(1991) 08 CAL CK 0007

Calcutta High Court

Case No: None

Mackintosh Burn Limited and Another		APPELLANT
	Vs	
Nu-built Construction Private Ltd. and Others		RESPONDENT

Date of Decision: Aug. 1, 1991

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 115
- Specific Relief Act, 1963 - Section 14(1), 41, 42

Citation: (1992) 1 CALLT 151

Hon'ble Judges: Khwaja Mohammad Yusuf, J

Bench: Single Bench

Advocate: Saktinath Mukherjee, Ranjan Mitra and D. Chowdhury, for the Appellant; P.K. Das, P.S. Biswas and C.K. Mitra for the Opposite Party No. 1 and A.K. Jana, for the Opposite Parties Nos. 2 and 3, for the Respondent

Judgement

Khwaja Mohammad Yusuf, J.

This is an application u/s 115 of the CPC where the judgment dated 9th January, 1991 passed by the learned District Judge, North 24-Parganas, in Misc. Appeal No. 102 of 1990 was challenged by the defendants/petitioners to set aside the order of injunction granted by the learned District Judge in favour of the plaintiff. The learned Munsif, 3rd Court, Sealdah, by his order dated 1lth September, 1990 in T. S. No. 283 of 1990 refused to grant any order of injunction which was reversed by the learned District Judge. The petitioners filed a title suit against the defendants for permanent injunction restraining the defendant No. 1 from cancelling the agreement between the plaintiff and defendant No. 1 and a permanent injunction upon defendants Nos. 3 and 4 not to start any work at the site of work or demolish or do anything in respect of the building made by the plaintiff; also a prayer was made restraining the defendant Nos. 1 and 2 to take away any material from the site

of work without observing the letter of intent as well as without physical verification of the works done already by the plaintiff.

2. The fact of the case is that the petitioner No. 1 entered into an agreement with M/s. WEBEL Electronics Communication System Limited, a Government undertaking, for construction of a Factory-cum-Administrative Complex at Salt Lake City. The petitioner No. 1 in turn engaged the plaintiff/, opposite party No. 1 as the sub-contractor to execute some of the works which were on terms and conditions in the agreement with WEBEL. One of the terms important for the purpose of this case is "For all work to be done the materials to be used have got to be approved by the authorised representative of our client (WEBEL)/Consultants. Defective and sub-standard work shall have to be rectified/replaced at your (Nu-Built''s) cost to the satisfaction of client/Consultants'' representative.'' In the course of the work the Nu-Built executed some work not satisfactory and to the satisfaction of WEBEL/Consultants and the plaintiff was asked to redo which it was contractually obliged to do but refused to do and closed the work incomplete on or about 10th June, 1990 and is now wrongfully claiming payments which in terms of the agreement the plaintiff does not deserve. In the circumstances as WEBEL/Consultants rejected some floor work and the petitioners by letter dated 24th August, 1990 asked the Nu-Built to redo the work but by letter dated 31st August, 1990 the plaintiff refused to do the same and wrongfully filed application u/s 145 of Cr. P. C. in the court of Executive Magistrate at Barackpore against the new contractors i.e. opposite-parties Nos. 2 and 3. The plaintiff which is the opposite-party No. 1 in breach of the contract after abandoning the work have been taking all misconceived steps and stalled the progress of the work causing irreparable loss and prejudice to the petitioners, M/s. Mackintosh Burn Ltd. The petitioners stated that the Nu-Built was obliged to rectify or redo the work. which was not approved by WEBEL or their Consultants, namely, Ghose, Bose and Associates, an eminent Consultant of West Bengal.

3. The Affidavit-in-Opposition filed by opposite party No. 1, inter alia, states that Nu-Built is a sub-contractor for construction of the factory building and other ancillary works for WEBEL at Salt Lake for about Rs. 50 lakhs. Eighty per cent of the work has been completed in spite of actue non-co-operation and non-payment of the bills by the petitioner No. 1, Troubles were started by the petitioner No. 1 with motive of wrongful gain through their agent M/s. Jay Guru Enterprise, opposite-party No. 2. False allegation was made that the progress of the work was lagging far behind the aniticipated schedule and threat to get the balance work done at their own risk and cost. It was decided to take joint measurement on 9th June, 1990 but it could not materialise because of the non-co-operative attitude of the petitioner No. 1 though it was alleged that there were no one at the site on 9th June, 1990. The fact is that the men of the opposite-party No. 1 were present at 2.30 P.M. at the site. Thereafter opposite-party No. 1 got a letter dated 22nd June, 1990 that the work at the factory premises was treated by them as closed with effect from

