

\$~9

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

+ **FAO(OS) 373/2015**

M/S HARJINDER SINGH NAMDHARI Appellant
Represented by: **Mr.Sanjay Bansal, Advocate**

versus

**NATIONAL BUILDING CONSTRUCTION
COMPANY LTD** Respondent
Represented by: **Mr.Gaurav Upadhyay, Advocate**

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
% **27.01.2016**

CM No.12375/2015

Allowed subject to just exceptions.

FAO (OS) No.373/2015

1. Limited show cause notice was issued in the appeal on July 20, 2015 on the question whether amount realized by the respondent on invoking the performance guarantee was not adjusted by the respondent when it filed its counter claim and thus it is a case of double enrichment by the respondent.
2. We have repeatedly called upon learned counsel for the appellant to show the pleadings before the learned Arbitrator when the respondent filed the counter claim to the effect that the respondent had not adjusted the amount realized when it invoked the performance bank guarantee. De-hors the pleadings we have called upon learned counsel for the appellant to show

any material wherefrom it could be gathered that the amount realized by the respondent when it encashed the performance guarantee has not been taken into account either by the respondent or the learned arbitrator.

3. Learned counsel for the petitioner is unable to show anything to us.
4. Since it is an assertion made by the appellant, which is an assertion based on a fact, the appellant has to show the fact and if the same is shown the assertion would be made good. Per contra, if the primary fact is not so, the assertion would fail.
5. The appeal is accordingly dismissed.
6. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 27, 2016

mamta