

05.07.2022
SL No.4
Court No.8
(gc)

SA 271 of 2007

M/s. Electrical Manufacturing Co. Ltd.

Vs.

Uttarpradesh State Electricity Board

(Through Video Conference)

The second appeal appeared in the warning list on 22nd June, 2022 and continued to appear in the list until it was transferred to the daily cause list on 28th June, 2022.

The appellants are not represented.

The second appeal can be admitted if a substantial question of law is involved. We have gone through the order of the learned Trial Judge as well as the Appellate Court. The dispute arose with regard to the enforcement of the bank guarantee. The contention of the appellant before both the Courts that without filing of the suit, the bank guarantee could not have been enforced. The appellant before both the Courts has drawn attention to an insertion made in the extended bank guarantee which mentions that the bank guarantee can be enforced only after filing of the suit. Both the Courts have arrived at a finding that the same was inserted without the consent or approval of the beneficiary of the bank guarantee. The bank guarantee was issued at the instance of the appellant. This finding of fact does not call for any interference on the basis of the evidence available on record. Moreover, a bank guarantee

can be enforced if there is a breach of contract. The original bank guarantee and the bank guarantee on which reliance was placed and extended by the appellant contain a clause that if there is a breach of contract, the beneficiary would be in a position to enforce the bank guarantee. The evidence before the Trial Court as well as the Appellate Court clearly establishes breach of contract. In view thereof, even if one ignores that the enforcement of the bank guarantee de hors without filing of the suit but the breach of contract has been established, we are of the view that the respondent shall be entitled to enforce the bank guarantee.

In view of the fact that there is no substantial question of law is involved, the second appeal is not admitted.

Accordingly, the second appeal being SA 271 of 2007 stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)