

ORDER

OCD-3

APOT/64/2023  
WITH  
AP/71/2023  
IA NO: GA/1/2023

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE

KOSC INDUSTRIES PVT. LTD.  
VERSUS  
LAKHOTIA INFRA PROJECTS PVT. LTD.

BEFORE:

THE HON'BLE JUSTICE HARISH TANDON  
THE HON'BLE JUSTICE PRASENJIT BISWAS  
[COMMERCIAL DIVISION]

Date : 2<sup>nd</sup> March 2023.

APPEARANCE:

Mr. Tridib Bose, Advocate  
Mr. Shounak Mukhopadhyay, Advocate  
Mr. V.V.V. Sastry, Advocate  
Mr. Sourav Roy, Advocate  
..... for Appellant.

Mr. Rajarshi Dutt, Advocate  
Mr. Deepak Kr. Jain, Advocate  
Mr. Rahul Poddar, Advocate  
..... for Respondent.

The Court:- The dispute relates to a shortage of the materials returned by the respondent to the petitioner and the payment of rental charges for the materials used and utilised by the respondent. Several correspondences have been exchanged in relation to the return of the materials wherefrom it appears that the petitioner disclosed the shortage and the response of the respondent appears to be that so far as the materials used and utilised at Howrah Fire Station site, the respondent

has raised a dispute and denied any shortage as the materials were lifted by the petitioner in absence of any authorised representative of the respondent. However, the e-mail dated July 14, 2020 would further reveal that the respondent has taken a responsibility of the shortage at the Naihati site. The shortage was disclosed to the respondent on July 14, 2020 in relation to the Howrah Fire Station site as well as the Naihati site. The respondent took a stand that there is no shortage of the materials and the claim has been raised in order to put a pressure on the respondent to succumb to the illegal demands. The matter is at the nebulous stage of the injunction as the petitioner is seeking for an ad interim order of injunction in respect of the materials used and utilised at Naihati site. There is a categorical stand of the respondent that the shortage in relation to the Naihati site is a responsibility of the respondent and, therefore, we do not think that there is any specific dispute having raised in relation to the disclosure made in the e-mail dated July 14, 2020 issued by the petitioner. However, the respondent is vociferous in his submission that the post-dated cheques have been wrongfully and illegally deposited for encashment and proceedings are also initiated after its banker refuses to honour the same. It is, thus, submitted that the petitioner cannot resort to both the avenues where there is a serious dispute on the return of the materials.

We do not intend to go into the nitty-gritties of the aforesaid submissions at this stage for the simple reason that the proceeding under Section 138 of the N. I. Act is distinct and different from proceedings

before the Civil Court or under the Arbitration and Conciliation Act, 1996. The e-mail would indicate that the respondent has taken responsibility of any shortage in respect of materials used and utilised at Naihati and therefore, there is no occasion to deny the ad interim order to protect the materials admittedly belonging to the petitioner.

In view of the above, the respondents are restrained from transferring, alienating, disposing of and/or creating any third party interest in respect of the materials lying at the Naihati site disclosed in the e-mail dated July 14, 2020 for a period of three months from date or until further order.

Since the instant appeal arises from an order refusing to pass ad interim order, there is no necessity for keeping the appeal pending as the Trial Court has directed exchange of affidavits and expected to decide the matter finally.

In view of the above, both the appeal and the applications are disposed of.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J.)