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C.A.No. 12 OF 1998

ITEM No.27

Court No. 1

SECTION IV
A/N MATTER

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. 12/1998@@
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STATE OF HARYANA & ORS

Appellant (s)

VERSUS

M/S.CONTINENTAL CONST. LTD
(prayer for interim relief and office report)
(For Final Disposal)

Respondent (s)

Date : 10/08/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.C. LAHOTI

For Appellant (s) Mr. Mahabir Singh, adv.

For Respondent (s) Mr. Shiv Kumar Suri, adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

The appeal is disposed of in terms of the
signed order. No costs.

.SP1

(Kanchan Jain) (Prem Prakash)
AR-cum-PS Court Master

Signed order is placed on the file.

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.....L.....I.....T.....T.....T.....T.....T.....T.....J

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 12 OF 1998@@
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State of Haryana & Ors.

....Appellants

VS.

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

The respondent, M/s. Continental Construction Ltd. was awarded a contract for widening and strengthening of four lanes of National Highway No. 1 from Samalkha to Karnal in the State of Haryana. The contract was allotted in the year 1987 and was required to be completed within 42 months. It appears that certain disputes arose between the respondent and its partner - Balfour Beatty, who had dropped out of the contract. The respondent alone carried on with the work and furnished a bank guarantee in the sum of Rs. 4.5 crores. Fresh contracts in place of earlier ones, were entered into between the parties. By a fresh stipulation, the respondent undertook to complete the work by 31st December, 1994. That time was subsequently extended from time to time and finally upto 31st March, 1996. The respondent, in the meanwhile, approached the appellant for upward revision of the rates in view of the changed circumstances. It appears that the appellant terminated the contract having decided not to revise the rates upwards. The respondent, thereafter, approached a civil court under Section 9 of the Arbitration and Conciliation Act 1996 with twin prayers that the bank guarantee of Rs. 4.5 crores given by the respondent to the appellant be not encashed and that the machinery, which the respondent had imported should not be seized by the appellant. The trial court declined to grant either of the two prayers. The matter was taken up in appeal to the High Court where an order came to be issued restraining encashment of the bank guarantee as also removal of the machinery from site by the appellant. The arbitration proceedings have been going on for the last more than four years. We are informed that those proceedings have not yet been completed. The very purpose of arbitration is getting frustrated. Learned counsel for the parties have been impressed upon that they should ensure, through their respective clients, that the arbitration proceedings are concluded at the earliest possible time.

In this appeal, the case of the appellant is that it should be permitted to encash the bank guarantee during the pendency of the arbitration proceedings and that in the event the respondent succeeds, he should recover the amount from the Government. It is also submitted on behalf of the appellant that the machinery belonging to the respondent, which has been seized, may be permitted to be sold so as to prevent it from being rendered useless. Leave was granted on 5th January, 1998 and while issuing notice on the prayer for interim relief, this Court directed stay of the judgment of the High Court dated 27th February, 1997, impugned herein, in the meanwhile. Subsequently, the interim order was modified on 17th February, 1998 and the appellants were restrained from encashing the bank guarantee, filed by the respondent. This is where the matter rests at present.

Since the arbitration proceedings have since not been concluded and the order restraining encashment of bank guarantee has been in operation since 17th February, 1998, it appears appropriate to us to make that order absolute till the matter is disposed of by the arbitrator. However, sofar as the seized machinery is concerned, learned counsel for the respondent does not object to the seized machinery being sold in open auction by the appellant. We, therefore, permit the appellant to sell the seized machinery by open auction under intimation to the respondent and deposit the sale proceeds in the trial court.

We are informed at the Bar that there is a vacancy in the office of one of the arbitrators which is to be filled up by Central Government. We expect the competent authority of Central Government to do so at an early date for which purpose the attention of the competent authority may be invited by either party.

With these observations, the appeal is disposed of. No costs.

.SP1

.....CJI

.....J.
(R. C. LAHOTI)

New Delhi
August 10, 2001.