

OD-7

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/6/2025
IA NO: GA/1/2025, GA/2/2025
SOUTH EASTERN COAL FIELDS LIMITED AND ORS
VS
INTECH SAFETY PRIVATE LIMITED AND ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 7th February 2025.

Appearance :
Mr. S. Roychowdhury, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for U.O.I.
Mr. Amritam Mondal, Adv.
Mrs. Swati Agarwal, Adv.
Ms. Shipra Naskar, Adv.
...for respondents 1 to 6
Mr. Avishek Guha, Adv.
Ms. Shilpa Das, Adv.
...for respondent 4 (ICICI Bank)

The Court :- This intra-Court appeal by the respondent in the writ petition is filed against an interim order passed by the learned Single Bench in WPO 594 of 2024. As could be seen from the first order dated 9.7.2024 passed by the learned Single Bench the appellant herein, was the respondent in the writ petition namely the tendering authority despite issuance of repeated notices and communication did not appear before the Court nor the bank was present and the Court took into consideration the facts and circumstances and having been prima facie satisfied granted an order of stay for a limited period of invocation of the bank guarantee. Subsequently the appellant has filed an

application for vacating the interim order which was considered by the learned Single Bench and the interim order and the said application were rejected.

Aggrieved by the same the appellant is before us.

We are clear in our mind about the legal position that Court should refrain from granting an order of injunction of stay from invocation of a bank guarantee. However, this rule which has developed through various judicial decisions has certain exceptions. One such exception which we can point out is when there is an allegation of fraud.

According to the appellant, the writ petitioner had produced a certificate of prior experience to enable them to participate in the tender invited by the appellant. According to the appellant the said experience certificate is a fraudulent document and in this regard they seek to rely upon certain communication sent by Eastern Coalfields Limited. The learned Single Bench took note of the facts and circumstances of the case which were placed for the first time before the Court in the application for vacating the interim order and opined that the allegation of producing false or fabricated or fraudulent documents need to be examined. One more matter which needs to be taken note of is that the writ petitioner was not informed that the reason for returning the bank guarantee despite the writ petitioner being unsuccessful bidder was on account of the allegation that the experience certificate is a fraudulent document.

Learned Advocate for the appellant would submit that as per the terms and conditions of the Bid Document if it is found by the tendering authority

that the information furnished by the tenderer is false or any fraudulent document has been produced they have got a right of forfeiture of the amount furnished by the tenderer which is given in the format of a bank guarantee. Thus several issues need to be adjudicated more particularly when there is an allegation of fraud. Therefore, we are of the view that the learned Single Bench was justified in granting an interim order.

One more issue which we need to point out is that the bank guarantee which was given by the respondent/writ petitioner had lapsed on 12 July 2024. Thus we find no grounds to interfere with the impugned order.

Accordingly, the appeal fails and dismissed and the appellant is directed to file their affidavit in opposition within three weeks from date, reply, if any, within a week thereafter after which, the appellant is granted liberty to mention before the learned Single Bench for taking up of the matter at an early date.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)