

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT 42 Of 2024
E.C. 458 of 2018
IA GA 1 of 2024
GA 2 of 2024

The Braithwaite Burn and Jessop Construction Co. Ltd.
VS
Indo Wagon Engineering Ltd.

BEFORE

The Hon'ble Justice I.P. MUKERJI

-And-

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 13th February, 2024

Appearance:

Mr. Subhankar Nag, Adv.

Ms. Sreya Basu Mallick, Adv.

Mr. Ankit Dey, Adv.

...for the appellant.

Mr. Anirban Kr. Ray, Adv.

Mr. Chayan Gupta, Adv.

Mr. Soumyajyoti Nandy, Adv.

Mr. Deepankar Thakur, Adv.

... for the respondent.

Re: IA No.GA 1 of 2024

The Court:- Sufficient cause is shown. The marginal delay of 47 days in preferring the appeal is condoned. The application is allowed.

Re: IA No.GA 2 of 2024 and APOT 42 of 2024

We admit the appeal and at the same time dispose of it today dispensing with all formalities, as the point involved is very short.

By a judgment and order dated 16th October 2023, the learned judge has been pleased to dismiss an execution application on the ground that despite repeated orders of the court, service thereof was not made on the judgment-debtor. It was dismissed for non-prosecution.

The version of the appellant is that at the time of filing of the application in 2018, service had been effected on the judgment-debtor. Thereafter, there was a change of advocates. The outgoing advocate was not giving change to the incoming one. This delayed and interfered with prosecution of the execution application.

Be that as it may, the arbitral award is for about Rs.100 crore. This amount is disputed by Mr. Anirban Ray, learned advocate for the respondent judgment-debtor.

On the above most technical grounds, we are not at all minded to extinguish the valuable legal right.

Although Mr. Anirban Ray submits that by dismissing the application, the learned judge has given leave to file a fresh execution application, we notice from the order that this leave is conditional upon “if circumstances so warrant” and “in accordance with law”.

This is not an application which has been dismissed for non-appearance of learned counsel, yet it has been dismissed for “non-prosecution.” In our view, in spite of the above leave, resurrection of the said application would not be easy for the appellant.

In those circumstances, we set aside the order dated 16th October 2023. However, this is conditional upon the appellant reimbursing the respondent costs of contesting the proceedings before us which we assess at 2000 GMs. to be paid by 26th February 2024.

APOT 42 of 2024 is allowed. GA 2 of 2024 is disposed of.

Ms. Sreya Basu Mallick, learned advocate, is given liberty to file Vakalatnama on behalf of the appellant, without prejudice to the rights and contentions of the recorded advocate on record. The department will accept the Vakalatnama as furnished by her.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)