

02 05.12.2024

Ct-37

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**In the High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division**

FMAT 393 of 2024
with
IA No. CAN 1 of 2024

**Cognition Projects Pvt. Ltd.
Vs.
R.P. Jeet Developers Pvt. Ltd. & Anr.**

Mr. Subhabrata Datta
Mr. Debashis Sarkar
... For the Appellant

Mr. Saumabho Ghose
Mr. Souvik Majumdar
Ms. A. Banerjee
Mr. Rishabh Karnani
Mr. Abhidipto Tarafdar
... For the Respondent no. 1

Mr. Sayak Ranjan Ganguly
Mr. Srijani Ghosh
Ms. Indroni Majumdar
... For the Respondent no. 2

- 1.** The report of the Section Officer, S.R Section, dated 04.12.2024 is taken on record.
- 2.** By consent of the parties the appeal and application are taken up together and disposed of by this common order.
- 3.** We find substance in the submission made on behalf of the appellant that the learned Trial Court in deciding the application for injunction and attachment before judgment has virtually decreed the suit after having arrived at a satisfaction that the conditions under Order 38 Rule 5 have not been fulfilled.

4. It appears that the plaintiff was given a part of the contract awarded to the appellant by DVC and according to the plaintiff in spite of executing the work huge amount is outstanding. A dispute is pending between D.V.C and the appellant. The plaintiff cannot be denied of payments for the work executed and the plaintiff is obliged to release such payment.
5. Learned counsel appearing for the appellant has referred to Memo dated 18th December, 2021 being No. CPPL/2021/WO/73 and submits that the plaintiff is entitled to receive payment after release of payment from D.V.C. It is contended that since the D.V.C has not released the payment, the appellant is unable to release the bills. However, prima facie, being satisfied that the plaintiff has executed the work and unpaid bills have been disclosed in the petition, we modify the order passed by the learned Judge, Commercial Court, Rajarhat by directing the appellant to furnish an unconditional bank guarantee for a sum of Rs.18,00,000/- (Eighteen Lakhs) to the satisfaction of the learned Judge, Commercial Court, Rajarhat within four weeks from date. The bank guarantee shall be initially for a period of one year and shall be renewed from time to time till

the disposal of the suit. In default, there shall be a decree for the said sum and it would be executable forthwith.

6. In view of the above, the appeal being FMAT 393 of 2024 stands disposed of.

7. In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2024 and the same is accordingly disposed of.

8. However, there shall be no order as to costs.

9. Since no direction is given for filing affidavit-in-opposition, all allegations made have been denied.

10. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)

