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**Em and Em Associates Vs. Delhi Developement Authority**

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**SooperKanoon Citation :** [sooperkanoon.com/685276](http://sooperkanoon.com/685276)

**Court :** Delhi

**Decided On :** Jan-11-1985

**Reported in :** 1986(2)ARBLR140(Delhi); 30(1986)DLT163

**Judge :** Jagdish Chandra, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1; [Arbitration Act, 1940](#)- Sections 41

**Appeal No. :** Suit No. 1391 of 1984

**Appellant :** Em and Em Associates

**Respondent :** Delhi Developement Authority

**Advocate for Pet/Ap. :** D.K. Syal and; M.L. Jain, Advs

**Judgement :**

**Jagdish Chandra, J.**

(1) By means of this application brought under Section 41 read with Second - schedule of the [Arbitration Act, 1940](#) and Order 39 Rules 1 & 2 of the Code of Civil Procedure the petitioner Em & Em Associates seeks a stay against the respondent Delhi Development Authority (to be referred to as DDA), their officers, agents and servants from encashing the bank guarantee/guarantee bond No. 44/82 for Rs. 46,300.00 .

(2) This application is resisted by the respondent/DPA.

(3) The perusal of the bank guarantee shows that the Syndicate Bank (hereinafter to be referred to as the Bank) undertook to pay the amount due and payable under this guarantee without any demur on demand from the Dda stating that the amount claimed is due by way of loss or damages caused to or would be caused to or suffered by the Dda by reason of any breach on the part of the petitioner-contractor of any of the terms and conditions contained in the original contract between the parties on the basis of which this bank guarantee was given by the Bank. Copy of the letter of demand by the Dda upon the Bank is Annexure P-2 dated 15-10-1984 in which the following relevant lines appear :

'...INthis connection I am to state that the three agreements in question have been closed. We propose to encash the aforesaid bank guarantees. You are, thereforee requested to send a demand draft for Rs. 1,73,637.60 in favor of the E.E./CPD-VIII per messenger of this letter

(4) This letter nowhere alleges or mentions that this amount has become due to the Dda on account of any loss or damages caused to or to be caused to or suffered by the Dda by reason of any breach of the original contract on the part of the petitioner-contractor. Not stating these averments in the aforesaid letter renders the letter not in consonance with the terms of the bank guarantee and under the circumstances this letter of the Dda is defective and consequently the bank guarantee cannot be invoked by the DDA. In this view of the matter the petitioner is entitled to the stay as prayed for.

(5) The contention of the learned counsel for the respondent/DDA that this bank guarantee was contract only between the bank on the one hand and the Dda on the other for which reason the petitioner-contractor was not competent to move this stay application in respect of the invoking of the bank guarantee, does not appear to be tenable because the bank guarantee has arisen out of the original main contract between the petitioner on the one hand and respondent/DDA on the other and the money covered under the bank guarantee, even though payable by the Bank, shall ultimately remained the liability of the petitioner-contractor.

(6) In view of the above discussion, Dda is restrained from encashing the bank guarantee on the basis of the aforesaid letter dated 15-10-1984 on account of its defective nature as pointed out above. Copy of this order may be sent to the Bank.

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