

1 3.7.2024

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)**

**F.M.A.T 243 of 2024
With
CAN 1 of 2024**

**Haldia Petrochemicals Ltd.
Vs.
Five Star Logistics Pvt. Ltd.**

**Mr. Sabyasachi Choudhury
Mr. Rupak Ghosh
Mr. V.V.V. Sastry
Mr. Tridib Bose
Mr. Rahul Poddar ... For the Appellant.**

**Mr. Utpal Bose, Sr. Advocate
Ms. H. Chakraborty
Ms. N. Chatterjee
Mr. Suvodeep Chakraborty.... For the Respondent.**

Re: CAN 1 of 2024

We formally admit the appeal.

The point involved is very short.

We propose to dispose of the appeal (FMAT of 2024) and the connected application (CAN 1 of 2024) today itself, dispensing with all formalities.

We have closely examined the impugned judgment and order dated 28th June, 2024 passed by the learned judge, Commercial Court at Alipore in the suit in question.

S.D. In our interpretation of the letter of the appellant dated 29th March, 2024, the respondent was given three months' time "to rectify and remedy each of your statutory non-compliances." A reference in that letter was made to an earlier letter of the appellant described

as “our letter of termination dated 23rd February, 2024.”

Thereafter the letter ran as follows:

“In view of the same your termination is being deferred until the said grace period.”

Mr. Sabyasachi Chowdhury, learned advocate for the appellant submitted that the contract between the parties could not be directed to be specifically performed, under Section 14 and 41 of the Specific Relief Act, 1963.

Although Mr. Choudhury contended by this letter only three months’ time was given to the respondent to effect the compliance without in any manner interfering with the termination of the contract which had already been made, we are of the view that the language of this letter suggests that the termination itself was waived if the “compliances” were made by 30th June, 2024, impliedly suggesting that it would be reconsidered if the “compliances” were carried out.

This is our prima facie view.

In that view of the matter, a formal letter of termination was necessary before disengaging the respondent. We also prima facie observe that this is a contract of personal service of which specific performance cannot be claimed unless it is shown that it is a special type of service which admits of specific performance. Therefore, we grant the appellant the liberty of formally terminating the contract if they so

desire. It shall have effect from such date and in such manner as mentioned in that notice of termination, subject to the rights and contentions of the respondent in the suit.

In that view of the matter we appoint Ms. Paramita Pal, Advocate, Bar Association (m) 9830452258 and Mr. Anand Farmania, Advocate (m) 9836900353 as Joint Special Officers at an initial remuneration of 2000 Gms. each to visit and inspect the premises in question and allow the contractor which had been rendering service till yesterday to continue to render service. If according to the finding of the Joint Special Officers, the respondent was rendering service the respondent will continue to do so. But if in the meantime, a letter of termination is issued by the appellant terminating its contract with the respondent, the Joint Special Officers will also ensure that the contractor selected by the appellant is allowed to take over from the respondent without any disruption of the work in the establishment.

This arrangement will continue till the application is considered by the learned judge on the returnable date ie. 8th July, 2024. On the returnable date the learned judge will visit the issues afresh in the presence of both the parties without being influenced by our observations above to any greater extent than taking them as prima facie.

The Joint Special Officers will file their report before the learned court below.

Other questions regarding the forum selection clause and the existence of the alleged arbitration agreement are also kept open.

The appeal (FMAT 243 of 2024) and the connected application (CAN 1 of 2024) are hereby disposed of.

As affidavits were not invited, the allegations contained in the petition are deemed not to have been admitted.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

