

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S) 3264 OF 2008

NATIONAL HIGHWAYS AUTHORITY
OF INDIA . . . APPELLANT(S)

VERSUS

M/S KMC CONSTRUCTIONS LTD.
& ANR. . . RESPONDENT(S)

ORDER

1. The matter lies within a short compass and we do not consider it necessary to go beyond what is strictly required for the disposal of this appeal.

2. Against an order of injunction restraining the appellant - National Highways Authority of India ("NHAI" for short) from encashing a bank guarantee, an appeal was filed to the Division Bench of

the High Court which by the impugned judgment and order dated 2nd January, 2007 took the view that as the *inter se* liability of the parties was seriously disputed and pending before the learned Arbitral Tribunal the bank guarantee ought not to be permitted to be encashed but should be kept alive by the contractor till the conclusion/completion of the arbitration proceedings. It is the aforesaid order that is called in question in the present appeal by the appellant - NHAI.

3. At the outset, we would like to put on record that the respondent - contractor does not appear to be aggrieved by the order of the Division Bench of the High Court requiring the bank guarantee to be kept alive till the conclusion/completion of the arbitration proceedings. We,

therefore, would feel seriously inhibited in going into the question of the legitimacy of the action on the part of the appellant - NHAI in withholding the bank guarantee and would only be concerned with the issue of encashment of the bank guarantee agitated in the present appeal.

4. The impugned order of the High Court directing the bank guarantee to be kept alive, instead of encashment thereof, was passed in a situation where serious inter se disputes and claims were pending before the learned Arbitral Tribunal and the High Court reasonably anticipated such proceedings to get over within a short time frame. The view taken by the High Court, in the exercise of what is a highly discretionary jurisdiction to interfere with an order of injunction passed by the learned trial judge, cannot be termed to be

per se unreasonable or unjustified so as to require our interference. The fact that the arbitration proceedings have not concluded within a reasonable time frame as contemplated by the High Court and, instead, has dragged on will not detract from the fundamental principle underlying the order of the High court i.e. to secure the conflicting interests of the parties pending conclusion of the arbitration proceedings, with which there can be no disagreement. We, therefore, decline to interfere and, consequently, affirm the order of the High Court with a request to the learned Arbitral Tribunal to conclude the arbitration proceedings as expeditiously as possible keeping in mind that the same has been pending before it since the year 2006.

5. With the aforesaid observation, the appeal is disposed of.

....., J.
(RANJAN GOGOI)

....., J.
(NAVIN SINHA)

NEW DELHI
AUGUST 30, 2017

ITEM NO.106

COURT NO.3

SECTION XII-A

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

CIVIL APPEAL NO(S). 3264/2008

NATIONAL HIGHWAYS AUTHORITY OF INDIA

APPELLANT(S)

VERSUS

M/S. KMC CONSTRUCTIONS LIMITED & ANR.

RESPONDENT(S)

Date : 30-08-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s)

Ms. Gunjan Sinha Jain, Adv.
Mr. Bhavana B., Adv.
for M/s. M. V. Kini & Associates, AOR

For Respondent(s)

Ms. Kiran Suri, Sr. Adv.
Ms. Shipra Ghose, AOR
Mr. Hirendra Nath Rath, Adv.UPON hearing the counsel the Court made the following
O R D E RThe appeal is disposed of in terms of the signed
order.

[VINOD LAKHINA]

AR-cum-PS

[ASHA SONI]

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]