IA No. GA 1 of 2023
APOT No. 265 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.

Upon hearing learned counsel for the parties we are in a position to dispose of the appeal dispensing with all formalities.

The agreement between the parties relates to the supply of construction materials by the respondent to the appellant. In the modern style of making construction these construction materials are supplied in units. They were so supplied between 12th September 2019 and 18th October 2019.

There is a dispute between the parties with regard to the number of units.

According to Mr. Ganguly, learned advocate for the appellant, the number of units was 2000 while, according to Mr. Mukhopadhyay, learned advocate for the respondent, the number was 2200. The disputes between the parties have been discussed partly in the impugned judgment and order. According to the respondent, the end result was that 1400 units were returned to them and 800 units remain on the site.

According to the respondent's learned counsel, the rent for 1400 units between November, 2019 and June, 2020 have not been paid. 600 units were withheld by the appellant for which also rent is due. The total amount, according to the respondent, received was 4,90,880/- in respect of the rent leaving a balance amount of Rs.22,29,120/- remaining due and payable by the appellant to them.

These facts and figures appear in a chart which was very heavily relied upon in the impugned judgment and order. The said order was passed on the basis of the statement in the chart which was taken to be admission of liability by the learned judge.

Now it is submitted by Mr. Ganguly that the chart was handed up to the court for the purpose of showing the calculation of rent payable for successive periods during which units were hired by the appellant from the respondent and the rent agreed to be paid for it. His client or counsel had not for a moment admitted the outstanding amount mentioned in the chart. In fact, according to the affidavit-in-opposition filed by the respondent before the learned court below, a large portion of the sum claimed as due and payable by the respondent was not so and only a much lesser amount was due and payable, learned counsel submitted.

This part of the conduct of the appellant is not appreciated by us. When the chart was being relied and acted upon by the learned judge, the exact standpoint of the appellant with regard to the facts and figures shown therein ought to have been clearly pointed out to the learned judge. In fact, the learned judge proceeded on the basis as if the contents of the chart were admitted. Neither any application was made before the learned judge denying the admission as recorded.

With a lot of reservation, for the ends of justice, we set aside the impugned judgment and order dated 14th July 2023 except to the extent indicated below and remand the application to be heard by the learned trial judge afresh. This exercise will be subject to the following interim order.

A Receiver ought to be appointed to make inspection of the units lying at the various sites where the 800 or any other number of units may be lying, to identify and inventorise them, take possession thereof and deliver the same to the respondent. This exercise by the Receiver shall be carried out in the presence of the parties upon maintaining proper minutes.

Mr. Rajiv Lall, Advocate (Mobile No. 9831965034) is appointed as a Receiver at an initial remuneration of 2000 GMs to be shared equally by the parties to do the above work and file a report before the leaned single judge by 22nd September 2023.

The subsisting interim order restraining the appellant from dealing with the goods shall continue till the Receiver takes actual physical possession of the said 800 units or lesser or greater number of units.

The appeal (APOT 265 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.)

R. Bose