10th June, 1990 and adviced the opposite party No. 2 to take up the balance of work. On 11th July, 1990 and 17th July, 1990 the petitioner No. 1 forcibly took away all the steel materials from the custody of the petitioner No. 1 from the work sites when complaint was lodged with the Bidhan Nagar Police Station (East). Though the closer of the work was done on 10th June, 1990 but the petitioner No. 1 allowed the opposite-party No. 1 to clean the mosaic work and complete the work upto 2nd out. But surprisingly by letter dated 24th August, 1990 the petitioner No. 1 stated that partially polished portion of mosaic has not been accepted by the petitioners and we were asked to dismantle the work though the mosaic work was done under the specification and the direct supervision of the petitioners and there was no question of non-acceptance of the mosaic work or dismantling the same. The petitioners with the help of opposite-party No. 2 attempted to demolish and dismantle the construction without taking joint measurement and making payment of outstanding dues in terms of contract and therefore the opposite-party No. 1 was compelled to file T. S. No. 283 of 1990 in the court of 3rd Munsif at Sealdah and thereafter the Misc. Appeal No. 102 of 1990 before the District Judge at Barasat for in junction. By order dated 15th September, 1990 the learned District Judge passed an interim order of injunction in favour of the opposite-party No. 1 against which the petitioners moved the High Court in CO. No. 3316 of 1990 when Mr. Justice A. K. Nandi on 5th December, 1990 directed the learned District Judge to hear out the petition of temporary injunction within a week. The matter was heard by the lower appellate court and by order dated 9th January, 1991 the interim order was made absolute restraining the petitioners from demolishing or dismantling in any way the Factory-cum-Administrative Complex. Against the said order the petitioners have come again to the revisional jurisdiction of the High Court.

4. Mr. Mukherjee, the learned Advocate appearing for the petitioners, submitted that the lower appealate court granted injunction in total disregard of the provisions of law. The alleged building or construction contract cannot be specifically enforced under the provision of Section 14(1)(a), (b) and (c) of the Specific Relief Act, 1963 and accordingly no injunction can be granted in view of the bar imposed by Section 41(e) of the said Act. It is contended that Section 14(3) has no application in this case as the plaintiff did not even claim to be in possession of the property whereas the allegation in the plaint clearly indicates that the plaintiff was out of possession and merely seeks to injunct the defendants. The plaintiff did not seek to protect his possession because it had none. u/s 14(3)(c)(iii) a suit for specific performance is not maintainable unless the plaintiff is in possession and this is the statutory requirement in India in accordance to the Statute. Reference has been made of the decision in the case of Mayor, Alderman, and Burgesses of Wolverhampton v. Emmons reported in (1901)1 QB 515 and also the case of Carpenters Estates Ltd. v. Davis reported in (1940)1 All. ER 13 to differentiate from the first one. It is further submitted that there cannot be any question of the plaintiff claiming to be in possession of the property in question under the contract as the plaintiff does not

have any contract with WEBEL which owes the property and which is not a party to the suit. Until the plaintiff has not obtained possession in pursuance of the contract a suit for specific performance is not maintainable according to Section 14(3) proviso (c) (iii) of the Act of 1963. According to the learned Counsel the general rule too is that such a suit is not maintainable. The learned Counsel in this connection cited three decisions reported in State of West Bengal and Ors Vs. Anil Kumar Bhuiya, ; AIR 1951 Punj. 426 (Dewan Chand Sabbarwal v. Union of India and Anr.) ; and Union Construction Co. (Private Ltd.) Vs. Chief Engineer, Eastern Command, Lucknow and Another, It is further argued by the learned Counsel, Mr. Mukherjee, that assuming that a suit for specific performance is maintainable as contended on behalf of the plaintiff but the suit for injunction is not maintainable, for this is not a suit for specific performance but only for injunction. It is a well-known principle of law that a suit for injunction is not maintainable when efficacious remedy by way of specific performance is available according to Section 41(h). To substantiate the point the petitioners have cited three case laws as under : (i) Ram Kissan Joydoyal v. Pooran Mull and Ors. ILR (1920 Cal. 733) ; (ii) Jawahar Theatres Private Ltd. Vs. Smt. Kasturi Bai and Another, ; and (iii) Satish Bahadur Vs. Hans Raj and Others, The learned Counsel submitted that the lower court committed a judicial error and it is liable to be set aside in revision and also cited the Division Bench decision of Calcutta High Court reported in State of West Bengal and Ors Vs. Anil Kumar Bhuiya, and Sanjay Investments Ltd. Vs. Nepal Chandra Datta, The submission of Mr. Mukherjee also included the point that as the injunction would affect third party i.e. the WEBEL and as such the injunction cannot be granted to affect a third party and cited L.D. Meston School Society Vs. Kashi Nath Misra, On the basis of State of West Bengal and Ors Vs. Anil Kumar Bhuiya, it was further submitted that the work of a public utility concern shall be affected by the order of injunction and for the sake of an individual, who is not even a party, cannot be affected. While concluding his argument the learned Counsel submitted that the Special Officer''s report cannot go into evidence without the examination of the Special Officer. He cited during his argument from Dr. R. Banerjee''s Specific Relief Act, Seventh Edition.

