

22-09-2023
ct no. 13
Suppl. 1
pk

F.M.A.T. No. 439 of 2023
With
CAN 1 of 2023

Tuaman Engineering Ltd.

-Versus-

Yes Bank Ltd. & Ors.

Mr. Shakya Sen,
Mr. Rajarshi Dutta,
Mr. Amit Kumar Nag,
Mr. Partha Banerjee,
Ms. Ranjabati Ray,
Mr. Maharnab Roy.

...for the appellant

1. The appeal is directed against the order No. 2 dated September 21, 2023 passed by the learned City Civil Court at Calcutta in Title Suit No. 1881 of 2023.

2. By the impugned order, the Court below refused to stay payment under bank guarantee issued by the 1st defendant/respondent no. 1. According to the plaintiff/appellant, the bank guarantee has not been invoked in terms thereof.

3. Reliance is placed on the decision of the Supreme Court in the case of ***Hindustan Construction Company Ltd. Vs. State of Bihar*** reported in ***(1999) 8 Supreme Court Cases 436***, particularly paragraphs 9, 12 and 21 thereof. The letter of invocation could not be produced in the Court below. A copy of the letter of invocation dated September 13, 2023 is placed before this

Court which the appellant has been able to procure.

4. The bank guarantee is valid till September 30, 2023. The appellant shall keep the bank guarantee alive and extend its validity till such time, the decision is taken by the Court below or as it may direct, in the application under Order 39 Rule 1 and 2 of the CPC. All questions are kept open to be decided by the Court below.

5. This Court requests the Court below to take up the appellant's application under Order 39 Rule 1 and 2 as expeditiously as possible in accordance with law on Tuesday (26.09.2023) or Wednesday (27.09.2023).

6. Let due notice of this order and all proceedings here and the Court below be served on all the respondents in the suit immediately by the appellant.

7. The disposal of the appeal shall not fetter the Court below from taking an independent view in the matter as regards as the invocation of the bank guarantee.

8. In view of the above, F.M.A.T. No. 439 of 2023 is disposed of. CAN 1 of 2023 shall also stand disposed of.

9. There will be no order as to costs.

10. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)