

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2052 of 2016

In
Civil Writ Jurisdiction Case No.14995 of 2009

=====

M/s. Sri Ram Enterprises, a partnership firm having its office at Prem Kunj Apartment Goshala Road, P.S. Kotwali, Town and District Bhagalpur through its authorized representative Sri Giriraj Sharma, son of Late Ammi Lal Sharma, Resident of Jagarnath Suri Lane Mandroja, P.O. Bhagalpur, P. S. Tarapur, District Bhagalpur

... .. Appellant/s

Versus

1. General Manager, Eastern Railway, 14 Strand Road, 4th Floor, Kolkata-700001
2. The Chief Administrative Officer (Construction), Eastern Railway, 14 Strand Road, 4th Floor, Kolkata- 700001
3. The Deputy Chief Engineer, Eastern Railway, Bhagalpur

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Gautam Kumar Kejriwal
For the Respondent/s : Mr. Anil Singh

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 20-12-2017

Delay of 20 days in preferring the appeal is condoned. I. A. No.7180 of 2017 is allowed. Matter is heard on the merits.

The sole submission made on behalf of the appellant is that since there was no concluded contract in terms of Article 299 of the Constitution of India between the appellant and the Railways, the learned Single Judge has committed error by relegating the appellant to the forum of arbitration.



The reason for the learned Single Judge to do so emerges from the following paragraphs :

“4. The petitioner successfully participated in Tender No.115 of 2006-07(open) for the execution of balance work for construction of (a) Major Bridge No.39 [1x30.5 m through type] at Ch-25.501 KM and (b) Bridge no.50 [4x18.3 m composite girder] at Ch-34.425 KM in between Manderhill and Dumka, pursuant to which a letter of acceptance dated 09.01.2008 has been issued in its favour.

5. At the very outset, this Court takes note of the order dated 19.01.2011 passed in LPA No.1411 of 2009 by a Division Bench of this Court in similar circumstances. Having noticed the submission of the respondent- contractor that there cannot be a binding rule by which the respondent- contractor would be forced to avail the arbitration clause in absence of any agreement, it was held that the letter of acceptance has to be treated as part of the agreement. In that view of the matter, even though there was no agreement in writing, it was held that the letter of acceptance had to be treated as part of the agreement. Having regard to the judgment of the Apex Court in the case of State of U.P. Bridge vs. Bridge & Roof Co. [India] Ltd., (1996) 6 SCC 22 as well as in ABL International Ltd. and another vs. Export Credit Guarantee Corporation of India Ltd. and others, (2004) 3 SCC 553, the Division Bench expressed its firm view that the writ petition itself was not maintainable in view of the forum of arbitration being available.



6. In view of the decision of the Division Bench in LPA No.1411 of 2009, the present writ petition is dismissed as not maintainable. The petitioner shall be at liberty to agitate its grievances in arbitration.

7. Before parting, this Court takes note of the submission of Mr Gautam Kejriwal, learned counsel for the petitioner, that the matter has been pending for several years and the petitioner may not be relegated on the grounds of alternative remedy at this belated stage.

8. This Court is not impressed with the submission of learned counsel for the petitioner. Though the writ petition was filed in the year 2009 challenging the deduction of an amount of Rs.22,73,332/- from the running bills of the petitioner in terms of the respondents' letter dated 26.08.2009 which was merely of a consequential nature, a specific challenge in respect of the earlier letter dated 24/27.04.2009 holding the amount in question to be recoverable has itself been laid for the first time before this Court only in I.A. No.6781 of 2016 which has been filed in the month of August 2016. It is therefore incorrect to say that the subject matter of the writ petition has been pending before this Court for several years."

The rational and reasoning provided by the learned Single Judge in the above-mentioned paragraphs seems to be in conformity with the law and the facts. It is a frivolous exercise being done on behalf of the appellant in trying to prevail upon this Bench to sort out the issue in appeal instead of getting the matter resolved and adjudicated on priority under arbitration.



The Court is not satisfied that a case is made out for interference with the decision of the learned Single Judge dated 29.08.2016. Appeal is dismissed. Appellant, however, is still free to avail of the remedy indicated by the learned Single Judge.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

sk

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2017
Transmission Date	NA