5. Mr. Das, the learned Advocate appearing for M/s. Nu-Built Construction Private Ltd., plaintiff-opposite party No. 1, placed an unreported decision of a Division Bench of Calcutta High Court being F.M.A. No. 614 of 1987 delivered on 7th July, 1989 in the case of Minerva Dairy and Farm and Ors. v. Anand Singh Baid and Anr. to bring home the point that though in case of oral agreement the terms could not be ascertained with certainty but in the instant case there is a written contract and the terms are clear and prima facie as in the above unreported decision. There was jurisdictional point as well but no question of jurisdiction arises in the instant case. In the unreported decision the Court found that the plaintiff had no present interest in the property whereas in the instant case there is no such dispute and the plaintiff was duly appointed as a sub-contractor; and further the plaintiff has spent several lakhs and refusing an injunction to the plaintiff would go against the balance of

convenience whereas in the un reported decision the principals involvement in the contract was almost nil. Referring to Jawahar Theatres Private Ltd. Vs. Smt. Kasturi Bai and Another, Mr. Das submitted that the said case was directed against the order relating to valuation of the suit but in the instant case no such point arises and if even any point is decided the same is obiter. To counteract Wolverhampton''s case (supra) in the face of Carpenters'' case (supra) AIR 1967 Mad. 361 (K. M. Jaina Beevi and Ors. v. M. K. Govindaswami) has been cited.

6. Mr. Das made submissions in support of his client and placed Section 14(3)(c) and Section 42 of the Specific Relief Act and placed AIR 1967 Mad. 361 (supra) in support of his contention regarding Section 14(3)(c). He also referred to decision reported in (1970) 3 All. ER 326 at 340 (London Borough of Hounslow v. Twickenham Garden Developments Ltd.) and based his argument on the observation of Justice Megarry. Apart from the above cases on the limits of revisional jurisdiction of the Court he cited a number of decisions including (i) Bhojraj Kunwarji Oil Mill and Ginning Factory and Another Vs. Yograjsinha Shankarsinha Parihar and Others, ; (ii) Arundhuti Nan and Others Vs. P.M. Daryanani, (ii) R.S. Cambray and Co. (P.) Ltd. Vs. Bishnu Banerjee, ; (iv) D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, ; and (v) The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, . Besides the above, Mr. Das has also re ferred to two of my decisions reported in 1989(1) CLJ 556 (Ajay Kumar Sinha v. Anne Maria Barrato and Ors.) and Cal. LT 1990(2) HC 257 (Satpal Tandon v. Smt. Joytsna Ghose and Ors.) both of which relate to Section 115 of the Code of Civil Procedure.

7. I have considered the facts of the case and the amguments made on behalf of the parties. The short prayer of the petitioners is to set aside the judgment dated 9th January, 1991 passed by the learned District Judge, North 24-Parganas, in Misc. Appeal No. 102 of 1990. As I stated hereinbefore the learned Munsif of 3rd Court at Sealdah refused to grant injunction; in T.S. No. 283 of 1990 but the learned District Judge passed the interim order on 15th September, 1990 and made it absolute on 9th January, 1991 restraining the petitioners herein from demolishing or dismantling or damaging or defacing in any manner the portion of the construction made by the opposite-party No. 1 in the Factory-cum-Administrative Complex of the WEBEL until further orders.

