Items-5&6. 26-11-2024

sg Ct. 12

FMA 1201 of 2015
With
FMA 1407 of 2019
CAN 3 of 2023

Pawan Agarwal
Versus
Manish Todi & Ors.

Mr. Rittick Chowdhury
Mr. Roshan Pathak
…for the petitioner

Mr. Nirmalya Dasgupta
Mr. R.L. Mitra
Ms. Priyanka Dhar
…for the respondent

1. Affidavit of service filed in Court is taken on record.
2. This is an application for return of bank guarantee deposited with the Hon'ble Court as per the order dated 28th June, 2019 passed in CAN 4117 of 2019 arising out of FMAT 399 of 2019.
3. It is an admitted position that the bank guarantee was furnished during the pendency of the appeal filed under Section 37 of the Arbitration and Conciliation Act and after the said award was set aside, the bank guarantee cannot survive. It has been further brought to our notice that the application for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act was also dismissed.
4. Mr. Nirmalya Dasgupta, learned Counsel appearing on behalf of the respondents, neither disputes the dismissal of the appeal nor the dismissal of the application under Section 11 of the Conciliation and Arbitration Act. However, it has been urged that since the appeal has been disposed of, this Court may not have any jurisdiction to pass any order and the

bank guarantee had expired in the meantime.

5. Irrespective of the fact that whether the bank guarantee had expired in terms of an order or not, the bank guarantee is still in the custody of the learned Registrar General pursuant to the direction of this Court. The consequence of the dismissal of both the proceedings would be to return the bank guarantee in favour of the applicant. The petitioner cannot be held to be remediless.
6. Since the bank guarantee was furnished pursuant to an order of this Court with the dismissal of the appeal, the bank guarantee cannot survive any further and no formal order is required for return of the bank guarantee and we feel that it should not cause any impediment on behalf of the applicant to settle the matter with the bank as we have not been shown any letter by which the bank has insisted for return of the bank guarantee and without which the banking operation, insofar as the application is concerned, may be prejudiced.
7. The petitioner shall make appropriate communication with the learned Registrar General of this Court for return of the bank guarantee.
8. CAN 3 of 2023 is, accordingly, disposed of.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)