25.11.2024
Court No.13
Item No.13
pk

FMA 549 of 2024
Mahavir Chemical Industries (MCI)
Vs.
Bank of Baroda and others

Mr. R. Das,
Mr. Aurin Chakraborty,
Mr. Prasanta Naskar

…for the appellant.

1. The instant appeal is directed against judgement and order dated 02.02.2024 passed by the Single Bench of this Court.

2. The brief facts of the case are that the appellant entered into a joint venture agreement with one Indu Bhusan Singh, who was already carrying on business in the name and style of "M/s. Bhagabati Construction". The joint venture executed various works with various bodies both government and non government and received sums of money in the said joint venture account maintained with the respondent Bank of Baroda.

3. Towards outstanding dues of M/s. Bhagabati Construction, in which the appellant was no where connected, the Bank of Baroda sought to exercise lien and refused operations in the account of the joint venture. In essence the Bank of Baroda exercised lien over the accounts of the joint venture

that had a credit balance. The learned Single Bench of this Court is of the view that such exercise of lien under Section 171 of the Indian Contract Act, 1872 was not permissible and allowed the petitioner to withdraw 49 per cent of the credit balance in the joint venture account with the bank.

4. It appears that Indu Bhusan Singh had died in 2021 and the writ petition was filed in the year 2022. None of the legal heirs of Indu Bhusan Singh or successors in interest of M/s. Bhagabati Construction were impleaded in the writ petition. The writ petition ought to have failed on this ground alone as the legal heirs of Indu Bhusan Singh and his successors of interest and M/s. Bhagabati Construction were necessary parties and their interests are vitally liable to the writ petition.

5. Apart from the above, this Court is of the view that there are large number of disputed questions of facts were required to be gone into for deciding as to whether the appellant ought to have been allowed to withdraw 49 per cent of the credit balance in the account of the joint venture. The relations between the appellant and Indu Bhusan Singh ought to have been examined and determined only after a proper trial on evidence.

6. It is submitted that the appellant has already invoked arbitration clause in the joint venture with the legal heirs of Indu Bhusan Singh in respect of the transactions conducted in the joint venture.

7. Since admittedly the Bank of Baroda has already recalled the loans to M/s Bhagabati and has taken out proceedings under the DRT and SARFAESI Acts, the bank and the petitioner ought to have been directed to approach the DRT for asserting their respective rights.

8. In that view of the matter, since the petitioner has been allowed to withdraw 49 per cent of the credit balance in the account of the joint venture, the same shall be subject to the result of the arbitration proceedings now pending between the appellant, the legal heirs of Indu Bhusan Singh and M/s. Bhagabati Construction.

9. The findings of the learned Single Bench insofar as the right of the appellant to appropriate 49 per cent of the credit balances of the Joint venture with the Bank of Baroda shall also abide by the result of the arbitration between the appellant, the legal heirs of Indu Bhusan Singh and/or M/s. Bhagabati Construction.

10. The learned counsel for the appellant has relied upon a decision of the Single Bench of the Delhi High Court in the case of **Indus Sor Urja Private Limited Vs. Indian Bank reported in 2024 SCC OnLine Del 1586**. This Court is of the view that the facts of the case are quite different from the facts of the instant case.

11. With the aforesaid observations, the instant appeal is disposed of without any order.

12. There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)