

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2154 of 2011

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Tantia Construction Ltd, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office situated 25/27, Netaji Subhas Road, Kolkata 700 001 (West Bengal) through its Executive Director, Ramesh Kumar Khaitan, Son of Sri S.N. Khaitan, Resident of GC 92, Salt Lake, Sector 3, P.O. and P.S. Bidhan Nagar, District Kolkata (West Bengal).

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Road Construction Department, Government of Bihar, Vishwasaraiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief-cum-Special Secretary, Road Construction Department, Government of Bihar, Vishwasaraiya Bhawan, Bailey Road, Patna.
3. The Executive Engineer, New Capital Road Division, Road Construction Department, Patna.
4. The Executive Engineer, Patna West Road Division, Road Construction Department, Patna.
5. The Executive Engineer, Patna City Road Division, Road Construction Department, Patna.

.... Opposite Parties

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Appearance:

For the Petitioner	: Mr. S.D.Sanjay, Sr. Advocate Mr. Gautam Kejriwal, Advocate Ms. Priya Gupta, Advocate
For the Opposite Parties	: Mr.P.K. Verma, AAG 3 Ms. Divya Verma, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 01-08-2017

The present application has been filed for modification of part of the order dated 18.09.2009 passed in CWJC No. 7403 of 2008.

2. Mr. S.D. Sanjay, learned Senior Counsel, submits that certain adverse remarks touching upon the conduct of Mr. Gautam Kejriwal, learned counsel appearing for the petitioner in CWJC No. 7403/2008, have been made in the order dated 18.09.2009 and seeks



that the same be expunged as the oral prayer for withdrawal of the writ petition was *bona fide* and not with the intent of suppressing any material fact such as filing of an arbitration application before the Calcutta High Court during the pendency of the writ petition as well as filing of the Interlocutory Application No. 2991 of 2008 for conditional withdrawal of the writ petition.

3. This Court is unable to appreciate why, if the petitioner was aggrieved in any manner by the judgment dated 18.09.2009, had waited for more than one and half years before filing the present modification petition. In any event, the said judgment dated 18.09.2009 is a detailed and reasoned one, passed after considering all material facts and circumstances. The adverse remarks came to be made for the reason that material facts were not brought to the notice of the Court by Mr. Gautam Kejriwal while making the oral prayer for withdrawal of the writ petition, such as

(a) during pendency of the writ petition and without informing this Court, the petitioner approached the Calcutta High Court on 13.05.2008 by filing an application under Section 9 of the Arbitration and Conciliation Act 1996 for the same cause of action, in which interim orders were granted by that Court on 13.05.2008 itself.

(b) the very next day on 14.05.2008, the petitioner filed I.A. No. 2991/2008 seeking withdrawal of the writ petition with liberty to file a fresh writ petition at the appropriate stage, without however



disclosing the fact of having approached the Calcutta High Court and the interim order granted.

(c) these material facts, including the fact of pendency of I.A. No. 2991/2008, were not stated even at the time when the oral prayer for withdrawal of the writ petition was made.

(d) such oral prayer for withdrawal of the writ petition was made without even informing, much less after seeking consent from, learned Additional Advocate General who was representing the State of Bihar.

4. No error apparent on the record or sufficient reason has been pleaded for expunging the remarks contained in the said judgment as sought except the solitary plea of *bona fides*. It transpires from the order dated 18.09.2009 that such plea was not taken by Mr. Gautam Kejriwal at that time, rather he had sought to justify the filing of the application before the Calcutta High Court as being strictly in terms of the agreement between the parties. The plea of *bona fides* is thus clearly an afterthought and cannot be accepted. It may also be noted that I.A. No. 2991/2008 was filed on 14.08.2008 for withdrawal of the writ petition 'for taking appropriate steps in terms of the contract with the respondents before the appropriate forum', whereas the application under the Arbitration and Conciliation Act, 1996 was already pending on that date, having been filed on the preceding day on 13.08.2008.



5. The order dated 18.09.2009 thus requires no interference. The modification petition stands dismissed.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.08.2017
Transmission Date	N.A.

