

## M/s. Rani Construction Pvt. Ltd. Vs Union of India

**Court:** Delhi High Court

**Date of Decision:** Feb. 5, 1996

**Hon'ble Judges:** K. Ramamoorthy, J

**Bench:** Single Bench

**Advocate:** Mr. P. Nagesh, for the Appellant; Mr. Sanat Kumar, for the Respondent

### Judgement

K. Ramamoorthy, J.

This is a petition u/s 20 of the Arbitration Act, 1940. The petitioner in I.A. 7149/93 has prayed for injunction

restraining the respondent Union of India from encashing the guarantee of bond No. 88/92 furnished by the State Bank of India, Ponda. Goa till

the disposal of the present proceedings.

2. The dispute related to the work of ""Earthwork in filling/cutting in formations, diversions of nallahs, trolley refuges, construction of arch bridges

No. 43 and 43-A etc. According to the petitioner, the Union of India rescinded the contract illegally and the petitioner has challenged the recession

and has claimed the damages exceeding Rs. 80 lakhs.

3. As per the terms of the contract, the petitioner was obliged to furnish a bank guarantee to the tune of Rs. 1,50,000/-. It was processed on

22.9.1988 and it was subsequently being renewed. According to the petitioner, the invocation of the guarantee is not in accordance with law.

Therefore, there should be an injunction pending the arbitration proceedings. The Union of India has filed a reply to this petition contending inter

alias that the petitioner is not entitled to any damages. Most of the claims made by the petitioner would come into the categories of Excepted

Matters in Clause 63 of the General Conditions of Contract. The petitioner was guilty of several breaches of contract and the respondent was

forced to rescind the contract. The respondent incurred losses and the respondent was within its rights in invoking the bank guarantee.

4. On the facts and circumstances of this case, the principles laid down by the Supreme Court would on all fours apply and the petitioner has not

made out any case for the grant of injunction. In the light of the law laid down by the Supreme court in the following decisions it has to be

considered whether the petitioner has established any case bringing its case within the principles laid down by the Supreme Court :

- (1) United Commercial Bank Vs. Bank of India and Others, .
- (2) U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd., .
- (3) General Electric Technical Services Company Inc. Vs. M/s. Punj Sons (P) Ltd. and another, .
- (4) National Thermal Power Corporation Ltd. Vs. M/s. Flowmore Private Ltd. and another,
- (5) Larsen and Toubro Limited Vs. Maharashtra State Electricity Board and others, .

5. The Supreme Court had held in the case of Larsen and Toubro Ltd. (supra) as under :

Before we adjudicate the rival plea urged before us by counsel for the parties, it will be useful to bear in mind the salient principles to be borne in

mind by the court in the matter of grant of injunction against the enforcement of a Bank Guarantee/irrevocable Letter of Credit. After survey of the

earlier decisions of this court in United Commercial Bank v. Bank of India and others, (supra), U.P. Cooperative Federation Ltd. v. Singh

Consultants and Engineers (P.) Ltd., (supra), General Electric Technical Service Co. Inc. v. Punj Sons (P) Ltd. and another, (supra), and the

decision of the court of Appeal in England in Elia and Rabbath v. Matsas and Matsas 1966 (2) L R 495 , and a few American decisions, this

court in Svenska Handelsbanken Vs. M/s. Indian Charge Chrome and others, , laid down the law thus :

..... in case of confirmed bank guarantees/irrevocable letters of credit, it cannot be interfered with unless there is fraud and irretrievable injustice

involved in the case and fraud has to be an established fraud .....

..... irretrievable injustice which was made the basis for grant of injunction really was on the ground that the guarantee was not encashable on its

terms .....

..... there should be prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Mere

irretrievable injustice without prima facie case of established fraud is of no consequence in restraining the encashment of bank guarantee ....

6. I am unable to see anything which would persuade me to grant the injunction in favor of the petitioner. There are absolutely no merits. The

petitioner has not made out a strong prima facie case for the grant of injunction and nothing has been shown as to how a grave injustice would be

done to the petitioner if injunction is refused.

7. Accordingly, I.A. 7149/93 is dismissed. No costs.

S. No. 3957/92

8. Post the matter for further proceedings on 14th of May, 1996.