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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) No.649/2016, IA No.6744/2016 (u/O 39 R-1&2) and IA
No.6746/2016 (for exemption from serving notice u/S 80 to D-1).
SHRI SOMENDRA NATH DEKA Plaintiff
Through: Mr. Ravish Singh, Adv.
versus

NATIONAL BUILDINGS CONSTRUCTION CORPORATION
LIMITED & ANR Defendants
Through: Mr. Abir Phukan and Mr. Surya
Prakash, Advs. for D-1.
Mr. Amit Kumar for Mr. Anuj Jain,
Advs. for D-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **27.07.2016**

1. The plaintiff has instituted the suit for (i) declaration that the disruption caused in the execution of the contract dated 24th December, 2010 on account of insurgent activities/ problems will not be treated as non-performance of the works contract placed by the defendant no.1 on the plaintiff within the meaning of Bank Guarantee (BG) dated 20th May, 2011 issued by the defendant no.2 Central Bank of India (CBI) in favour of the defendant no.1 at the behest of the plaintiff; (ii) for permanent injunction restraining the defendant no.1 from encashing the BG and the defendant no.2 CBI from making payment under the BG; and, (iii) for mandatory injunction directing the defendant no.1 to extend the time for completion of the works contract.
2. Needless to state, the suit was accompanied with an application for interim relief restraining encashment of BG.

3. The suit came up first before this Court on 27th May, 2016 when the *ex parte ad interim* relief injunctioning the encashment of BG sought was denied to the plaintiff, though summons of the suit and notice of the application for interim relief were issued.
4. The counsel for the defendant no.1 as well as the counsel for the defendant no.2 CBI appear.
5. The counsel for the defendant no.1 states that the BG has since been encashed and monies thereunder been received by the defendant no.1 from the defendant no.2 CBI.
6. The counsel for the plaintiff has chosen not to appear and has sent Mr. Ravish Singh, Advocate (Enrolment No.D-1469/15) who does not know anything about the case.
7. The remedy of the plaintiff against the illegality if any on the part of the defendant no.1 in invoking and encashing the BG is to sue for the relief of recovery of the amount thereof and not to continue with the present suit. As far as the reliefs claimed of declaration and mandatory injunction are concerned, again the remedy if any of the plaintiff for illegal termination of the works contract by the defendant no.1 has to be of recovery of compensation for breach of contract and the reliefs of declaration and mandatory injunction in the shape of specific performance of the works contract are not maintainable in law and the works contract is not found of such a nature as to be capable of specific performance.
8. Thus no purpose will be served in keeping the present suit pending or for directing the pleadings to be completed therein and keeping the suit pending would rather deprive the plaintiff of instituting appropriate

proceedings for the reliefs to which the plaintiff may be entitled.

9. The relief of permanent injunction against encashment of BG as aforesaid has already become infructuous.

10. However the counsel for the plaintiff has chosen not to appear.

11. Appearance of Mr. Ravish Singh, Advocate is as good as non-appearance on the part of the plaintiff.

12. For this reason, it is deemed appropriate to dismiss the suit in default of appearance of the plaintiff rather than for the reasons aforesaid.

Dismissed in default.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 27, 2016

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