(2003) 02 AHC CK 0131

In the Allahabad High Court

Case No : C.R. No. 180 of 2003

Central Warehousing Corporation — APPELLANT

Vs

Prabhu Narain Singh and Another — RESPONDENT

Date of Decision : 24-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151
Contract Act, 1872 — Section 170

Citation : AIR 2003 All 223 : (2003) 5 AWC 3766 : (2004) 1 CTLJ 400

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : R.N. Singh, A.P. Sahi, G.K. Singh and A.K. Rai, for the Appellant; C.K. Rai, for the Respondent

Final Decision : Allowed

Judgement

Janardan Sahai, J.—The facts of this case are simple. The defendant applicant M/s. Central Warehousing Corporation is a Government of India Undertaking, which provides transport services to parties exporting their goods. It appears that the applicants had entered into a contract with M/s. Bhola Nath Industry, Varanasi for transporting their woollen yarn through the container services of the applicants to Bombay. The applicants engaged M/s. Vijai Trading & Transporting Company, the first defendant whose proprietor, D.S. Mishra is the second defendant for carrying the goods in the container. M/s. Vijai Training & Transport Company in turn had taken the services of the plaintiff Prabhu Narain Singh, proprietor of M/s. O.D.C. Roadways for transporting these goods.

2. A dispute about the payment of hire charges arose between the plaintiff and M/s. Vijai Training & Transport Company. The plaintiff Prabhu Narain Singh who is the opposite party No. 1 in this revision filed a suit for injunction against the defendant Nos. 1 and 2 "directing them not to get the possession of the container unless the dues of the plaintiff are cleared". No relief in the suit is claimed against M/s. Central Warehousing Corporation.

3. In paragraph No. 8 of the plaint it is stated that there is no privity of contract between the plaintiff and defendant Nos. 3 and 4 but they have been impleaded as parties as proforma defendants for effectual adjudication of the dispute.

4. In the suit an application was filed by the Central Warehousing Corporation praying that the container No. TRI 499102 be given to the defendant Nos. 3 and 4 so that it can be transported to its destination. The application was opposed by the plaintiff. By the order dated 28-11-2002 the trial Court rejected the application. This is the order impugned in this revision.

5. The trial Court has referred to the objection of the plaintiff for the release of the goods in favour of defendant-applicant in this revision. These objections are that the plaintiff is bailee of the goods and has a lien over them until the hire charges are paid and the defendant Nos. 3 and 4 have not filed any counter claim. The trial Court has also referred to the pendency of writ petition filed in this Court and to the totality of the facts and circumstances of the case for holding that it was not a fit case for release of the goods by an interlocutory order. As regards the loss being suffered by the defendant Nos. 3 and 4 it is stated that the same could be compensated in terms of money. It has also been noted that the suit is pending at the stage of evidence and could be disposed of expeditiously.

6. Sri R.N. Singh, learned senior counsel for the applicant submitted that in view of the plaint case itself there was no privity of contract between the plaintiff and the defendant Nos. 3 and 4, that the containers admittedly belonged to the applicants and the applicant had no concern with the payment of hire charge to the plaintiff and as such there was no justification for the plaintiff to retain the custody of the containers. He relied upon Official Liquidator Vs. Swarup Cold Storage, . On the other hand, it is submitted by Sri C.K. Roy, learned counsel for the plaintiff/opposite party that the plaintiff is a bailee and has lien over the goods and can retain the container until the hire charges are paid. He relied upon Section 170 of the Indian Contract Act and upon decision of the Apex Court reported in Shipping Corpn of India Ltd. Vs. C.L. Jain Woolen Mills and Others,

7. Although the trial Court has referred to the objection of the plaintiff that no counter-claim was filed by the applicant/defendant Nos. 3 and 4 it has not given any specific finding upon the effect of the counterclaim not having been filed upon the maintainability of the application of the defendant-applicant Central Warehousing Corporation. As such it is necessary to consider this aspect of the case.

