

(2015) 06 MAD CK 0569

In the Madras High Court

Case No : Writ Petition (MD) No. 8375 of 2015 and M.P. (MD) Nos. 1, 3 of 2015

Ideal Exports

APPELLANT

Vs

Assistant Commissioner of Customs, Tuticorin

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 323 ELT 334

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Advocate : S. Muthalraj, for the Appellant; Vijaya Karthikeyan, J. Barathan, Additional Government Pleader and J. Antony Arul Raj, Advocates for the Respondent

Judgement

R. Mahadevan, J—This Writ Petition has been filed praying for a Writ of Mandamus directing the 1st respondent to deliver certain consignments of Raw Cashew Nuts containing in seven containers under bill of lading No. Ex. 11385 only to the petitioner with an extended time limit of one month and consequently restrain the 1st respondent to deliver the above said cargo to any third party other than the petitioner based on his representation dated 8-5-2015. The short facts necessary for the disposal of this Writ Petition are as follows:-

The petitioner is one of the importers of raw cashew nuts. He claims to have business transaction with Raw Materials and Commodity Company NIG Ltd., along with IEF OBAN Road, AWE OYO State, Nigeria. It is stated that the above said consignor dispatched certain consignments to the petitioner at Tuticorin, Tuticorin District. The cargo was unloaded on 6-5-2015 at Customs ICD at St. John ICD and there is 14 days time for clearing the containers without any demurrage and godown rent. Thereafter, the shipping liner would impose demurrage charges. While so, the petitioner approached the first respondent on 8-5-2015 requesting him not to process the export document without the knowledge of the petitioner. The first respondent directed the Superintendent

(Import) to hold the cargo till further orders on 8-5-2015. In the meanwhile, the petitioner has received a letter dated 16-5-2015 from the first respondent requesting him to produce the original bill of lading and invoice issued in the name of the petitioner, failing which, it was informed that necessary action would be taken in accordance with the provisions of Customs Act, 1962. It is the apprehension of the petitioner that the Cargo would be transferred to any third party or it may be auctioned. Hence, he has come forward with this Writ Petition for the relief stated supra.

2. Notice was ordered on 20-5-2015 and interim stay was granted in favour of the petitioner on the same day. In the meanwhile, two impleading petitions came to be filed and they were allowed, who are arrayed as respondents 4 and 5 in this Writ Petition.

3. The learned Counsel for the petitioner would vehemently contend that at the most, if the petitioner does not submit the original Bill of Lading, the respondents can impose demurrage and other charges as applicable from time to time. They have no power to transfer the cargo to any third party. Further, the authorities have got power to extend the time limit upto 30 days since the arrival of the cargo. The action of respondents would definitely affect the business community, as it is not only the interest of local customers involved but also foreign customers involved in it. Hence, he prayed for allowing this Writ Petition.

4. Mr. J. Bharathan, learned Counsel appearing for the fourth respondent (impleading party) through his vacate stay petition would submit that first of all, the petitioner has no locus standi to file this Writ Petition since the fourth respondent is the actual purchaser and the transaction of the agreement between the petitioner and the consignor at Nigeria does not materialise between them. For the abovesaid reasons, the petitioner has not been able to produce the original Bill of Lading to the official respondents. In spite of the fact that the fourth respondent is able to sustain his claim by producing the original bill of lading, due to the interim order granted by this Court, the fourth respondent could not get the cargo cleared. Further, each and every day, demurrage charges are levied by the official respondents. Therefore, the fourth respondent is really put to peril, despite the fact that he is the owner of the goods in question. Eventually, he prayed for the dismissal of this Writ Petition.

5. Mr. B. Vijay Karthikeyan, learned Standing Counsel appearing for the Customs, has filed a detailed counter affidavit, in which, he takes through paragraph Nos. 3 and 8, by stating that due to the non-cooperation of the petitioner, the Foreign Supplier, namely, M/s. Raw Material and Commodity Company Nigeria Ltd, Nigeria vide letter dated 11-5-2015, forced to sell the cargo to the fourth respondent herein, who is in possession of all original documents. The other fact is that so far the petitioner has not filed the bill of entry to clear the goods supported by Bill of Lading showing their ownership. Apart from that, as per the Act, the minimum 30 days time expired on 7-6-2015. Therefore, he prayed for the dismissal of this Writ Petition.

6. Heard all the parties and perused the materials available on record.

7. Before venturing into the submissions of all the parties, this Writ Petition is liable to be dismissed on the simple ground that the petitioner has already approached the Principal District Munsif (Vacation) Court, Tuticorin District, seeking for the relief of permanent injunction against the private respondents herein, where, he could not obtain any order. The Trial Court has ordered notice on 13-5-2015, which is still pending. Immediately, on 20-6-2015, he approached this Court and got an order of interim stay. It is pertinent to note that either in the Writ Petition or in his subsequent counter affidavit dated 1-6-2015, there is not even a whisper about the suit pending on the very same issue. The petitioner cannot pursue his remedy simultaneously. Therefore, prima facie, he has not filed this Writ Petition with clean hands. Once this Court does not satisfy on primary aspects, it need not go into the other aspects involved in this Writ Petition. On this simple score, this Writ Petition could have been dismissed. Still, this Court finds that the issue involved in this Writ Petition is contractual obligations entered into between the parties, which cannot be gone into by this Court under Article 226 of the Constitution of India. That apart, there are disputed questions of facts involved in it, which also cannot be gone into in a Writ petition. Further, this Court cannot conduct a roving enquiry to give a definite finding either in favour of the petitioner or in favour of the private respondents as to who is the real owners. As rightly averred in the counter affidavit of the Customs, if any of the parties prove their claim by producing the original Bill of Lading and other materials to claim the cargo, the authorities are duty bound to release the same, since the goods are perishable in nature. If the owners of the goods is stalled to claim the goods before the Customs authorities, unnecessarily, demurrage charges will be levied by the Customs authorities for no fault of the real owner. In view of the foregoing reasons, this Court does not find merit in the contentions of the petitioner. Hence, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.