

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1296 of 2022
(Assigned)

VSA Infra Projects Private Limited & Anr.
Vs.
Eastern Coalfields Limited & Anr.

Mr. Tanmoy Mukherjee
Mr. Aditya Mondal
... For the petitioners

Mr. Syed Nurul Arefin
... For the Eastern Coalfields Limited

1. This revisional application has been filed assailing the order dated 10th March, 2022 passed in connection with Money Suit No.5 of 2020 where the learned Judge, Commercial Court at Asansol dealt with an application under Order XXXIX Rule 7 of the Code of Civil Procedure and finally rejected the application which was filed without any schedule to be inspected by the Commissioner.

2. The plaintiffs have filed the suit, being Money Suit No.5 of 2020, with a prayer for decree for Rs.20 crore along with consequential orders, including interim interest.

3. Both the plaintiffs and the pro-forma defendant constituted a joint venture enterprise which participated in a tender issued by the defendant/ECL authority for hiring of HEMM to remove 156.50 L. cum OB from

Jambad OCP of Kajora area. They obtained tender in their favour and work order was issued on 9th November, 2015.

4. According to the plaintiffs, they could not complete the project after utilizing their full infrastructure within time as the defendant/ECL authority has failed to make over the entire site and in the result ECL authority made over only 1,50,000 sq. meters to the plaintiffs.

5. Learned counsel appearing on behalf of the opposite party/ECL has submitted by referring to the petition that the application under Order XXXIX Rule 7 of the Code of Civil Procedure did not disclose any schedule to be inspected by the Commissioner.

6. Learned counsel appearing on behalf of the petitioners also admitted the laches on the part of the petitioners/plaintiffs for not delineating any schedule in the application under Order XXXIX Rule 7 of the Code of Civil Procedure.

7. Learned counsel appearing on behalf of the petitioners/plaintiffs has prayed for liberty to file one fresh application under Order XXXIX Rule 7 of the Code of Civil Procedure before the trial Court.

8. On careful scrutiny of the entire order, the learned Judge observed that the application was filed without mentioning any schedule for carrying out the inspection by the Advocate Commissioner.

9. Observation on this issue of not mentioning the schedule in the application under Order XXXIX Rule 7 of the Code of Civil Procedure is correct and I do not find any infirmity in the order on this particular issue of schedule for carrying out inspection within the meaning of the provision of Order XXXIX Rule 7 of the Code of Civil Procedure.

10. In the aforesaid view of the matter, the revisional application stands dismissed, with liberty afforded to the petitioners/plaintiffs to file a fresh application under Order XXXIX Rule 7 of the Code of Civil Procedure within seven days from date of communication of this order which will be disposed of by the learned Judge as expeditiously as possible according to the provision of law without any influence by the order of this Court.

11. Learned counsel appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Judge, Commercial Court at Asansol, forthwith.

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

13. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)