
(1992) 11 PAT CK 0015
In the Patna High Court
Case No : F.A. No. 456 of 1991

Rajendra Agriculture University and Others
Vs

APPELLANT

Bhartiya Ispat Udyog Pvt. Ltd.

RESPONDENT

Date of Decision : 19-11-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5, 151

Citation : (1996) 2 PLJR 548

Hon'ble Judges : Dharmpal Sinha, J

Bench : Single Bench

Judgement

Dharmpal Sinha, J.—Heard learned Counsel for both the sides on the petition filed by the Appellants under Order XLI Rule 5 read with Section 151 of the CPC at Flag "A" praying for stay of further proceeding in Execution Case No. 4 of 1991, counter affidavit filed on behalf of the Respondent No. 1 at Flag "B" as well as reply to the counter affidavit filed on behalf of the Appellants.

2. The main contention of the learned Counsel for the Appellants is that the Respondent had agreed and acquiesced in acceptance of Rs. 35,463.93 paise only by writing a letter on 28.1.1982 in full satisfaction of his claim, which he made for supply of iron material in pursuance of an admitted contract including 20% increase in the price of steel. His further contention is that out of the amount of Rs. 35,463.93 paise claimed by the letter aforesaid, which was Ext. B/8, about Rs. 18,000/- was later paid and about Rs. 17,000/- offered for payment by the bifurcated University Learned Counsel for the Petitioners-Appellants has raised some contentions to show that the decree, which has been passed by the learned trial court for an amount of Rupees 2,64,928/-, is wrong and improper; but we are not concerned for the present with the merit of the appeal; but with the question as to whether stay as prayed should or should not be granted. In this regard it was stated by the learned Counsel for the Appellants that the Respondent is a Company which has stopped functioning and so if the amount decreed in his favor is realised by execution process and the Appellants

succeed in the appeal, they would not be able to get back the amount.

3. Learned Counsel for the Respondent has submitted that it is a money decree, which should not be normally stayed and the price of the steel had further been subsequently raised by Anr. 35% before the entire supply had been completed. He has further submitted that the Company is actually existing even when, for some reason the manufacturing of steel is stopped, and, therefore, the contention that the Appellants would not be able to realise the amount in case of success in appeal, is not tenable.

4. Considering the fact that the decree in execution is a decree for money, I do not think it proper to grant or stay except partial to the extent that on condition of deposit of the entire original decretal amount of Rupees 2,64,928/- in the court below further proceeding in Execution case No. 4 of 1991 can remain stayed for realisation of the amount of interest as decreed by the trial court below.

5. Accordingly, I direct that if the amount of Rupees 2,64,928/- (Two lacs sixty four thousand and nine hundred twenty eight) is deposited before the concerned court, further proceedings in Execution Case No. 4 of 1991 in respect of the realisation of interest shall remain stayed, but there will be no stay for realisation of the cost of the suit. The Respondent, however, shall be entitled to withdraw the amount i.e. deposited on furnishing bank guarantee for the amount and further undertaking by a bond to pay interest at the rate of 12% per annum, on the amount if found to have deposited in excess, on the decision in the appeal.

6. The aforementioned amount shall be deposited by the Appellants within four months from today, failing which the stay even with regard to realisation of the interest shall stand vacated.

7. The petition at Flag "A", counter affidavit at Flag "B" as well as reply to the counter affidavit are, accordingly, disposed of.