

04-05. 24.04.2025
Court No.37
(Tanmoy)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL DIVISION

FMAT/320 /2024

IA No: CAN/1/2024

HINDUSTAN STEELWORKS CONTRUCTION LIMITED
-Versus-
ARCON PROJECT PRIVATE LIMITED & ORS.

With

FMAT/321 /2024

IA No: CAN/1/2024

HINDUSTAN STEELWORKS CONTRUCTION LIMITED
-Versus-
ARCON PROJECT PRIVATE LIMITED & ORS.

Mr. Uday Gupta, Ld. Sr. Adv.
Mr. Arik Banerjee, Adv.
Mr. Jit Ray, Adv.
Mr. Rahul Kumar Singh, Adv.

...for the appellant/HSCL.

Mr. Srijib Chakraborty, Adv.
Mr. Aditya Mondal, Adv.
Ms. Rupsa Sreemani, Adv.

...for the respondent no.1.

Mr. Dhiraj Kr. Trivedi, Ld. DSGI
Mr. Shailendra Kr. Mishra, Adv.

...for the respondent no.2.

Dictated by Arijit Banerjee, J.

1. These two appeals are directed against orders dated August 6, 2024, passed in two suits filed by the respondent no.1 herein against the appellant before the learned Commercial Court at

Rajarhat, North 24-Parganas. In one of the suits, the respondent no.1 herein prayed for injunction to restrain the appellant herein from invoking a Bank guarantee that the respondent no.1 had furnished in favour of the appellant in connection with a construction contract. In the other suit, the respondent no.1 herein challenged a termination order issued by the appellant terminating the contract in question on the ground of alleged default on the part of the respondent no.1 herein.

2. In both the suits, *interlocutory* orders were passed by the learned Trial Court. Invocation of the Bank Guarantee was injuncted. An order was passed staying the operation of the termination order. These two appeals are directed against those two orders.

3. It appears that a construction contract was awarded by the appellant herein to the respondent no.1 for building a school for tribal students. This was at the behest of the concerned Department in the Government of India. However, the Government of India is not a party to the construction contract.

4. When these two appeals had been taken up before a co-ordinate Bench earlier, the Bench was of the view that for expeditious resolution of the disputes between the parties, the parties should go

to arbitration. Although the concerned construction contract executed by and between the appellant and the respondent no.1 herein does not contain an arbitration clause, the co-ordinate Bench suggested that the parties should record their consent by filing affidavit, for going to arbitration. The appellant and the respondent no.1 have filed affidavits recording their unconditional consent to go for arbitration. However, the respondent no.2 [National Education Society for Tribal Students (NEST)] has filed an affidavit according consent for going to arbitration but on condition that no Award can be passed against it and it will not be liable to pay any portion of an Award that may be made in the arbitration.

5. The co-ordinate Bench recorded in a separate order that since unconditional consent of the defendant no.2 in the suits is not available, the appeals may have to be heard out on merits.

6. Today, we have heard learned Counsel for the parties at some length.

7. Mr. Chakraborty, learned Counsel appearing for the respondent no.1/plaintiff, says that his client will keep the concerned Bank Guarantees renewed periodically till the disposal of the suit, as directed earlier by a co-ordinate Bench.

8. We further see that final measurement of the work done has been taken by the Special Officer appointed by the co-ordinate Bench and report has been filed in Court which is part of the records. It is in the interest of the tribal students that the school building should be completed as early as possible. The appellant herein is permitted to proceed with necessary work for completing the school building, in accordance with law.

9. In view of the aforesaid, we see that no useful purpose will be served by keeping these two appeals pending and the matter may be remanded to the learned Trial Court for disposal of the suit as expeditiously as possible.

10. Accordingly, these two appeals are disposed of with the following directions:

- (i) The appellant will be at liberty to do the needful for completing the construction of the concerned school building, in accordance with law.
- (ii) The appellant shall not encash the Bank Guarantees in question subject to the respondent no.1/plaintiff keeping the Bank Guarantees renewed periodically till the disposal of the suit.

(iii) In the event the appellant herein completes the work in question at the risk and cost of the respondent no.1/plaintiff, the liability of the plaintiff will naturally be subject to the result in the pending suits.

(iv) The respondent no.1/plaintiff will be entitled to remove its goods from the work site after proper inventorization in the presence of both parties.

11. We have not gone into the merits of the case.

12. We are told that written statement has been filed by the defendant no.1 in the suit and the suit is at the stage of framing of issues.

13. Given the nature of the disputes between the parties and that it is a commercial cause, we request the learned Trial Court to spare no efforts to expedite the trial and conclude the same on an early date without granting unnecessary adjournments to either of the parties.

14. We have not applied our mind to the plaintiff's claim for damages. It will be open to the plaintiff to agitate such claim before the appropriate forum including in the pending suits.

15. The orders impugned in these two appeals stand modified to the aforesaid extent.

16. Mr. Ratul Das, who was appointed as Special Officer, stands discharged. If any payment is due to the Special Officer on account of his remuneration, he shall inform the parties of the same. The parties shall forthwith pay such remuneration.

17. The appeals being FMAT/320/2024 and FMAT/321/2024 along with the connected applications being IA No: CAN/1/2024 and IA No: CAN/1/2024 stand disposed of.

18. Urgent Photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Om Narayan Rai, J.)