

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2413 OF 1999

U.B.ENGINEERING LTD.

.....APPELLANT

VERSUS

PUNE READYMIX CONCRETE INDS.LTD.

.....RESPONDENTS

O R D E R

The parties entered into a contract in terms of a Work Order on 27.10.1994. Under the Work Order, the respondent had to supply ready-mix concrete as per specifications at the site of the appellant at Talegaon. The total quantity and the price are specified in the Work Order. Since these are not relevant for our present purpose, we are not going into such details contained in the Work Order. The controversy between the parties has arisen with reference to the clause regarding Mobilisation Advance contained in the Work Order. The appellant had to give to respondent an advance of Rs.15 lacs by way of Mobilisation Advance in two equal instalments of Rs.7.50 lacs each. Before

release of the first instalment of Mobilisation Advance, the respondent had to

furnish a bank guarantee in the sum of Rs.7,50,000/-. Regarding the second

instalment of the Mobilisation Advance there was no such requirement of

furnishing a bank guarantee in the Work Order. It is the admitted case of the

parties that the respondent furnished a bank guarantee for the purpose of

release of the first instalment of the Mobilisation Advance and the first

instalment was accordingly released in favour of the respondent in the sum of

Rs.7,50,000/-.

The controversy which is the subject matter of the present appeal is

about the second bank guarantee in the sum of Rs.7,50,000/- furnished by the

respondent in favour of the appellant on 20.01.1995. It is the case of the

respondent that even though there was no requirement in the Work Order for

furnishing a bank guarantee before release of the second instalment of

Mobilisation Advance, the respondent was made to furnish a bank guarantee.

Further in spite of the bank guarantee being furnished, the appellant did not

release the second instalment of the Mobilisation Advance. In fact, according to

the respondent second instalment of Mobilisation Advance was never released.

Moreover, a Batching Plant belonging to the respondent which according to the

respondent costs him about Rs.35 lacs, was installed at a site which was under

the control of the appellant. The plant was to be used for executing the Work

Order. According to the respondent, the appellant had stopped accepting the supplies under the Work Order in May, 1995. Thereafter the plant was no

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longer required at the site. The respondent was also keen to have the Batching Plant removed from the site of the appellant. For these reasons, the respondent submits that he had to extend the second bank guarantee by a period of three months. After the respondent extended the bank guarantee it was able to remove the Batching Plant from the site of the appellant. The respondent thereafter filed a suit for injunction on 22.09.1995 praying that the appellant be restrained from encashing the bank guarantee furnished to the appellant on 20.01.1995. Initially, an ex-parte ad-interim injunction was granted in favour of the respondent by the trial court. The said injunction was, however, vacated by the trial court by a final order dt.22.09.1998. The respondent filed an appeal in the High Court against the said order of the trial court. The High Court vide its order dt.11.01.1999, allowed the appeal and granted the injunction in favour of the respondent as prayed by it in the plaint. The said order of the High Court is under challenge in this appeal.

In the impugned order, the High Court while granting injunction in favour of the respondent (plaintiff in the suit) has noted the offer made on behalf of the respondent-plaintiff to keep the bank guarantee alive during the pendency of the suit before the trial court by taking necessary steps in that regard. This offer was, in fact, accepted by the High Court. As a result of this, we can safely

presume that the respondent i.e. the plaintiff in the suit must have kept the bank guarantee alive during the pendency of these proceedings. In view of the fact that the High Court has granted injunction in favour of the respondent-plaintiff

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against encashment of bank guarantee during the pendency of the suit and that injunction has been operating all along, we do not consider it appropriate to interfere with the said order at this stage specially when the bank guarantee has to be kept alive during the pendency of the proceedings. The interest of the appellant stands protected while the case set up by the respondent-plaintiff will be examined on merits during trial of the suit.

The learned counsel appearing for the appellant has made a grievance about certain observations made in the impugned judgment of the High Court regarding the merits of the controversy between the parties. It is well-recognised that such observations made for purposes of deciding the interim matter are not binding while deciding the matter finally. Yet, we make it clear that any observations made in the impugned judgment of the High Court regarding merits of the case shall not come in the way of the trial court in deciding the suit on merits in accordance with law.

We note that the suit is pending since the year 1995. Therefore, we consider it appropriate to request the trial court to try and dispose of the suit as expeditiously as possible.

While upholding the judgment under appeal, this appeal is dismissed.

.....J.

(ARUN KUMAR)

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.....J.

(R.V. RAVEENDRAN)

NEW DELHI;

MARCH 7, 2006.

ITEM NO.102

COURT NO.10

SECTION IX

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2413 OF 1999

U.B. ENGINEERING LTD.

Appellant (s)

VERSUS

PUNE READYMIX CONCRETE INDS.LTD.

Respondent(s)

(With office report)

Date: 07/03/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN KUMAR

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr.Makarand D.Adkar, Adv.

Mr.Baraj K.Mishra, Adv.

Mr.Vijay Kumar, Adv.

Mr. Vishwajit Singh,Adv.

For Respondent(s)

Mr.Amit Sibal, Adv.

Mr. S. Udaya Kumar Sagar,Adv.

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Mr.B.Madavan, Adv.

Mr.A.Vinaygam, Adv.

Mr.Atif Chaudhri, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

(Satish K.Yadav)

(Phoolan Wati Arora)

Court Master

Court Master

(Signed order is placed on the file)