8. It has already appeared from the facts narrated hereinbefore that the petitioner No. 1 engaged the opposite-party No. 1, Nu-Built, as sub-contractor for construction of a Factory-cum-Administrative Complex at Salt Lake City, Calcutta, on certain terms and conditions. It is an admitted position by the petitioner No. 1 that the contract between WEBEL and M/s. Mackintosh Burn Ltd. in respect of this complex does not give power to the petitioner No. 1 to engage any sub-contractor. Anyhow after entering into the contract the Nu-Built i.e. the opposite-party No. 1 started the work from February 1989. Suddenly the petitioner No. 1 informed the opposite-party No.

1 that WEBEL/Consultants rejected some floor work and asked the Nu-Built to redo the work which the latter refused to do. The petitioner No. 1 on 2nd June, 1990 informed the Nu-Built for joint measurement of the work on 9th. June, 1990 at the site in order to terminate the contract. The agents of Nu Built waited for the joint measurement at the site for hours together but none-appeared on behalf of the petitioner No. 1. Thereafter by letter dated 22nd June, 1990 the petitioner No. 1 treated the work of Nu-Built at the factory complex as closed with effect from 10th June, 1990. In the month of July 1990 the petitioner No. 1 forcefully took away some materials belonging to the Nu-Built. The Nu-Built filed the Title Suit in the 3rd Court of Munsif at Sealdah for declaration and permanent injunction praying, inter alia, restraining the defendant No. 1 i.e. the M/s. Mackintosh Burn Ltd. (the petitioner No. 1 herein) from cancelling the agreement; injunction not to start any work at the site or demolish or otherwise do anything in respect of the building already made by the plaintiff either by the defendant Nos. 1 or 3 and 4 i.e. the petitioner No. 1 and the opposite-parties Nos. 2 and 3 herein ; a declaration that the defendant No. 1 cannot cancel the work of the plaintiff without observing the agreement as well as without physical verification of measurement of the work already made by the plaintiff ; and a permanent injunction upon the defendants Nos. 1 and 2 not to take away any material from the site without observing the letter of intent as well as without physical verification of the work done by the plaintiff.

9. Two observations are of vital importance in the judgment of the learned District Judge. He said : "It is admitted position that no joint measurement of the portion of the construction made by the appellant (Nu-Built) has yet been taken. Thereafter, it cannot be ascertained actually how much of the work has been done by the appellant and whether this is below the specification." Further he observed that the balance of convenience ought to be considered as a pre-eminent consideration in the matter of grant of an , interlocutory injunction in the facts of the case. The learned District Judge has rightly concluded that in the absence of joint measurement there could not be any finding about the actual loss which the appellant might suffer for the alleged breach of contract. The petitioners'' contention is that building or construction contract cannot be specifically enforced u/s 14(i)(a), (b) and (c) of the Specific Relief Act, 1963 and accordingly no injunction can be granted in view of the bar imposed by Section 41(e) and (h) of the said Act. It is also the submission of the petitioners that Section 14(3) of the Act has no application in this case as the plaintiff does not even claim to be in possession of the property as indicated in Sub-clause (c) (iii) of Sub-section (3) of Section 14.

10. This Court by Order dated 4th March, 1991 appointed Mr. S. N. Pal as Special Officer to hold inspection and take measurement of the constructed portion by the opposite-party No. 1 in the presence of the parties and make his observations and conclusion thereon as well as other features as he would deem fit and proper and also separately anything to be pointed out by the parties concerned and shall give his views thereon. The Report has been filed in the Court by the Special Officer on

19th April, 1991 in detail which will be of immense help to the lower appellate court to come to a conclusion. Much emphasis has been made on Wolverhampton''s case (supra) and Carpenters'' case (supra). In the former case of 1901 it was held that specific performance of a building contract would not be ordered, and that an order ought to be made against the defendant for specific performance of his contract to built houses in accordance with the Plans whereas in the latter case of 1940 it was held that the plaintiff was entitled to a decree for a specific performance of the covenant and it was necessary for the granting of decree that the defendant was in possession of the land by the contract. It was sufficient that the defendant was in possession of the land on which the work was contracted to be done. It must be mentioned that in this Carpenters'' case (supra) the Wolverhampton''s case (supra) also came under consideration and a different view was adopted by Justice Farwell of Chancery Division.

