

(2015) 03 SC CK 0086

In the Supreme Court Of India

Case No : Civil Appeal No. 3103 of 2015 (Arising out of SLP (C) No. 9689 of 2014) and Civil Appeal No. 3104 of 2015 (Arising out of SLP (C) No. 11848 of 2014)

Millenium Wires (P) Ltd. and Others

APPELLANT

Vs

State Trading Corporation of India Ltd. and Others

RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2015) 4 AD (SC) 294 : (2015) 110 ALR 483 : (2015) 3 AWC 2681 : (2015) 4 CDR 815 : (2015) 4 LW 302 : (2015) 180 PLR 408 : (2015) 3 RCR(Civil) 929 : (2015) 128 RD 384 : (2015) 4 SCALE 62 : (2015) 6 SCJ 70 : (2015) 3 WLN 30

Hon'ble Judges : Pinaki Chandra Ghose, J.; M. Yusuf Eqbal, J.

Bench : Division Bench

Advocate : Atul Nanda, Senior Advocate, Jaiveer Shergill, Ankur Sood, Advocates, Pallavi Langar, AOR, for the Appellant; S. Ganesh, Sr. Adv., Devmani Bansal, A.P. Mathur, Ajay Monga, Advs. for Gagan Gupta, AOR, Dinesh Agnani, Sr. Adv., Piyush Sharma, AOR, Leena Tuge

Final Decision : Allowed

Judgement

Pinaki Chandra Ghose, J.—Leave granted in both the matters.

2. These appeals, by special leave, have been preferred against the judgment and order dated 17.12.2013 in RFA (OS) No. 142/2013 and judgment and order dated 10.12.2013 in RFA (OS) No. 139/2013, passed by the Division Bench of the Delhi High Court by which the High Court dismissed the appeals filed by the Appellants. RFA (OS) Nos. 142/2013 and 139/2013 were filed by M/s. Millenium Wires (P) Ltd. and the State Trading Corporation of India Ltd., respectively, against the judgment and order of the learned Single Judge of the Delhi High Court in Original Suit, being CS (OS) No. 545/2012. The learned Single Judge rejected the plaint of the Appellants herein Under Order VII Rule 11 of the Code of Civil Procedure, 1908. Since these appeals are arising from same factual

matrix and involve same questions of law and fact, they are being disposed of by this common judgment.

3. Briefly stated, the facts of the case are that M/s. Millenium Wires (P) Ltd. (hereinafter referred to as "Millenium Wires") and State Trading Corporation of India Limited (hereinafter referred to as "STC") entered into an Associateship Agreement (hereafter referred to as "the Agreement"), for importing continuous cast copper wire rods from Synergic Material Services PTE Limited, Singapore and Synergic Industrial Material Services, Malaysia (hereinafter referred to as "Synergic, Singapore" and "Synergic, Malaysia" severally and collectively as the "Synergic Companies"). The STC opened 4 Letters of Credit with the Allahabad Bank being Issuing Bank and the Malayan Banking BHD, Malaysia being the Confirming Bank.

4. Under the said Agreement, STC was to import the said copper wire rods for Millenium Wires from the Synergic Companies. The agreement stipulated that Millenium Wires shall provide STC with margin money as advance of 25% of the value of Letter of Credit to be opened by STC (Clause 4 of the Agreement) along with 25% cash advance and a post dated cheque 102.5% of the value of consignment in favour of STC along with an undertaking. The mode of effecting the transaction between the Millenium Wires and STC on one hand and the Synergic Companies on other hand, was this: Oral orders were placed by the Millenium Wires on the two Synergic Companies and the latter sent sales contract/proforma invoices to STC. The proforma invoices were to be issued by Synergic, Singapore in favour of STC, specifically mentioning Millenium Wire's name as "A/c-Millenium Wires Pvt. Ltd.". On acceptance of the said proforma invoice, final invoice was to be issued by the two Synergic Companies, which on acceptance by Millenium Wires was to be sent back to the Synergic Companies. This would constitute the contract between STC/Millenium Wires on one side and the Synergic Companies on the other. At this stage Letters of Credit were to be opened by STC through Allahabad Bank payable to the Synergic Companies through the Malayan Bank.