8. Ordinarily, no temporary injunction can be granted where no such final relief for injunction could have been granted. In the present case the defendant Nos. 3 and 4 have not filed any counter-claim and as such no decree of injunction as final relief can be granted in their favour. It has therefore to be examined whether an interim mandatory injunction against the plaintiff for handing over the goods in his possession to the defendants Central Warehousing Corporation

can be granted in the absence of a counterclaim. Temporary injunction can be granted under Order 39, Rule 1 and 2 CPC as well as u/s 151, CPC. Rule 2 of Order 39 is not applicable to the facts of this case, Order 39, Rule 1 has three Clauses (a), (b) and (c) which cover the circumstances in which a temporary injunction can be granted under that Rule. Clauses (b) and (c) relate to injunctions against certain acts of the defendant and, therefore, under these clauses it is only the plaintiff who is entitled to seek injunction. Clause (a) however relates to injunction where the properly in dispute is in danger of being wasted or alienated by any party to the suit or wrongfully sold in execution of a decree. Clause (a) of Order 39, Rule 1 is wide enough to cover the grant of injunction in favour of the defendant against the plaintiff. Under Order 39, Rule 1 the Court is empowered to pass order for preventing waste of the property. It has been held in Rattu Vs. Mala and Another, and in Sivakami Achi v. Narayan Chettiar AIR 1939 Mad 495 that a defendant can also apply for an injunction against the plaintiff in respect of any act covered by Clause (a) of Order 39, Rule 1.

9. The application for custody of the goods has however been filed by the defendants 3 and 4 not under the provisions of Order 39, Rule 1 but u/s 151, C.P.C. The Courts it has been held have inherent jurisdiction to issue temporary injunction in circumstances, which are not covered by the provisions of Order 39. However, inherent jurisdiction can be exercised by the Court only which it consider it necessary for the end of justice vide Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, and The Allahabad Bank Ltd. Vs. Rana Sheo Ambar Singh and Others,

10. The temporary injunction claimed by the applicants arises out of the cause of action pleaded by the plaintiff/respondent. The cause of action pleaded by the plaintiff/respondent in this case is that he has a right to retain the custody of the goods as a bailee until the hire charges in respect of the goods are paid by the defendants 1 and 2. The defendants 3 and 4-applicants in this revision have alleged in their application that they are owners of the containers and custodian of the goods and as such they are entitled to carry the goods to their destination. The claim of defendants 3 and 4, there fore, arises, out of the plaintiffs cause of action.

11. In the application of the defendant Nos. 3 and 4 it is stated in paragraph 23 that it was apprehended that if goods in the container are kept for a long time they would altogether be damaged. In paragraph 22 of the application it is stated that on account of the delay in taking the goods to their destination the owners of the goods M/s. Bhola Nath Industries are claiming damages from the applicants. The applicant''s case that the goods would be damaged by passage of time, would be covered under Order 39, Rule 1(a), C.P.C. The mere fact that the application of the defendants 3 and 4 was filed u/s 151, C.P.C. would not come in the way of the Court granting an injunction under Order 39, Rule 1(a). But the plaintiff has claimed to be the bailee of the goods. The application of the plaintiff

