
(1997) 04 P&H CK 0121
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 902 of 1994

American President Lines Ltd.

APPELLANT

Vs

Aarti Steels Limited

RESPONDENT

Date of Decision : 28-04-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Civil Procedure Code, 1988 — Section 115
Specific Relief Act, 1963 — Section 40

Citation : (1997) 117 PLR 30 : (1997) 4 RCR(Civil) 102

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : H.L. Sibal and Reeta Kohli, for the Appellant; M.L. Sarin and Hemani Sarin, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—In Civil Revision No. 3079 of 1996, G.C. Garg, J. on 5.8.1996 directed that the paper-book of Civil Revision No. 902 of 1994 be also put up with Civil Revision No. 3079 of 1996. Subsequently, again on 9.12.1996 N.K. Kapoor, J, directed the office to annex Civil Revision No. 902 of 1994 with Civil Revision No. 3079 of 1996. Civil revision No. 3079 of 1996 has been allowed by me on 22.4.1997. Since the present revision petition, namely, Civil Revision No. 902 of 1994 was not on the regular list, the same could not be decided. The Registry has now, after obtaining the orders from the Hon'ble Chief Justice, set down Civil Revision No. 902 of 1994 for disposal.

2. The matter in issue decided in Civil Revision Nod going through the record, I am of the view that this revision petition deserves to be allowed for the reasons recorded in Civil Revision No. 3079 of 19%. It is true that the plaintiff in a suit for perpetual injunction u/s 38 or mandatory injunction u/s 39 is entitled to claim damages either in addition to or in substitution for such injunction and the Court, if it thinks fit in the circumstances of the case, is competent to award damages.

In the present case, however, plaintiff has only sued the petitioner for a decree of injunction. Plaintiff has not claimed damages either in addition to or in substitution for such injunction and therefore, Section 40 is of no help to the case of the plaintiff. The judgment cited by counsel for the respondent has no application to the facts of the present case as the plaintiffs is yet to prove by cogent evidence its rights under the Bills of Lading.

3. After hearing the learned counsel for the parties and going through the record, I am of the view that this revision petition deserves to be allowed for the reasons recorded in Civil Revision No. 3079 of 19%. It is true that the plaintiff in a suit for perpetual injunction u/s 38 or mandatory injunction u/s 39 is entitled to claim damages either in addition to or in substitution for such injunction and the Court, if it thinks fit in the circumstances of the case, is competent to award damages. In the present case, however, plaintiff has only sued the petitioner for a decree of injunction. Plaintiff has not claimed damages either in addition to or in substitution for such injunction and therefore, Section 40 is of no help to the case of the plaintiff. The judgment cited by counsel for the respondent has no application to the facts of the present case as the plaintiffs is yet to prove by cogent evidence its rights under the Bills of Lading.

4. Consequently, this revision petition is allowed and order under revision set aside. Resultantly, application under Order 39 Rules 1 and 2, Code of Civil Procedure, filed by the plaintiffs shall stand dismissed.