Item No.12.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 28.02.2023

DELIVERED ON: 28.02.2023

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 372 of 2023
With
I.A. No.CAN 1 of 2023

Coal Mines Associated Traders Private Limited & Anr.
Vs.
Union of India & Ors.

Appearance:-

Mr. Kishore Datta, Sr. Adv.,
Mr. Arijit Bardhan,
Mr. Sayan Sinha,
Mr. Steven S. Biswas .... for the appellants.

Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee .... for the State.

Mr. Prithu Dudhoria ... for the Union of India.

Mr. Jaweid Ahmed Khan,
Mr. Bhaskar Sengupta,

Mr. Talha Ahmed Khan ... for the IOCL.

<u>JUDGMENT</u>

(Judgment of the Court was delivered by* T.S. SIVAGNANAM, *J.)

1. This intra-Court appeal by the writ petitioner is directed against the order dated 23rd February, 2023 passed in WPA No.15888 of 2021 in and by which the learned Writ Court had vacated the interim order, which was granted on 7th October, 2021. The said order states that both the parties were heard and considering the submissions of the parties, the respondents/Indian Oil Corporation Limited (for short, "IOCL") was directed to maintain status quo with regard to the bank guarantee in question till 15th November, 2021 or until further order, whichever is earlier. The interim order had been extended from time to time till it was vacated by the impugned order dated 23rd February, 2023.

2. From the stay petition as well as from the submissions of the learned advocates of the respective parties, we are able to ascertain that the pleadings are complete and the respondents, both the State and the IOCL have filed their respective affidavit-in-opposition to which reply has been filed by the appellant. The Union of India has chosen not to use any

affidavit-in-opposition. In such circumstances, it is to be seen as to whether the status quo, which was prevailing from 7th October, 2021 till 23rd February, 2023 should have been disturbed, more so when there was no specific prayer made by any of the respondents seeking for vacating the interim order.

3. The learned Single Bench has rightly noted the legal position that originally the Courts will be slow in granting an order of injunction to restrain the working of a bank guarantee. There will be no quarrel to the said legal proposition. Nonetheless, the issue involved in the writ petition needs to be considered and what played in the mind of the learned Writ Court when it granted the interim order on 7th October, 2021.

4. In the writ petition, the first prayer sought for by the appellants is to declare Section 150 of the Finance Act, 2021 cannot be given retrospective effect from 28th March, 2021 and Section 5 of the General Clauses Act, 1897 would not be applicable for interpretation of Finance Act, 2021. The second prayer sought for is to quash the order passed by the Commercial Tax Officer dated 16th July, 2021 cancelling the Form C declaration, which was issued to the appellants, who in turn had submitted to the IOCL. There are other ancillary prayers and there are also interim orders sought for to restrain the IOCL

and its authorities from giving any effect or further effect to the letters dated 16th August, 2021 and 24th September, 2021 issued by the Senior Manager, Institutional Business, Durgapur Divisional Office, IOCL till the disposal of the writ petition.

5. Thus, the interim relief sought for appears to have been couched in a more comprehensive manner and the learned Single Bench while considering such prayer thought it fit to direct the IOCL to maintain status quo with regard to the bank guarantee in question initially till 15th November, 2021, which was subsequently extended from time to time in the presence of the respective parties.

6. Therefore, in our prima facie view, this is not a classical case where the issue to be considered is whether a bank guarantee can be injuncted or not. To put it in other words, the principal challenge is to the cancellation of the Form C declaration and the consequences that would follow as a result of such cancellation. Therefore, in our view, a slightly different approach can be taken in the instant case and presumably for such reason, the learned Writ Court on 7th October, 2021 directed the IOCL to maintain status quo with regard to the bank guarantee in question. That apart, the interim order was passed as far back as on 7th October, 2021 and

it would be inequitable to disturb the said position especially when the writ petition is ready for hearing. Nothing prevented the respondents from seeking for vacating the interim order, which appears to have not been done though the interim order was in force since 7th October, 2021.

7. Therefore, we are of the view that the interim order should stand restored till the writ petition is heard and decided or in the event if the respondents move for vacating the interim order till such applications are considered by the learned Writ Court.

8. We are informed by the learned Advocates appearing for the parties that till date though a letter of invocation of the bank guarantee has been issued but funds have not been transferred.

9. Thus, considering the above aspects, the appeal is allowed. Consequently, the application being I.A. No.CAN 1 of 2023 is disposed of. The order passed in the writ petition dated 23rd February, 2023 is set aside and the respondents / IOCL is directed to maintain status quo with regard to the bank guarantee in question and in case, a letter has been given to the bank for invoking the bank guarantee, IOCL shall forthwith inform the bank for withdrawal of such letter and the bank guarantee shall be kept alive by the appellants till the learned Writ Court takes a decision either in the writ petition or in

the applications for vacating the interim order if the respondents chose to file the same.

10. There shall be no order as to costs.

11. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)