

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1417 of 2016

- =====
1. The Union Of India through the Secretary, Ministry of Railways, New Delhi.
 2. The General Manager, East Central Railway, Hajipur.
 3. The Divisional Railway Manager, East Central Railway, Mughalsarai.
 4. Chief Commercial Manager, East Central Railway, Hajipur.
 5. The Divisional Commercial Manager, East Central Railway, Mughalsarai.

.... Respondents.-Appellant/s

Versus

1. M/s Steelco, Hill View, South of Gandhi Maidan, Gaya through its Proprietor, Madan Prasad.
2. Madan Prasad, son of late Ram Chandra Prasad, resident of Hill View, South of Gandhi Maidan, P.O. & District Gaya, Proprietor, Hill View, South of Gandhi Maidan, Gaya.

.... Writ Petitioners-Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Sinha, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 02-08-2017

Re.: Interlocutory Application No.6543 of 2016

The delay of 39 days in filing of this Appeal is
condoned.

Interlocutory Application stands allowed and disposed
of.

Re.: Letters Patent Appeal No.1417 of 2016

Seeking exception to an order dated 20th April, 2016
passed by the Writ Court in Civil Writ Jurisdiction Case No.7745 of
2011, this appeal has been filed under Clause 10 of the Letters



Patent.

Certain advertisement rights were given to the writ petitioner- respondents herein, earnest money and certain amount as per the agreement i.e. Rs.2,84,000/- were deposited. However, agreement was not executed and when the amount of Rs.2,84,000/- deposited was not refunded, the writ petition was filed. The learned writ Court having allowed the writ petition, this appeal has been filed under Clause 10 of the Letters Patent primarily on the ground that there was an arbitration clause in the agreement. The writ petitioners- respondents herein were permitted usages of the advertisement area and, therefore, the writ Court has committed an error in allowing the writ petition and directing for refund of the amount of Rs.2,76,000/-.

Having heard learned counsel for the parties, we find that the categorical finding recorded by the learned Writ Court is that after the offer was accepted and the earnest money deposited, actual agreement was not executed and in the absence of the actual agreement being executed, the arbitration clause will not come into existence and, therefore, the remedy of arbitration was not available. In our view, the learned Writ Court has rightly decided this issue.

As far as contention of the appellants that for the amount deposited right for advertisement was given and the writ



petitioners did utilize the space is concerned, the finding recorded by the learned Writ Court after going through the entire record is that this is not correct. It is found that the plea of the Railway Administration that the writ petitioners had utilized the space for advertisement was never the consideration or the reason which weighed with the authorities while passing the impugned order forfeiting the amount. The learned Writ Court has dealt with this specific issue in detail in the following manner:-

“ In any event the plea that the petitioner had utilised the space for advertisement has not been taken into consideration in the impugned order and the respondents cannot be allowed to improve their position by taking fresh grounds in their counter affidavits. The validity of the impugned order has to be tested on the basis of the reasons contained therein alone. This Court is of the view that if the respondents continued to grant indulgence to the petitioner to make payment of the security deposit rather than rejecting the petitioner's tender for failure to comply with the mandatory condition of payment of the security deposit, they did so at their own risk and responsibility. There was nothing to prevent the respondents from awarding the contract to another suitable tenderer if the terms so permitted, or to opt for re-tender. The respondents have also not been able to point out any specific term in the tender authorizing retention of the amount deposited by the petitioner towards advertising rights, in absence of a valid contract between the parties.”



Keeping in view the aforesaid reasons, which have been considered by the learned Writ Court and which is found to be correct on the basis of the material available on record, we see no reason to make any indulgence into the matter. The appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	