5. In pursuance to the Agreement, STC opened four Letters of Credit with the Allahabad Bank being:

With respect to all these Letters of Credit the Malayan Bank had released the payment to the Synergic Companies after the documents were presented by them. It was at this stage that the Millenium Wires and STC approached the Delhi High Court by filing a suit seeking permanent, mandatory and perpetual injunction against the Synergic Companies from claiming any benefit under the Letters of Credit in question and against the Confirming Foreign Bank being Malayan Bank to prevent any action or release of funds under the Letters of Credit.

6. The Malayan Bank filed an application Under Order VII Rule 11 of the Code of Civil Procedure, 1908. The learned Single Judge of the Delhi High Court allowed

the application thereby dismissing the plaint giving following reasons:

(i) There were no specific allegation against the Malayan Bank except a statement that the Bank seems to be hand in glove with the Synergic Companies.

(ii) As per UPC-600 (Uniform Customs and Practice for Documentary Credits, Sixth Edition) published by International Chambers of Commerce, the Banks are bound to release the payment in terms of the Letter of Credit if the complying presentation is made by the Beneficiary (in this case Synergic Companies). Further the learned Single Judge relied on established principle that the Court shall not grant injunction against the issuing bank or the confirming bank except in two circumstances:

a) There is fraud and the bank has knowledge of the fraud; or

b) There would be irreparable injury caused to one of the parties if the injunction is not granted.

The Plaintiffs made specific allegations only against the Synergic Companies and no averment with respect to the knowledge of such fraud to the confirming bank was made. Rather, it has been shown that there was no knowledge of fraud on the part of the Confirming Bank and it cleared the payments to the Synergic Companies as per the provisions of UPC-600.

(iii) The learned Single Judge further pointed out that as per UPC-600 Clause 16, in case the issuing bank refuses to honour the presentation of documents, it has to give a notice of such refusal to the confirming bank within 5 days of the presentation of the documents. Here, the Allahabad Bank approved the presentation of documents made by the Malayan Bank, Confirming Bank, for 2 of the four Letters of Credit and refused only one and even this refusal was communicated after 19 days, way beyond the time period prescribed by Clause 16. Thus, the Malayan Bank was in its right as well as duty to have made the payment to the Synergic Companies as per the Letter of Credit and the UPC-600.

(iv) The learned Single Judge also pointed out that the remedies sought in the plaint i.e. injunction against the Synergic Companies to claim any benefit under the Letters of Credit and against the Malayan Bank to advance any payment under Letters of Credit had already become infructuous as the Malayan Bank had made the payments to the Synergic Companies.

(v) The learned Single Judge discussed the established law relating to the Letters of Credit in great detail. He stated that the Letter of Credit is independent of the underlying contract between the applicant and the beneficiary and Courts of law would not meddle with the dealings of the banks and grant injunction as a matter of course as it would affect the trustworthiness of these transactions and also the position of the banks in the market. Further, the Banks should not be asked to not comply with the Letter of Credit for some dispute between the parties.

7. On these grounds the learned Single Judge allowed the application Under

Order VII Rule 11 of the Code of Civil Procedure, 1908 and dismissed the plaint as showing no cause of action against the Malayan Bank, giving liberty to the Plaintiffs to pursue other appropriate remedies against the Synergic Companies. Against the order of the learned Single Judge, both the Appellants filed separate appeals before the Division Bench of the High Court. The Division Bench also dismissed both the appeals on same grounds as that of the learned Single Judge.

8. The major contention of the Appellants herein is that the High Court has committed grave error in dismissing the suit Under Order VII Rule 11 as it acted against the settled principles of procedure with respect to application Under Order VII Rule 11. According to the Appellants, in such an application, the Court ought to have looked into the averments contained in the plaint only and it cannot look into the written statement or any other evidence filed by the Defendant. The Plaintiffs/Appellants have, inter alia, relied on Saleem Bhai and Others Vs. State of Maharashtra and Others, , Popat and Kotecha Property Vs. State Bank of India Staff Association, , and Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, .

