IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.5981 of 2015 (O&M)
Date of Decision: December 7, 2015

UCO Bank, Government of India Undertaking, through its Chairman, Head Office 10, BTM, Sarani Kolkata 700001 & others.

...Appellants

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Aalok Jagga, Advocate,
for the appellants.

*****

AMIT RAWAL, J. (Oral)

CM No.14931-C of 2015

For the reasons mentioned in the application, which is supported by an affidavit, delay of 3 days in refiling the appeal is condoned.

CM stands disposed of.

RSA No.5981 of 2015

The appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby the suit filed by the respondent-plaintiffs for mandatory injunction directing the Bank to honour the commitment as they had undertaken to give the bank guarantee unconditionally and irrevocably, has been decreed by both the Courts below.

Mr.Aalok Jagga, learned counsel appearing on behalf of the appellant-defendants has raised multi-fold arguments in supports of the grounds of appeal, which are summarised as under:-

a) As per the terms and conditions of the contract, the employer, i.e., State of Haryana-plaintiff had to make advance payment and then get the bank guarantee in lieu thereof;

b) On plain and simple language of Clause 51.1 of the agreement, it is revealed that at first advance payment is to be made and then the bank guarantee has to be issued;

c) The contractor and the officials of the Allahabad Bank are already involved in an FIR as the contractor had managed to give the bank guarantee to the employer;

d) After termination of the contract on 3.11.2008, the employer-respondent-plaintiff had raised the demand for enforcement of the bank guarantee on 25.11.2008, whereas the bank guarantees were given on 14.11.2008 and the first guarantee was issued on 24.10.2008. In essence, there is an apparent collusion between the contractor and the employer and a fraud has been played upon the Bank. It is in these circumstances, the bank wrote a letter to the respondents as to whether the contractor had been issued advance money against the bank guarantee or not, which allegedly gave the cause of action to the State to invoke the provisions of Section 39 of the Specific Relief Act by invoking the jurisdiction as provided under Section 9 of the Civil Procedure Code;

e) Had the aforementioned facts taken into consideration, perhaps the suit of the employer-respondent-plaintiff would have failed, thus, there is illegality and perversity, much less, substantial question of law arises for determination by this Court.

I have heard the learned counsel for the appellant-defendants and appraised the paper book.

Copy of the letter, vide which the bank had given assurance to the Superintending Engineer, Rohtak, Circle PWD B&R Branch, Rohtak, Haryana, has been annexed as Annexure A-1, which reads thus:-

" *Non judicial Stamp Rs.100/-*

Delhi *F 864802*

To

The Superintending Engineer,

Rohtak Circle PWD B&R Branch,

Rohtak, Haryana.

From

Trimurti Construction Developer & Builders,

C-1, 2nd Floor, Sector-26,

Noida, UP

Name of the work: Construction of O.P.D. in PGIMS Rohtak.

In accordance with the provisions of the condition of contract, Sub-clause 51.1 ("Advance payment") of the above mentioned Contract, Trimurti Construction Developers & Builders, C-1, 2nd Floor, Sector-26, Noida, UP, a Bank guarantee to guarantee his proper and faithful performance under the said clause of the contract in an amount of Rs.35,00,000/- (Rupees Thirty Five Lacs Only).

We, UCO Bank, Mid Corporate, Nehru Place, New Delhi as instructed by the contractor, agree unconditionally and irrevocably to Guarantee as primary obligator and not as surety merely, the payment to "the Superintending Engineer, Rohtak Circle PWD B&R Branch Rohtak, Haryana". On this first demand without whatsoever right of obligation on our *p;art and without his first claim to the contract, in the amount not exceeding Rs.35,00,000/- (Rupees Thirty Five Lacs only).*

Seal UCO Bank Sd/-

Chief Manager

We further agreed that no change or addition to or other modification of terms of the Contractor or works to be performed there under or any of the contract documents which may be made between to "The Superintending Engineer, Rohtak Circle PWD B&R Branch, Rohtak, Haryana" And Trimurti Construction, Developers & Builders C-1, 2nd Floor, Sector 26, Noida, UP, shall in any way release us from any liability under this guarantee shall remain valid and in full effect from the date of the advance payment under the contract until the Superintending Engineer, Rohtak Circle PWD B&R Branch, Rohtak, Haryana receives full repayment of the same amount from the Contractor.

We UCO Bank, Mid Corporate, Nehru Place, New Delhi, lastly undertake not to revoke this guarantee during its currency except with the pervious consent of the Govt.in writing.

Notwithstanding any thing contained herein above:

i) Our liability under this Bank guarantee shall not exceed Rs.35,00,000/- (Rupees Thirty Five Lacs only)

ii) This Bank guarantee shall be valid upto 23.10.2009.

iii) We are liable to pay the guaranteed amount or any part thereof under this Bank guarantee only if you serve upon us a written claim or demand on or before 23.10.2009.

iv) This guarantee stand automatically cancelled on 23.10.2009.

Date 24 day of Oct.2008

Sd/- for UCO Bank, Nehru Palace, New Delhi-19

Counter Signatory Sd/-Chief Manager."

On plain and simple language of the aforementioned letter, it is revealed that the bank had unconditionally and irrevocably undertaken to give guarantee as primary obligator and not as surety as the payment to the Superintending Engineer, aforementioned, on the demand whatsoever right of obligation on their part and without its first claim to the contractor, in the amount not exceeding ₹35.00 lacs.

It is a matter of record that before the mobilization, demand/ advance payment is made to the contractor, the employer secures its amount by taking bank guarantee from the contractor. The liability of the contractor to give the bank guarantee is either to deposit the equivalent amount or to secure the bank guarantee by creating any equitable mortgage. Be that as it may, the purpose of bank guarantee is that of the trustee/care taker. It cannot question the employer as to whether it had made advance payment or why it had terminated the contract before and made bank guarantee at a subsequent stage. The fact remains that the demand of bank guarantee was raised after the bank guarantee had been given by the bank on receipt of the security or equivalent amount alleged to have been deposited or paid by the contractor.

In my view, the Bank had been acting as shylock in not pondering upon their obligation. There is apparent breach of obligation and rightly so, the employer had invoked the provisions of Section 39 of the Specific Relief Act to enforce the breach of obligation.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below, which are based on appreciation of oral and documentary evidence.

Accordingly, the appeal is dismissed.

December 7, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**