(2010) 01 DEL CK 0319

In the Delhi High Court

Case No : I.A. No. 10702 of 2006 in C.S. (OS) No. 557 of 2006

B.G. Creations Pvt. Ltd. APPELLANT

Vs

State Bank of Saurashtra and Another RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151

Citation : (2010) 2 BC 594 : (2010) 158 PLR 38

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Sudhir Makkar, Ajay Monga and Manish Paliwal, for the Appellant; R.K. Saxena, for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.

LA. 10702/2006 (under Order 1 Rule 10 r/w Section 151 CPC)

1. This application has been filed by the applicant namely the Citi Bank A.S. Turkey who has prayed for impleadment in the present suit.

2. Present suit is suit for permanent injunction. The prayer made in the application is that the defendant No. 1 Bank i.e. the State Bank of Saurashtra, now known as the State Bank of India be restrained from making any payment in pursuance of letter of credit dated 7.12.2005.

3. plaintiff was a company engaged in the business of trading of food-grains. A supply order of chickpeas had been placed upon defendant No. 2 whereby defendant No. 2 was required to make this supply to the plaintiff. In pursuance of this agreement plaintiff asked its banker defendant No. 1 to issue a letter of credit in favour of the banker of defendant No. 2. Accordingly, the aforementioned letter of credit dated 7.12.2005 was issued by defendant No. 1 in favour of the banker of defendant No. 2. Defendant No. 2 was indicated as the

beneficiary. On inspection of the consignment the plaintiff found the goods to be defective. He has accordingly prayed that this letter of credit issued by defendant No. 1 be not enforced in view of this fraud played by defendant No. 2 upon the plaintiff.

4. The applicant before this Court i.e. the Citi Bank A.S. Turkey was the advisory bank/negotiating bank for this letter of credit. On affidavit, it is stated that the amount payable on this letter of credit has already been released by the applicant to the beneficiary namely to defendant No. 2. The applicant had approached defendant No. 1 for release of payment in its favour but the applicant has been informed that an ad-interim injunction has been granted in favour of the plaintiff and against defendant No. 1 not to release this amount on this letter of credit. It is further stated that a settlement has been proposed between the plaintiff and the defendants which would be behind the back and against the interest and to the prejudice of the applicant as it is the applicant who has to receive this amount on this letter of credit from defendant No. 1. Applicant is the ultimate effected party in the present proceedings and as such he would be a necessary and a proper party for adjudication of the dispute between the parties. Accordingly, impleadment has been prayed for.

5. The application has been opposed. It is submitted that there is no privity of contract between the applicant bank and the plaintiff who is neither a proper and nor a necessary party. It is stated that the applicant has wrongly concealed that on 25.4.2006 the applicant had sent a swift message to defendant No. 1 wherein the applicant had agreed to get the said letter of credit cancelled and the applicant and the beneficiary had agreed to acquit each other irrevocably. It is further stated that in fact a settlement had been arrived at between the plaintiff and defendant No. 2 on 20.4.2006. It is stated that the plaintiff had on 25.4.2006 submitted the original documents including the commercial invoice, packing list, bill of lading with the defendant No. 1 bank. On 18.9.2006, the plaintiff came to understand that vide a swift message of even date defendant No. 1 bank had called the Citi bank Mumbai to confirm the cancellation of this letter of credit. It is, thus, manifest an understanding had been arrived at between the parties and defendant No. 2 had agreed to settle its disputes with the plaintiff and in view thereof the Citi bank Turkey would not claim any amount against the said letter of credit and once this fact was confirmed by Citi Bank, defendant No. 1 would release the margin money held by it to the plaintiff whereupon the plaintiff would withdraw the suit. It is stated mat the present application is misconceived and is liable to be dismissed.

6. In the rejoinder filed by the plaintiff it is stated that the admissions made in the reply clearly show that there is connivance between the plaintiff and the defendants i.e. defendant No. 1 and 2 and if any settlement is arrived at between the parties behind the back of the applicant it would be to his prejudice. It is stated that as is evident from the message dated 24.4.2006 sent by the applicant to defendant No. 1 at the instance of defendant No. 2, the applicant

bank had agreed not to press for its reimbursement claim if the original documents are returned which in turn would signify that the plaintiff had not taken delivery of the goods. It is stated that till date defendant No. 1 has not returned the original documents to the applicant and therefore the reimbursement claim of the applicant is valid and subsisting; defendant No. 1 is under obligation to credit the account of the applicant bank. Thereafter several messages dated 5.5.2006 and 20.9.2006 and 27.9.2006 were sent by the applicant to defendant No. 1 reiterating that the reimbursement claim of the applicant bank is valid.

7. On an appreciation of the rival contentions of the parties, this Court is of the view that the applicant is a necessary and proper party. The role assigned to the applicant is that of a confirming, advising, and negotiating bank. The applicant bank has admittedly made payment to defendant No. 2 the beneficiary. Defendant No. 2 is ex-parte m these proceedings. As per trade practice the applicant bank had forwarded the original document to defendant No. 1 which was the issuing bank.

8. A letter of credit is a document issued mostly by a financial institution, used primarily in trade finance which usually provides an irrevocable payment undertaking. Such a document is primarily used in international trade transactions of significant value, for deals between a supplier in one country and a customer in another. The parties to a letter of credit are usually a beneficiary who is to receive the money, the issuing bank of whom the applicant is a client, and the advising bank of whom the beneficiary is a client. Almost all letters of credit are irrevocable, i.e., cannot be amended or cancelled without prior agreement of the beneficiary, the issuing bank and the confirming bank, if any.

9. In this scenario the presence of the applicant bank in the present proceedings would be necessary. The test laid down for testing an application of this nature is that a person is a proper party if his presence before the court is necessary to enable the court to arrive at an effectual adjudication and settle all the questions involved in the suit. The object of this provision is also to avoid needless multiplicity of suits.

10. Application'' is accordingly allowed. Applicant be impleaded as defendant No. 3. Amended plaint and amended Memo of parties be filed within two weeks with advance copy to the counsel for the defendants who may file written statement to the amended plaint within four weeks.

