

IA No. GA 1 of 2023
APOT No. 266 of 2023
with
AP No. 70 of 2023
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Division)

Lakhotia Infra Technologies Pvt. Ltd.
Versus
KOSC Industries Pvt. Ltd.

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 6th September 2023

Appearance:

Mr. Jayjit Ganguly, Advocate

Mr. Siddhartha Chatterjee, Advocate

Mr. P. Dasgupta, Advocate

Mr. P. Sancheti, Advocate

for the appellant

Mr. Shounak Mukhopadhyay, Advocate

Mr. Vishwarup Acharyya, Advocate

for the respondent

The Court: Order in terms of prayer (a) of the stay petition.

We admit the appeal and hear it out dispensing with all formalities.

Upon hearing learned counsel for the parties we find that the facts of this case are very similar to those which we decided earlier in the day in APOT No. 265 of 2023 with IA GA 1 of 2023 and AP No. 70 of 2023 (Lakhotia Infra Technologies Pvt. Ltd. vs. KOSC Industries Pvt. Ltd.).

Here also the appellant denies having admitted the amount shown in the chart as due and payable by his client to the respondent. In this appeal also the contention of the appellant is that the chart only reflected the terms and conditions on which the construction materials were given on hire by the respondent to the appellant and did not reflect the appellant's liability.

The only difference between these two cases is that according to the appellant, no materials are now lying with them whereas, according to Mr. Mukhopadhyay, learned counsel for the respondent citing a division bench judgement of this court dated 2nd March 2023 in APOT 64 of 2023

with IA No. GA 1 of 2023 and AP 71 of 2023 (KOSC Industries Pvt. Ltd. vs. Lakhotia Infra Projects Pvt. Ltd.), the construction materials as described in the e-mail dated 14th July 2022 are lying at the Naihati site.

In those circumstances, we dispose of this appeal and the stay application by an identical order to the one disposing of the other appeal by interalia remanding the section 9 application to the learned trial judge to hear out the same afresh.

We direct the Receiver appointed in the other appeal to visit the site in the presence of the parties and enquire whether any materials are lying there. He shall maintain proper minutes. Whether materials are found or not found and if found, the details thereof shall be recorded in the minutes and a report to be filed by the Receiver before the learned single judge. For this work the Receiver shall be paid 1000 GMs.

Mr. Ganguly, learned counsel for the appellant wants this court to reserve liberty to his client to urge the point of jurisdiction before the learned single judge. Mr. Mukhopadhyay, learned advocate for the respondent submits that the subject matter has been entertained by this court upto the division bench level and this point should no longer be kept open.

We grant liberty to Mr. Ganguly's client to raise this point of jurisdiction before the learned single judge. The point including the right to raise it is kept open to be decided in accordance with law, when raised.

The appeal (APOT 266 of 2023) and the connected stay application (IA No. GA 1 of 2023) are disposed of.

Since no affidavits were invited, allegations contained in the stay petition are deemed to have been not admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)