

IA No. GA 1 of 2022  
IA No. GA 2 of 2022  
APO No. 46 of 2022  
with  
AP No. 167 of 2022  
IN THE HIGH COURT AT CALCUTTA  
In Appeal from its  
ORDINARY ORIGINAL CIVIL JURISDICTION  
CIVIL APPELLATE JURISDICTION  
(Commercial Division)

Jalan Infrastructure, LLP  
Versus  
Gannon Dunkerley & Co. Ltd.

Before:  
The Hon'ble Justice I. P. MUKERJI  
And  
The Hon'ble Justice ANIRUDDHA ROY  
Date: 18<sup>th</sup> May 2022

Appearance:  
Mr. Surajit Nath Mitra, Sr. Advocate  
Mr. Kumarjit Banerjee, Advocate  
Ms. Sanchari Chakraborty, Advocate  
Mr. Sourajit Dasgupta, Advocate  
Ms. Tanishka Kandelwal, Advocate  
for the appellant  
  
Mr. Rishav Banerjee, Advocate  
Mr. Supriyo Gole, Advocate  
Ms. Aishwarya Awasthi, Advocate  
for the respondent  
  
Mr. Prodyut Banerjee, Advocate  
Mr. Pratip Mukherjee, Advocate  
for Prachi Infra & Roads Pvt. Ltd.

The Court: An application under section 9 of the Arbitration & Conciliation Act, 1996 was moved before a learned single judge of this court on 12<sup>th</sup> April 2022. The order that his lordship passed on that day was simply a direction upon the parties to exchange affidavits.

The petitioner in that application preferred an appeal before us. It was moved on 25<sup>th</sup> April 2022. An affidavit of service was filed in court, but none appeared for the respondent.

In those circumstances, on that day we, inter alia, observed and directed as follows:

- (a) The prima facie case of the parties could be fully appreciated in the presence of the respondent and an organisation Kapasi

Infracon LLP (KIL). Advocate-on-record for the appellant/petitioner was directed to serve a notice on these entities.

(b) The case of the appellant/petitioner was that all machinery belonging to KIL as detailed in annexures 2 and 2A of an agreement dated 30<sup>th</sup> January 2022 between the parties were charged in favour of the appellant/petitioner. Prima facie, the appellant/petitioner on the strength of this legal relationship was entitled to protection of the assets.

(c) Joint Special Officers were appointed to identify the machinery and take symbolic possession thereof.

(d) An order of injunction was made restraining the respondent from dealing with said machinery or parting with their possession. They would be permitted to use them under the Joint Special Officers strictly in the usual course of business.

Thereafter the respondent has made an application before this court (IA No. GA 2 of 2022) for vacation of our order dated 25<sup>th</sup> April 2022.

On our hearing learned counsel for the parties, we are of the view that our order dated 25<sup>th</sup> April 2022 adequately protects both the parties.

The first court has not had an opportunity to deal with the matter, save and except at the motion stage when it directed filing of affidavits.

In our opinion, this section 9 application should be heard out by the first court, subject to our interim order dated 25<sup>th</sup> April 2022 which is to continue till disposal of the said application or until further order whichever is earlier.

On the submission of Mr. Banerjee we only clarify the interim order to the effect that if the machinery have to be moved from one site to another under the contract between the respondent and KIL, it could not amount to parting with their possession provided always that before

movement of the machinery, prior intimation to the Joint Special Officers shall be given and that the machinery would be used under the said officers in terms of our order dated 25<sup>th</sup> April 2022.

We have been shown a judgment and order of the Hon'ble Gauhati High Court dated 18<sup>th</sup> April 2022 (WP(C)/2651/2022 *M/s. Gannon Dunkerley And Co. Ltd. vs. The Union of India And 4 Ors.*) wherein it has been inter alia recorded that the contract between the respondent and the principal employer NHIDCL was terminated on 8<sup>th</sup> April 2022. The matter is pending before that Hon'ble Court. On that basis, it has been contended on behalf of the appellant/petitioner that since the respondent's contract with the principal employer stands determined, they have no use of the machinery. This fact they had suppressed from this Court.

The Joint Special Officers shall be entitled to a further ad hoc remuneration equal to the remuneration already received, to be paid in the same manner as the initial remuneration.

Leave is given to Prachi Infra & Roads Private Limited to approach the learned single judge for an appropriate order, if such right is vested in them in this proceeding.

All points are kept open before the learned single judge.

The appeal (APO No. 46 of 2022) and the connected applications (IA No. GA 1 of 2022 and IA No. GA 2 of 2022) are disposed of.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)