

21.06.2023
SL No.2
Court No.37
(gc/sg)

**In The High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division**

**FA 187 of 2022
CAN 1 of 2022
CAN 2 of 2022**

**Eastern Coalfields Ltd.
Vs.
VSAIPPL-PE-SI(JV) & Ors.**

Mr. Debnath Ghosh,
Mr. Syed Nurul Arefin,
Mr. Rahul Singh,
Ms. Rashmi Binayak,
...for the Appellant.

Mr. Partha Pratim Roy,
Mr. Srijib Chakraborty,
Mr. Satyaki Mukherjee,
Mr. Aditya Mondal,
...for the Respondents.

By consent of the parties, the appeal and the stay application along with the application for evidence are taken up together and disposed of by this common order.

The plaintiffs have filed an application for judgment upon admission. The claim for judgment upon admission is based on two letters being letter dated 27th June, 2018 addressed to the respondent by the agent of the mine concerned and the letter dated 23rd July, 2018 from the Eastern Coalfields Ltd. to the plaintiffs.

Mr. Debnath Ghosh, learned Counsel appearing on behalf of the appellant submits that the tenor of the said letter would not show that there has been an admission of the claim of the plaintiffs as the recommendation of the agent is dependent upon an approval being obtained from the competent authority regarding the quantity mentioned

by the agent with regard to the excavation of coal and removal of Over Burden (in short "O.B"). Mr. Ghosh further submits that the plaintiffs have abandoned the site and did not complete the work for which there is a requirement of retender and the plaintiffs are liable for the costs and expenses to be incurred for completing the balance work.

Mr. Partha Pratim Roy, learned Counsel representing the plaintiffs submits that the said two letters unequivocally show the work done by the plaintiffs and the amount is required to be paid on the basis of the works carried out by the plaintiffs under the work contract awarded to the plaintiffs. Mr. Roy also submits that pursuant to the recommendation of the agent, the plaintiffs, in fact, have accepted the quantification made by the agent towards O.B. and coal quantity at the colliery concerned and having regard to the fact that the offer of the agent has been accepted by the plaintiffs, it is a concluded contract and the appellant is bound to release the payments on the basis of the acceptance communicated to the agent on 26th July, 2018.

We have considered the submissions made on behalf of the parties. We could not find any satisfactory reply from Mr. Ghosh for not releasing the amount after there is an acceptance of the offer duly communicated to the E.C.L on 26th July, 2018. In the written statement filed before the Commercial Court, there is no whisper of any decision being taken by the competent authority of

the E.C.L. suggesting a contrary recommendation than what was suggested by the agent. In fact, as rightly pointed out by the learned Counsel for the plaintiffs under the works contract “all measurements of O.B. removed will have to be certified by Colliery Surveyor, Management and Project Officer/Agent”. In the instant case, the agent has duly certified for the O.B. and the other works and has forwarded his recommendation to the competent authority for consideration. One would have expected from the appellant to disclose in the written statement the reason for non-acceptance of the recommendation of the agent. Surprisingly, till date no counter-claim has been made in the pending proceeding and by this time it may have been time barred. The plaintiffs cannot suffer due to lackadaisical approach of the competent authority in not considering the recommendation of the agent. We have not been shown a single document emanating from the competent authority with regard to the recommendation of the agent.

However, in view of the fact that there is no unequivocal admission *per se*, in terms of money and that in the written statement, it has been alleged that by reason of abandonment of the work retendering was necessary and the entire amount may not be payable, we modify the order passed by the learned Trial Judge to the extent that the appellant shall furnish an unconditional bank guarantee of Rs.2.60 crores within two weeks from date to the satisfaction of the learned Trial Court, in

default, the decree shall revive and would be immediately executable.

The learned Trial Court is requested to follow the case management strictly and conclude the trial as expeditiously as possible without granting any adjournment to either of the parties unless unavoidable.

The judgment of the learned Trial Court is modified to the aforesaid extent.

In the event the suit is decreed, it is needless to mention that the plaintiffs shall be entitled to interest from the date of presentation of the plaint till the decree is passed. The impugned order is modified to the aforesaid extent.

With the aforesaid observation, the appeal and the connected applications stand disposed of.

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

(Uday Kumar, J.)

(Soumen Sen, J.)