

(2013) 12 BOM CK 0011

In the Bombay High Court

Case No : Appeal From Order No. 1341 of 2013 with CAA/1604 of 2013

KSL and Industries limited and Another

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 24-12-2013

Acts Referred:

Citation : (2013) 12 BOM CK 0011

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Ajit Anekar instructed by Mr. Yogendra Singh instructed by Auris Legal, for the Appellant; Premlal Krishnan and Mr. Pankaj Vijayan instructed by y Intra legal, for the Respondent

Final Decision : Disposed Off

Judgement

Anoop V. Mohta, J.—Heard finally by consent.

The Appellant/plaintiff has challenged impugned order dated 25.11.2013 passed by the learned judge, City Civil Court, Mumbai, whereby for want of jurisdiction, the learned judge, refused to grant any anti-suit injunction. This Court, after hearing the Appellant at length, by a reasoned judgment/order on 18 December 2013 granted injunction in the following terms:

17 Therefore, taking overall view of the matter at this stage, I am inclined to restrain the Respondent-Defendant from taking any further steps in respect of pending proceeding i.e. Action No. 1888 of 2013 pending before the Hong Kong Special Administrative Region Court of First Instance till the next date.

18 Stand over to 23 December 2013. To be placed high on board for final disposal.

The reason so recorded in the above order dt. 18/12/2013 be treated as part and parcel of the present order as after hearing both the parties finally, I am inclined to dispose of the present Appeal from Order by adding the following grounds.

2. The Respondent/Bank has filed a reply of one Assistant General manager of the Respondent, having one from their Asset Recovery Management Branch, Bandra-Kurla Complex, Mumbai, being authorized Attorney holder of Respondent/Bank.

3. In reply affidavit dated 23 December 2013 all necessary objections have raised including the maintainability of such Suit in view of the provisions of Section 41(b) of the Specific Relief Act. The submissions are also raised that the parties shall be governed by the Laws of Hong Kong and no benefit whatsoever should be granted in favour of the Appellant/plaintiff, who has committed breach of contract terms. The submission is also made that the pleadings are not sufficient to accept the case of oppressive and/or vexatious litigation. The litigation, expenses or the hardship and/or heavy expenditure are also not be the reason to accept the case of grant of anti-suit injunction. This Court, therefore, ought not to have granted the injunction as the whole intention is to avoid the foreign decree/judgment, means the due payment and its recovery. The reliance is placed upon the judgment in the case of Rotomac Electricals Private vs. National Railway Equipment, decided on 31 January, 2011 in GA No. 262/2011 (C.S.No. 10 of 2011) of Calcutta High Court, whereby a Division Bench, refused to grant anti-suit injunction by holding that "prima facie lack of jurisdiction of Indian Court.". In Calcutta Judgment, reference was also made to Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd., and other judgments.

4. As already recorded above, we are dealing with the nonexclusive clause which is reproduced in order dated 18 December 2013. The effect of non-exclusive clause is that the party has choice of the court available, may agitate and/or file the Suit. Normally the Plaintiff/Appellant is entitled to file the Court of his choice, but if we consider the settled provisions of law, the Suit need to be filed at a place of Defendant's residence and/or office. The part of cause of action, if arose in India, and in view of the paragraphs reproduced above, unless contested and/or debated and/or decided, to say that Indian Court has no jurisdiction to grant such anti-suit injunction, in any circumstances, is impermissible. The question is only where exceptional case is made out or not. The judgment so cited by the learned Judge including Modi Entertainment (Supra) in fact emphasises that such anti injunction Suit in India is maintainable, though there is a clear provisions so read and referred by the learned counsel appearing for the Respondent and specially Section 41(b) of the Specific Relief Act. The foreign court is subordinate to Indian court or not is again a matter of debate, so also The Specific Relief Act is applicable to Indian Court for the purposes of Indian litigation. If there is no total bar, even as per the Modi Entertainment (supra) and in view of the specific non-exclusive clause between the parties, I see there is no reason at this stage to accept the case and/or submission of the learned counsel appearing even based upon the affidavit to show that this Indian Court has no jurisdiction to pass anti-suit injunction. However, it is made clear that this observation is at the stage where the learned Judge as inspite of notice, the other side was absent, based

upon the averments in the plaint and the documents, refused to grant ad-interim relief by holding that the Indian Court has no jurisdiction to grant such anti suit injunction. I am inclined to observe that unless other side appears and contest and in view of above observation made in the earlier order dated 18 December 2013 and above, refusal to grant such anti suit injunction is wrong in the present facts and circumstances. We are not dealing with the general provisions of law. If there is no total bar, the Court need to consider the exceptional case. That can be done only by giving opportunity to both the parties.

5. Therefore, in the interest of justice, by keeping all points open, I am inclined to direct the learned judge to dispose of the Notice of Motion as early as possible, preferably within five weeks from today. The Respondent to file reply within two weeks from today. The plaintiff to file rejoinder within one week thereafter. The learned judge to pass order on Notice of Motion within two weeks thereafter.

6. The liberty is granted to the parties to raise appropriate plea of jurisdiction also. The learned Judge to decide the same in accordance with law. All points are kept open on merits. The interim order passed by this Court on 18 December 2013 to continue till the disposal of the Notice of Motion and two weeks thereafter. The Appeal from Order is disposed of in the above terms, so also the Civil Application. No costs.