for temporary injunction has already been dismissed. The plaintiff is at best entitled to hire charges --a claim disputed by the defendants 1 and 2. It is not the case of the plaintiff that he was responsible for the preservation of the goods as such the only relief to which plaintiff would be entitled is for hire charges should the suit succeed. The plaintiff can thus be compensated in terms of money. The containers admittedly do not belong to the plaintiff and apart from the disputed claim for hire charges the plaintiff has no other claim for the custody of the goods. It is not in dispute that otherwise the defendants applicants are entitled to the custody of the goods. Certain facts about the plaintiffs lien may here be noted. In para 2 of the plaint averment regarding transportation by 39 trucks from 1-5-2001 to 30-6-2001 from Saharanpur to Bombay and by 4 trucks from Varanasi to Bombay is alleged. In para 3 a claim for Rs. 6,52,700/- for transportation from Saharanpur to Bombay is alleged, while in para 4 a claim for Rs. 1,60,000 as transportation charges from. Varanasi to Bombay is alleged. The sum of these figures is Rs. 8,12,700 at which the suit has been valued. The container which has been detained was being transported from Varanasi to Bombay. The dues being claimed by the plaintiff do not pertain to this consignment alone but are in respect of other consignments too. Whether the lien u/s 170 of the Contract Act can be claimed by the plaintiff in respect of dues which do not pertain to the goods bailed that is to the particular container detained but in respect of other consignment too, is very doubtful but no final opinion is being expressed in this order as it is a question which may have to be decided in the suit. The decision of the Apex Court in Shipping Corpn of India Ltd. Vs. C.L. Jain Woolen Mills and Others, helps the plaintiff only for the proposition which is not in doubt that a bailee has right to hold the bailed goods until payment of his dues in respect of these goods. But as the dues claimed are being disputed and rights of the defendants 3 and 4 and equities in their favour are also involved that decision does not help the plaintiff beyond the aforesaid proposition, which it laid down.

12. The valuation of the suit is Rs. 8,12,700. The plaintiffs interest in the suit can be protected by requiring the defendant to furnish bank guarantee. It is clear that the wool belonging to a third party, namely, M/s. Bhola Nath Industry is being detained by the plaintiff. On account of delay the defendant Nos. 3 and 4 who are the custodian of the goods and were duty bound to deliver the goods at the destination, may be saddled with huge damages. Thus the plaintiff''s interest can be safeguarded by imposing certain conditions upon the defendant-applicants and a bank guarantee by the defendant Nos. 3 and 4 would be adequate protection of the plaintiffs claim. The view taken by the trial Court that the defendant applicants can be compensated in money is on these facts and circumstances not justified and the trial Court has been erroneously swayed away as would be seen by the discussion which follows, by the pendency of the writ petition instead of considering the stand of the defendants 1 and 2 in the suit itself. In the circumstances the defendants aforesaid have made out a case u/s 151, CPC for grant of temporary mandatory injunction against the plaintiff.

However if the defendants 1 and 2 have claimed before the trial Court the release of the goods in their favour or have filed any objections to the application of the defendants 3 and 4 this order will not come in the way of the trial Court in deciding their rights.

13. The trial Court has rejected the application on the ground that no interlocutory order could be passed on account of the pendency of the writ petition. Although the trial Court has not given reference to the number of the writ petition or the name of the parties but counsel for the plaintiff/ opposite party in the revision and the counsel for the applicant refer to Writ Petition No. 288 of 2002 in this regard. The writ petition has been filed by D. S. Mishra and M/s. Vijay Trading and Company, defendants No. 2 and 1 respectively for a Mandamus commanding the authority to deliver the export consignment to the petitioner for transporting the same to the Bombay Port. In the said writ petition the applicants have not been impleaded as respondents. The claim of the applicants as custodian of the goods has not been disputed. The right of the applicants to get the custody of the goods from the plaintiff is not the subject-matter of controversy. The interim Mandamus, which was issued in that writ petition, was to the Senior Superintendent of Police, Ghaziabad, who is not a party in the present suit, who was directed to hand over the consignment sent by the petitioner or to show cause. In the writ petition M/s. Vijai Trading and Company have not disputed the rights of the defendant-applicants. As such pendency of that writ petition does not come in way of the trial Court in issuing injunction against the plaintiff.

In case M/s. Vijai Trading have objection against the application of the Central Warehousing Corporation they could do so in the suit. In the order of the trial Court there is no statement whether they have filed objections or any application claiming release of the goods. They are not parties to this revision as their names have been deleted by the applicants from the memo of Revision. As such the application of the Central Warehousing Corporation is not being disposed of finally in this Revision. The impugned order of the trial Court dated 28-11-2002 is therefore set aside and it is directed to dispose of the application of defendants 3 and 4 afresh in the light of the observations made in this order. The suit itself may be decided expeditiously.

14. Revision allowed. Revision allowed.

