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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO(OS) 596/2009

V D SWAMI AND COMPANY LIMITED ..... Appellant
Represented by: Mr.Krishnan Venugopal, Sr.Advocate instructed by Mr.Anshu Mahajan, Mr.Gaurav Ray & Mr.Karan Arora, Advs.

versus

BHARAT HEAVY ELECTRICALS LIMITED ..... Respondent
Represented by: Mr.J.C.Seth & Ms.Balaparameshwari.K, Advs.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

O R D E R

% **29.09.2016**

FAO(OS) 596/2009

1. Amongst others, one grievance in the appeal is to the learned Single Judge having neither acknowledged nor referred to, and as a result not dealt with, the contention of the appellant in the written submissions dated May 13, 2009.

2. We have perused the record of OMP No.215/2001 and find therefrom that in the absence of any representations from the respondent the learned Single Judge heard learned counsel for the respondent on April 24, 2009 and thereafter reserved the matter for judgment.

3. Thereafter, impugned judgment was pronounced on July 15, 2009.

4. There is no order recorded by the learned Single Judge that after arguments were heard a mention was made and the learned Judge permitted written submissions to be filed. But, from the record we find that written submissions are lying in the file of OMP No.215/2001. Since there is no stamp affixed by the Filing Counter, and because the written submissions are a part of the record, we have no reason to disbelieve statement made by learned counsel for the appellant that upon an oral mention made to the learned Single Judge the appellant was permitted to file the written submissions which were filed, and taken on record by the learned Single Judge; sans an order passed to the said effect.

5. The written submissions lying in the record are accompanied by a courier receipt it evinces that by courier they were sent to the learned counsel for the respondent who states in Court today that he did not receive the written submissions.

6. Whether or not the respondent received the written submissions is irrelevant. What is relevant is the fact that the learned Single Judge took on record the written submissions filed by the appellant because when arguments were heard and judgment was pronounced in OMP No.215/2001 counsel for the appellant was not present.

7. Thus, under the peculiar circumstances noted hereinabove, it was expected that the learned Single Judge should have acknowledged in the final decision that he had received and gone through the written submissions filed. The learned Single Judge ought to have crystallized the submissions advanced and therefore dealt with the same.

8. Under the circumstances, we dispose of the appeal setting aside the impugned decision dated July 15, 2009. OMP No.215/2001 is restored for

adjudication afresh before the learned Single Judge.

9. Parties shall appear before the learned Single Judge as per roster Bench on October 17, 2016.

10. No costs.

11. *Dasti*.

CM No.35712/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

SEPTEMBER 29, 2016
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