

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/437/2017
WITH
WPO/1130/2016

M/S. PANCHDEEP CONSTRUCTION LTD.
VERSUS
CALCUTTA METRO RAIL CORPORATION LTD. AND ANR.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN
AND

The Hon'ble JUSTICE SMITA DAS DE
Date : 7th April, 2025.

Appearance:

Mr. Haradhan Banerjee, Sr. Adv.
Ms. Somali Mukhopadhyay, Adv.
..for the appellant

Mr. Sakya Sen, Sr. Adv.
Mr. Atri Mandal, Adv.
Mr. Ankit Dey, Adv.
...for KMRCL

1. This appeal is arising out of an order passed by the learned Single Judge on 16th August, 2017 in which the letter of termination dated 26th November, 2016 was under challenge.
2. On the earlier occasion, we adjourned this matter in order to ascertain whether the appeal has now become infructuous in view of awarding of the contract in favour of the third party.
3. Mr. Haradhan Banerjee, learned senior counsel appearing on behalf of the writ petitioner/appellant submits that in the event the termination is held to be illegal or wrongful, the appellant is entitled to claim damages before the appropriate forum as the writ

court may not be the appropriate forum to decide the quantum of damages. Reference is made to the arbitration clause in the contract. Mr. Banerjee further submits that before the acceptance of the bank guarantee, they have executed works for which they have received some payment.

4. In the affidavit filed on behalf of the Metro Railway authorities and as pointed out by Mr. Sen that the performance guarantee was not submitted even after expiry of 60 working days i.e. 23rd August, 2016. It is not in dispute that the letter of acceptance was issued on 6th June, 2016 and on or before 6th July, 2016 the performance guarantee ought to have been furnished. However, the contract permits a further period of 60 days which means 6th August, 2016. It appears that even on 23rd August, 2016 the performance bank guarantee was not furnished. Reliance on the letter dated 16th August, 2016 to show that a format of the performance guarantee was forwarded is considered to be immaterial.
5. Mr. Sakya Sen, learned senior counsel appearing on behalf of the respondent no.1 has submitted that the dispute arose on 26th November, 2016 when the contract was terminated. The appellant knowing fully well that the appellant had to seek remedy in arbitration has filed the writ application and the time spent in this proceeding cannot now be interpreted in favour of the appellant.
6. The contract contains an arbitration clause. Only in exceptional circumstances a writ petition is maintainable. The learned Single

Judge has at the threshold found that the performance guarantee is not in accordance with Clause 6.13 of the contract.

7. Admittedly, it is not in dispute that the performance guarantee was sought to be furnished beyond the period stipulated under the said clause. This aspect was considered by the learned Single Judge.
8. In view of the above, we do not find any reason to interfere with the order passed by the learned Single Judge.
9. The appeal stands dismissed. However, there shall be no order as to costs.

(SOUMEN SEN, J.)

(SMITA DAS DE, J.)