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

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Judgment delivered on: 25.02.2021

+ FAO 85/2021

CLASSIC OILFIELD CHEMICALS FZCO

..... Appellant

versus

OIL AND NATURAL GAS CORPORATION & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Ms. Aakanksha Mehra & Ms. Aditi Gupta, Advocates.

For the Respondent: Mr. Abhimanyu Garg, Advocate for R-1 (through video conferencing).

Mr. Harshad V. Hameed, Advocate for R-2/Kotak Mahindra Bank (through video conferencing).

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.7710/2021 & CM APPL.7711/2021(exemption)

Exemptions are allowed subject to all just exceptions.

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1. Appellant impugns order dated 04.02.2021, whereby the application of the appellant under Order XXXIX rule 4 read with Section 151 CPC, seeking replacement of bank guarantee no.12880BG17018355 dated 21.10.2017 with a fixed deposit in the name of Director of the appellant or other mode as directed by the Court, has been dismissed.

Signature Not Verified

Digitally Signed By: HON'BLE MR. JUSTICE SANJEEV SACHDEVA
MAGGU
Signing Date: 26.02.2021 09:52:19
This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

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2. Learned counsel for the appellant submits that appellant was seeking replacement of the bank guarantee with a fixed deposit for the reason that the appellant has been directed to keep the bank guarantee alive during the pendency of the suit and repeated renewals of the bank guarantee are putting unnecessary financial burden on the appellant.

3. Learned counsel for the appellant submits that appellant is even willing to deposit the entire amount with the Trial Court subject to the outcome of the suit.

4. Subject suit was filed by the appellant impugning the invocation of the above referred bank guarantee. The Trial Court injuncted the invocation, however directed the appellant to keep the bank guarantee alive.

5. Issue notice. Notice is accepted by learned counsel appearing for respondent no.1/Oil and Natural Gas Corporation as also by learned counsel appearing for respondent no.2/Kotak Mahindra Bank.

6. Learned counsel for respondent no.1 submits that since the very subject matter of the suit is the bank guarantee, replacement of the bank guarantee with a fixed deposit will change the very nature of the case itself and accordingly, the Trial Court has not erred in dismissing the application on the said ground.

7. I am unable to accept the contention of learned counsel for respondent no.1 for the reason that the issues in the Suit is not the subject bank guarantee but the invocation of the said bank guarantee. Even if the bank guarantee were to be replaced by a solvent security, which is in this case, as offered by learned counsel for the appellant, is deposit of money

with the Trial Court, the nature of the Suit would not change. The Trial Court would still be required to adjudicate the issue of validity of the invocation of the Bank Guarantee.

8. In case, the Trial Court comes to a conclusion that invocation was valid, the amount deposited with the Trial Court can be released to the respondent no.1/defendant in the suit. In case, the Trial Court comes to a conclusion that the invocation was not valid, the amount can be refunded to the appellant.

9. In view of the above, impugned order dated 04.02.2021 is set aside. Appellant is permitted to deposit the entire amount covered by the bank guarantee with the Trial Court. On deposit of the amount, Trial Court shall keep the same in an interest-bearing fixed deposit. The deposit as well as the interest accrued thereon would be subject to further orders to be passed by the Trial Court.

10. On deposit of the said amount, respondent no.1 shall discharge and return the original bank guarantee documents to the appellant.

11. This would be without prejudice to the rights and contentions of the parties.

12. Appeal is allowed in the above terms.

13. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

FEBRUARY 25, 2021/ak

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