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

+ LPA 466/2017 & C.M. No.24362/2017

NATIONAL HIGHWAYS AUTHORITY OF INDIA Appellant

Through Mr.Mukesh Kumar, Adv. with
Mr.Karan, Adv.

versus

L N MALVIYA INFRA PROJECTS PVT LTD & ANR..Respondent

Through Mr.Vikas Singh, Sr. Adv. with Mr.,
Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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20.07.2017

The respondents have put in appearance. We have heard learned counsel for the parties. We are informed that the counter affidavit has still not been filed by the appellant (respondent in the writ petition).

Learned counsel for the appellant states that the counter affidavit shall be filed latest by tomorrow. It is, further, informed that the proceedings are now coming up before the learned Single Judge on 28th July, 2017. The respondents/writ petitioner may file rejoinder within three days from the time the counter affidavit is filed. No further time shall be sought or granted for the said purpose.

Learned senior counsel for the respondents points out that the

appellant did not comply with the order of this Court on 8th May, 2017 passed by the learned Single Judge. On the said date, the appellant herein was granted two weeks time to file the counter affidavit. He further submits that this was the second opportunity granted for the said purposes. He further submits that on the one hand, the appellant is not filing the counter affidavit in the writ proceedings despite repeated opportunities and on the other hand, the appellant has preferred the present appeal to assail grant of interim protection to the respondent/petitioner vide order dated 19th April, 2017.

We are further informed that on the last date in the writ proceedings i.e. on 17th July, 2017, one last opportunity has been granted to the appellant to file its counter affidavit.

Even though it appears that the appellant is guilty of delay in filing its counter affidavit despite repeated opportunities, the fact remains that the impugned order came to be passed by the learned Single Judge on the very first date of hearing when it was not possible for the appellant to file its counter affidavit.

In these circumstances, we dispose of the present appeal with the following directions:-

- (i) The appellant shall file its counter affidavit latest by tomorrow and if not filed, the matter shall proceed without the counter affidavit.
- (ii) In case the counter affidavit is filed in the writ proceedings by tomorrow, the respondent may file rejoinder within three days thereafter and no further time shall be granted.
- (iii) The parties are at liberty to mention the matter at 10.30 a.m. to

the learned Single Judge, to bring to his notice the present order so that the hearing in the writ proceedings may commence. In case if the hearing in the writ is not commenced on account of non-availability of respondent, interim order shall stand vacated

(iv) Neither party shall seek pass over before the learned Single Judge when the matter is called out.

(v) In case hearing cannot be concluded on the same date, the learned Single Judge may proceed to hear the arguments as far as possible on day to day basis and pronounce judgment as soon as possible.

The appeal and application being C.M. No.24362/2017 stand disposed of in the above terms.

Copy of this order be given dasti to both parties under the signatures of the Court Master.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 20, 2017/aa