11. The decision reported in State of West Bengal and Ors Vs. Anil Kumar Bhuiya, was cited to bring home the point that a contract for construction work is not specifically enforceable except in exceptional cases and that when such a contract is not enforceable, an order of injunction in support of such performance cannot be appreciated. In the case of Union Construction Company (Private) Ltd. v. Chief Engineer, Eastern Command (supra) the same point is emphasised that building or engineering contracts cannot be enforced through specific performance. To more strengthen the point the decision in AIR 1951 Punj. 426 (supra) is also referred. Apart from the above cases some decisions have been cited to the effect that in a suit for specific performance no injunction could be claimed such as one reported in ILR Cal. 733 (supra). In M/s. Jawahar Theatres Private Ltd. (supra) it was held that one could not be permitted to continue his suit for mere negative injunction. In the case of Satish Bahadur v. Hans Raj (supra) the Punjab and Haryana High Court held that if the plaintiff was entitled to other equally officacious relief during pendency of suit then the suit would be infructuous. The case reported in Sanjay Investments Ltd. Vs. Nepal Chandra Datta, only indicates to the extent that if there is erroneous belief as to the applicability of law and it leads to assumption of jurisdiction where there is none, then such order comes under the purview of Section 115 of C.P.C. The plea has also been taken on the basis of L.D. Meston School Society Vs. Kashi Nath Misra, that where the person for whose benefit an injunction is prayed for and the person against whom it is to operate are not parties to the suit in which it is prayed for, injunction cannot be issued. The decision in K. M. Jaina Beevi v. M. K. Gobindaswami (supra) is of importance vis-a-vis the decision in Carpenters'' case (supra) where Wolverhampton''s case (supra) was also discussed. It is stated in the Madras decision that suit for specific performance of agreement to construct building can be decreed if evidence shows that by the time suit was instituted building had been practically completed except certain minor things and completed during the pendency of appeal.

12. An argument of interest on the question whether or not a contract is specifically enforceable has been discussed by Justice Megarry in London Borough of Hounslow (supra) which I like to quote as under : "There was considerable argument on the question whether or not the contract in the case before me is specifically enforceable. If it is, then of course this greatly strengthens the contractor''s claim to retain possession of the site ; an injunction to evict the contractor could scarecely be granted if the contractor is entitled to a decree of a specific performance to compel performance of the contract. If the contract is not specifically enforceable, then the contractor must resist the injunction on some other ground.....On the view that I take, in the present case it does not matter whether the contract is or is not specifically enforceable ; the Court will not assist the borough in a breach of contract. But I was referred to Woiverhampton Corporation v. Emmons, and Carpenters Estates Ltd. v. Davis, and I must say that I cannot at present see why this contract should not be held to be specifically enforceable by the borough against the contractor. The work to be done is sufficiently defined,, I do not think damages would be adequate compensation, and the contractors obtained possession of the land under the contract: See also Fry''s Specific Performance. No doubt the doctine of mutuality is subject to many exceptions, but if in the present case the contract is specifically enforceable by the borough, it is not easy to say why it should not also be specifically enforceable by the contractor. I accept that there might well be difficulties in relation to matters such as the due provision of irregularities certificates and so on, but I do not think that those difficulties would prove insuperable." This is the view taken by the Chancery Division in 1970.

13. Now let me examine whether the High Court can interfere in a revisional application u/s 115 of the CPC in matters like the one under adjudication. It was held in Bhojraj Kunwarji Oil Mill and Ginning Factory and Another Vs. Yograjsinha Shankarsinha Parihar and Others, that interference in revision on the ground that a different view on facts elucidated was possible cannot permit interference in revisional jurisdiction. A Division Bench of Calcutta High Court held that the proviso of the C.P.C. Amendment Act of 1976 to Section 115(1) cannot and does not mean that an interlocutory order is always revisable if it has occasioned a failure of justice or has caused irreparable injury even though the requirements of the Sections are not satisfied Arundhuti Nan and Others Vs. P.M. Daryanani, The Supreme Court in the case of M/s. D. L. F. Housing and Construction Company (P) Ltd. (supra) very specifically said that while exercising the jurisdiction u/s 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relations to the jurisdiction of the court to try the dispute itself. In The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, Their Lordships made it abundantly clear with reference to Section 115 of C.P.C. that "In our opinion the High Court had no jurisdiction to interfere with the order of the first appellate court. It is not the conclusion of the High Court that the first appellate court had no jurisdiction to make the order that it

made. The order of the first appellate court may be right or wrong ; may be in accordance with law or may not be in accordance with law ; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction u/s 115 of the Civil Procedure Code."

