase order annexed.

Some bills which have been received have annexures enclosed thereto but these annexures have not been enclosed with the bills annexed.

Electronic mails exchanged between the parties have also not been annexed to the petition filed.

In fact, there is no mention of the electronics mills exchanged.

In the affidavit the company annexed some e-mails evidencing thereby that the company had raised disputes through such e-mail.

It is only then that the petitioning creditor annexed some electronic mails that too only relating to the demand for payment.

Therefore, there has been suppression of material facts by the petitioning creditor and the petition cannot be entertained.

The enclosures to the bills have also not been disclosed in the pleadings filed and it is not possible to ascertain the works undertaken as pleaded by the petitioning creditor on the basis of the purchase orders issued.

Therefore, this application warrants no order and is, accordingly, dismissed.

This, however, will not prevent the petitioning creditor from taking steps in accordance with law and although counsel for the petitioning creditor seeks a direction upon the company to secure its claim.

In the absence of relevant purchase orders and relevant documents such direction cannot be granted.

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

(PATHERYA, J.) sb.

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