

**Vs. Louis Dreyfus Armatures Sas and ors..... R**

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**SooperKanoon Citation :** [sooperkanoon.com/1165095](http://sooperkanoon.com/1165095)

**Court :** Kolkata

**Decided On :** Sep-29-2014

**Judge :** Soumen Sen

**Respondent :** Louis Dreyfus Armatures Sas and ors..... R

**Judgement :**

IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE Present : The Honble Justice Soumen Sen G.A.1997 of 2014 CS No.220 of 2014 The Board of Trustees of the Port of Kolkata.Petitioner Versus Louis Dreyfus Armatures SAS & Ors. Respondents For the Petitioner : Mr.Abhrajit Mitra, Sr.Adv.Mr.Anirban Roy Mr.Soumavo Ghoshe For the Respondent No.1 : For Union of India Heard on Mr.Saurabh Gupta Mr.K.K.Pandey Mr.Aparna Banerjee Ms.Manisha Gupta Mr.Sayon Ganguly Mr.Sudipto Sarkar, Sr.Adv.Mr.Jishnu Saha, Sr.Adv.: Dipanjan Dutta : 11.08.2014, 29.08.2014.

03.09.2014, 05.09.2014, 10.09.2014, 22.09.2014 Judgment on : 29.09.2014 Soumen Sen, J:- The initiation of proceeding under the arbitration rules of the United Nations Commission on International Trade Law, 1976 by a French National being the respondent no.1 on the basis of a Bilateral Treaty Agreement (hereinafter referred to as BIT) between the Government of India and the Government of France on the Reciprocal Promotion and protection of investments 1997 is the subject matter of challenge in this proceeding.

Mr.Sudipto Sarkar the learned Senior Counsel appearing with Mr.Jishnu Chaudhury the Senior Advocate on behalf of the respondent no.1 submits invited this Court to decide the matter without affidavit since it is contended that it is purely a jurisdictional issue for which no affidavit as such is required.

This is an application for injunction restraining the respondent no.1 from taking further steps on the basis of a notification of claim dated 11th November, 2013 and the notices of arbitration dated 17th April, 2014 and 19th May, 2014 respectively.

The plaintiff/petitioner essentially seeks restrain order upon the respondent no.1 to proceed with the arbitration proceeding in terms of the aforesaid notices.

The arbitration reference has been made by one Louis Dreyfus Armatures SAS (hereinafter referred to as LDA) respondent no.1 against the Government of India.

The genesis of the dispute is the awarding of a contract executed by Port Trust in favour of the Haldia Bulk Terminals Private Limited (hereinafter referred to as HBT) for operation and maintenance of berth Nos.2 and 8 of the Haldia Dock Complex of the Port Trust.

The plaintiff and HBT had entered into a contract on 16th October, 2009.

The said contract contains an arbitration clause.

The said Arbitration Agreement has already been invoked and arbitral tribunal has been constituted thereafter.

The respondent no.3 as claimant has filed the statement of claim.

The claim of the respondent no.3 against the plaintiff/petitioner is essentially one for damages allegedly suffered by the respondent no.3, as a result of alleged breach of contract dated 16th October, 2009 by the petitioner.

The arbitral reference is continuing on a regular basis.

The petitioner has also filed its counter statement and counter claim.

The counter claim of the petitioner also arises out of the said contract.

The petitioner alleged to have suffered loss and damages and hence made the counterclaim against the respondent no.3.

On 11th of November, 2013 the Government of India, State of West Bengal and the Port Trust received notice of claim issued on behalf of the defendant no.1, in respect of investment in the contract for the supply, operation and maintenance of cargo handling equipment at berth Nos.2 and 8 of Haldia Dock Complex in West Bengal.

The said notification of claim is purported to have been issued under Article 9 of a Bilateral Treaty Agreement between the Government of India and the Government of Republic of France on the reciprocal, promotion and protection of investment of 1997 (hereinafter referred to as the Treaty).Mr.Abhrajit Mitra the Ld.

Senior Counsel appearing on behalf of the petitioner submits that a bare reading of notification of claim would show that the claim relates entirely to the disputes already pending before the arbitral Tribunal.

The claim is directed against Port Trust.

The subject matter of the dispute

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