14. Let me take three decisions of our own High Court to close the judgment. A Division Bench presided over by A. M. Bhattacharjee, J. with reference to His Lordship''s judgment reported in Arundhuti Nan and Others Vs. P.M. Daryanani, has further decided in the case of R. Cambray and Co, (P) Ltd. v. Bishnu Banerjee (supra) that the position in law is formally established that the mere fact that the decision is erroneous in fact or in law does not amount to illegal or irregular exercise of jurisdiction and that while exercising the revisional jurisdiction it is not competent for the High Court to correct errors of fact or law, however gross or manifest, unless the said errors have relations to the jurisdiction of the court to try the dispute itself. It has been pointed out further by the Division Bench that the expression "illegally" is to be taken to mean "in breach of some provisions of law" and the expression "with material irregularity" to mean "by committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision" and if there is no such "illegality" or "material irregularity", then the High Court has no power to interfere even though it differs, however profoundly, from the conclusions from the subordinate Court upon question of fact or law. In the case of Ajay Kumar Sinha v. Anne Maria Barrato and Ors. (supra) I, too, followed the principle as enunciated hereinbefore and also referred the decision reported in Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, where the Chief Justice Gajendragadkar held that while exercising jurisdiction u/s 115 of the CPC it was not competent to the High Court to correct errors of fact, however gross they may be or even errors of law, unless the said errors have relationed to the jurisdiction of the Court to try the dispute itself. In Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, and M.K. Palaniappa Chettiar and Another Vs. A. Pennuswami Pillai, where the Supreme Court specifically held that, however, gross error of law was committed by the courts below, the High Court could not interfere u/s 115 of C.P.C. specially when there was no procedural error. The petitioner Satpal Tandon moved the Supreme Court against decision but the SLP (Civil) was dismissed.

15. In the light of what I have discussed hereinbefore I do not find that the order of the learned District Judge, North 24-Parganas, requires any interference by the High Court. The learned District Judge was absolutely within his bound to observe that in the absence of joint measurement there could not be any finding about the actual loss which the appellant might suffer for the alleged breach of contract. If the petitioners were allowed to dismantle the construction made by Nu-Built then at the time of trial it would be quite difficult to ascertain the nature and extent of the damages. Now that the measurement has been done and the Report of the Special

Officer is on record, the learned District Judge can approximately ascertain the loss which the opposite-party No. 1, Nu-Built, will suffer in case the dismantling of the portion constructed by Nu-Built is ordered by the Court. This decision is to be taken by the lower appellate court and not by the High Court after considering all the pros and cons of the matter. Whether the suit is maintainable or not, whether the plaintiff is entitled to specific performance or not, these are the questions to be decided by the trial court and not by the first appellate court. The first appellate court shall only reconsider whether the rule made absolute restraining the petitioners herein i.e. Mackintosh Burn Ltd. from demolishing or dismantling or damaging or defacing in any manner the portion of the construction made by Nu-Built in the Factory-cum-Administrative Complex of the WEBEL should continue any further or not- Such decision must be taken in the light of the Report of the Special Officer after due consideration as mentioned hereinbefore. One thing I want to make clear that the petitioners have completely failed to place before this Court any communication from WEBEL that they are not satisfied with the work of Nu-Built or that the WEBEL want the dismantling or demolition of the work done by Nu-Built Every allegation against Nu-Built has come from the mouth of the petitioners and WEBEL is nowhere in the picture. It is stated by the petitioners that the construction of complex is meant for public purpose. It might be so but nothing in this regard has also been placed before the Court. The complex under construction is a huge one and Nu-Built is concerned only with a minor portion of it and if the demolition or dismantling is not done in the near future, I do not think that the petitioners will suffer any irreparable loss or the public will be greatly inconvenienced as magnified by the petitioners. I am sorry I cannot reconcile myself with the argument advanced by Mr. Saktinath Mukherjee on behalf of the petitioners and accept the submission of Mr. P. K. Das on behalf of Nu-Built.

16. In the circumstances, without interfering in any way for the time being with the order of the learned District Judge passed on 9th January, 1991, I direct that the matter be heard afresh by the learned District Judge in the light of the Report of the Chartered Engineer who was appointed Special Officer by the High Court and decide whether the order of injunction as granted by the learned District Judge will continue or not and maintain or modify or vacate his order if he so thinks necessary with directions, if any. The learned District Judge is directed to complete the hearing of this matter and pass the order within 30th September, 1991 without granting any adjournment to any party if not absolutely necessary and the adjournments must be short and adjust this matter even if the diary is congested by adjourning other matters.

17. The revisional application is disposed of with the aforesaid directions. There will be no order as to costs.

18. The Additional Registrar II, Appellate Side, is directed to see that the xerox copy of the order is made available to the parties without delay on usual undertaking and

upon compliance of necessary formalities.