9. After having gone through the plaint filed by the Plaintiffs, we find that it is only twice that the Plaintiffs have alleged against the Malayan Bank in following words:

(At para 17)

That it is also pertinent to mention herein that the Plaintiffs apprehend that the Defendant No. 4 Bank (which is the Negotiating/Beneficiary Bank) is in active collusion with the Defendant Nos. 3 and 4.

(At para 47)

Further, as enumerated hereinabove, it is amply clear that the Defendant No. 2 has forged the shipping documents to fraudulently demonstrate export in order to surreptitiously negotiate with the beneficiary bank for release of payments without actually ever dispatching the goods. The Negotiating Bank has also wrongly negotiated with the Defendant No. 2 without correctly verifying the documents, giving rise to suspicion, that it is hands in glove with the Defendant No. 2.

10. Nothing in the plaint except the above two extracts even come close to being an allegation against the Negotiating Banks. In the above two extracts, there is expression of mere apprehension of the Plaintiffs that Negotiating Banks were in active collusion with the Synergic Companies. No explanation or justification has been made in the plaint as to how this active collusion came about or what makes the Plaintiff suspect so. It is true that in the plaint not all the evidence with respect to allegations is to be adduced however, a comprehensive narration of facts that constitute cause of action has to be given in the plaint. It is plain and clear that no cause of action, whatsoever, may be deduced against the Negotiating Bank from the above two extracts which form part of the plaint.

11. Furthermore, both the learned Single judge and the Division Bench have discussed the law relating to Letter of Credit and UPC-600 in great detail. In view of that, the following observation of the Court in *R.D. Harbottle (Mercantile) Ltd. v. National Westminster Bank (1977)* 3 WLR 752, should suffice:

Banks must be allowed to honour their guarantees without interference except in clear cases of notice of fraud to the bank. The merchants take risk which are not to be imposed on the banks. Such interference will deter trust in international commerce.

12. We would uphold and restate the law on injunction against honouring Letter of Credit by a Bank as summed up by the learned Single Judge as follows:

(1) The Court must be slow in granting an order of injunction restraining the realisation of a bank guarantee or Letter of Credit.

(2) There are two exceptions to the above rule. The first is that it must be clearly shown that a fraud of a grievous nature has been committed and to the notice of the Bank. The second is that injustice of the kind which would make it impossible for the guarantor to reimburse himself, or would result in irretrievable harm or injustice to one of the parties concerned, should have resulted.

(3) It is not enough to allege fraud but there must be clear evidence both as to the fact of fraud as well as to the bank's knowledge of such fraud.

13. It would suffice to say here that injunctions against the negotiating banks for making payments to the beneficiary must be given cautiously as constant judicial interference in the normal practices of market can have disastrous consequences as it affects the trustworthiness of the Indian banks and markets.

14. Furthermore, it appears that the Malayan Bank had forwarded the documents presented by the Synergic Companies to the Allahabad Bank. Out of four Letters of Credit, Allahabad Bank had accepted the presentation of documents in two Letters of Credit with the consultation of the STC. Only one of the presentation was rejected while there is no information with respect to the response of the Allahabad Bank on presentation of documents of the fourth Letter of Credit. Even on the Letter of Credit for which the presentation was rejected, the response was made after 19 days while UPC-600 provides that rejection or any objection against the presentation must be communicated to the negotiating bank of the beneficiary within 5 days.

15. In the circumstances as narrated above and in light of the settled law on the point of injunction against the banks to honour their guarantees, we are of the view that these appeals are to be dismissed and accordingly appeals are dismissed.

16. Before we part with, it would be most appropriate for us to point out that the Appellants can pursue their remedies against the Synergic Companies in appropriate forum by instituting appropriate proceedings, if so advised. However,

we make it clear that the opinion expressed by us in this judgment shall not stand in the way of deciding such proceedings on merits.

17. Hon"ble Mr. Justice Pinaki Chandra Ghose pronounced the reportable judgment of the Bench comprising Hon"ble Mr. Justice M.Y. Eqbal and His Lordship.

18. Leave granted in both the matters.

19. The appeals are dismissed in terms of the signed reportable judgment.