

ODC-13

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
[Commercial Division]

AP-COM/496/2024

Kcc Buildcon Pvt Ltd
VS
West Bengal Highway Development Corporation Ltd

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 15th July, 2024

Appearance:

Mr. Suman Dutt, Adv.

Mr. Dwaipayan Basu Mallick, Adv.

Mr. Sakabda Roy, Adv.

Mr. Abhishek Kisku, Adv.

Mr. P. Paul, Adv.

Mr. Subhankar Das, Adv.

...for petitioner.

Ms. Manali Bose, Adv.

Mr. D. Basu, Adv.

...for respondent.

The Court:- The present application has been filed under Section 27 of the Arbitration and Conciliation Act, 1996. The short conspectus germane to the present application is that in an arbitral proceeding, the claimant / present petitioner seeks to prove a report as a piece of evidence.

For such purpose, the claimant attempted to bring one of the co-authors of the said report as witness to prove the same before the arbitral tribunal. There is a dispute as to why the said proposed witness was disinclined to appear before the Court to prove the document. Whereas the claimant pleads that it is due to intimidation by the respondent that the said disinclination took place, the respondent opposes the same and apparently the tribunal turned down the claimant's plea on such count.

Be that as it may, fact remains that although it would be open to both parties to argue on the probative value and the evidentiary value of the report, if proved, the scope of consideration of the Court under Section 27 is extremely limited as to whether the witness sought to be examined is relevant and as to whether there is prima facie proof that the witness did not present himself for the purpose of proving the document-in-question. Both such considerations are satisfied in the present case in view of the facts narrated above. The petitioner /claimant has also taken due approval from the Arbitral Tribunal as envisaged under Section 27(1) of the 1996 Act.

Accordingly, AP-COM/496/2024 is allowed, thereby granting leave to the claimant/petitioner to have a sub poena issued through the Court for the production of Mr. Manoj Kumar Shukla, Head of the department, Flexible Pavement Division, Central Road Research Institute, New Delhi for the purpose of adducing evidence in connection with the arbitral proceeding going on between the parties. It will be open to the claimant to have such sub poena issued keeping in view the appropriate stage of the arbitral tribunal when the turn of the said witness comes to adduce evidence and/or subject to further orders of tribunal.

Liberty to mention in the event any further issue arises out of the present order.

(SABYASACHI BHATTACHARYYA, J.)