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19.04.2022
S.D.

**F.M.A.T.(ARBAWARD) 21 of 2022
With
CAN 1 of 2022**

**Pest Control Management Private Limited & Anr.
Vs.
Union of India & Anr.**

Mr. Sauvik Nandy
Mr. Somnath Saha ... For the Appellants.

Mr. Sanajit Kumar Ghosh
..For the Respondent.

We are in a position to dispose of the appeal and the connected application today dispensing with all formalities.

We notice from the impugned judgment and order dated 5th April, 2022 refusing an ad interim order of injunction that the application was made returnable after 15 days, of the date of the order by the learned Court below, to consider the case of the appellants/petitioners once again in the presence of the respondent/Union of India.

We further notice, that in the judgment and order under appeal the learned Judge remarked that although the prima facie case and balance of convenience were in favour of the appellants/petitioners whether any interim order was to be made

or not could only be considered in the presence of the respondent.

This is a fair decision.

We only observe that while adjudging the prima facie case, whether the appellants/petitioners had been able to make out a case of fraud and special equity, to restrain invocation of the bank guarantee had not been considered, by the learned Judge.

Mr. Sanajit Ghosh, learned advocate for the Union of India submits that no case of fraud and special equity has been made out by the appellants in the Section 9 application.

In our view, the case of the appellants/petitioners may be considered *de novo* on the returnable date, by the learned Court below in the presence of and upon hearing the respondent and by a reasoned order within four weeks of communication of this order. Within this period suitable short directions may be given by the learned Court below for exchange of affidavits.

All points are kept open before the learned Court below.

Our interim order made on 12th April, 2022 directing status quo as on that date with regard to the security deposit and the bank guarantee shall continue for a period of six weeks from date or till the date of the final order to be passed by the learned Court below in the Section 9 application, whichever is earlier.

We are not deciding any matter, but simply continuing the existing interim order for a very limited period to enable the

learned Court below to decide the issue, which is kept absolutely open.

The appeal and the connected application are disposed of accordingly.

(I.P. Mukerji, J.)

(Aniruddha Roy, J.)