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

+ **CS(COMM) 307/2017**

ANS CONSTRUCTIONS PVT. LIMITED

..... Plaintiff

Through: Ms. Sadiqua Fatma, Mr. Ankur Goel,
Ms. Grisha Mehta and Mr. Jitendra
Kumar, Advs.

Versus

FERNAS CONSTRUCTION INDIA PVT. LTD.

& ANR

.....Defendants

Through: Mr. N. Prashant Kumar Nair, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

27.04.2017

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Caveat No.423/2017

1. The counsel for caveator/defendant appears.
2. The caveat stands discharged.

CS(COMM) 307/2017 & IAs No.5209/2017 (u/O XXXIX R-1&2 CPC) & 5210/2017 (u/S 149 CPC)

3. The suit has been received post-lunch on listing on urgent mentioning and has been taken up at 1500 hours.
4. Though the listing of the suit is with office objection but owing to the urgency expressed, the office objection does not come in the way of consideration of the suit.
5. The plaintiff has sued (i) for declaration that there has been no breach of provisions of the Work Order on the part of the plaintiff and there has been breach of the Work Order on the part of the defendant No.1; (ii) for

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declaration that the letter dated 14th March, 2017 of the defendant No. 1 to the defendant No.2 Canara Bank seeking to encash the Bank Guarantee (BG) No.05/2014 for an amount of Rs.2,19,69,036/- issued by the defendant No.2 is arbitrary and null and void; and, (iii) for permanent injunction restraining the defendant No.2 Canara Bank from handing over demand drafts No.067620, 067621 and 067622 to defendant No.1 in respect of BG No.05/2014.

6. The suit is accompanied with an application for extension of time for filing the court fees and with an application for interim relief.

7. The defendant No.2 Canara Bank at the instance of the plaintiff, had furnished a BG, copy whereof is at page 11 of the plaintiff's documents, in favour of the defendant No.1 whereunder, the defendant No.2 Canara Bank had irrevocably and unconditionally guaranteed and undertaken to pay immediately and on first demand in writing any and all monies to the extent of Rs.2,19,69,036/- at any time upto 6th March, 2014 without any demur, reservation, contest, recourse or protest and without any reference to the plaintiff and further agreed that any such demand made by the defendant No.1 on the defendant No.2 Canara Bank shall be conclusive and binding, notwithstanding any difference between the plaintiff and the defendant No.1 or any dispute pending before any Court.

8. It is not in dispute that the validity of the BG stands extended from 6th March, 2014 to 30th June, 2017 and that the defendant No.1 has vide its letter dated 14th March, 2017 to the defendant No.2 Canara Bank and delivered to the defendant No.2 Canara Bank on 25th April, 2017, called upon the defendant No. 2 Canara Bank to encash the BG and pay the full

amount of the BG amount.

9. A perusal of the plaint shows the plaintiff to have sought to injunct the defendant No.2 Canara Bank on the grounds of the failure of the plaintiff to perform being attributable to the defendant No.1 and the moneys under the BG being thus not due to the defendant No.1.

10. I have reminded the counsel for the plaintiff of the well settled law as discussed in *Ashoka Paper Products Vs. Government of India* 2015 SCC Online, Del 14063 in respect of such BGs as the instant BG is and which does not permit this Court to interfere. The only remedy of the plaintiff is to sue the defendant No.1 for recovery of the monies illegally recovered under the BG.

11. In this view of the matter, the plaint does not disclose any cause of action for the relief claimed of permanent injunction against encashment of the BG.

12. The other reliefs of declaration claimed, without seeking the consequential relief of recovery of monies which on refusal of injunction will be paid by the defendant No.2 Canara Bank to the defendant No.1 under the BG are not maintainable and the suit qua them will also have to be summarily dismissed.

13. The counsel for the plaintiff states that the plaintiff has as yet not deposited the money to purchase the court fees and seeks liberty to withdraw the suit with liberty to sue again for the reliefs of declaration as claimed in this suit coupled with the consequential relief of recovery.

14. Though the plaintiff after filing the suit with application for extension of time of deposit of court fees and after having the suit considered, even if

withdraws the same when the same is on the anvil of being dismissed, the question of not insisting upon the plaintiff paying the court fees does not arise but owing to the reasons explained, it is deemed appropriate to, while dismissing the suit as withdrawn with liberty aforesaid, further not bind the plaintiff to pay the court fees.

15. Dismissed as withdrawn with liberty aforesaid.

Copy of this order be given *dasti*.

RAJIV SAHAI ENDLAW, J.

APRIL 27, 2017

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