
(2016) 06 CAL CK 0088

In the Calcutta High Court

Case No : F.M.A.T. No. 675 of 2016 and CAN No. 6344 of 2016

M/s. Felguera Gruas India Pvt. Ltd.

APPELLANT

Vs

M/s. Phoenix Conveyor Belt India Pvt. Ltd.

RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11

Citation : (2016) 4 CalHCN 528

Hon'ble Judges : Jyotirmay Bhattacharya and Ishan Chandra Das, JJ.

Bench : Division Bench

Advocate : Mr. Sabyasachi Bhattacharya, Mr. Dwaipayan Basu Mallick, Mr. Bijay Bikram Das and Mr. Anant Garg, Advocates, for the Defendant No. 1/Appellant; Mr. Avrajit Mitra, Mr. Rupak Ghosh and Mr. Rahul Suddy, Advocates, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Jyotirmay Bhattacharya, J.—By the impugned order dated 15th June, 2016 passed by the learned Judge, 6th Court, City Civil Court at Calcutta in Title Suit No.726 of 2016, an ad-interim order of injunction was passed by the learned Trial Judge restraining the defendant no.2 from taking any step or further step with regard to the notices dated 25th April, 2016 and 10th June, 2016, being annexures "K" and "N" to the application and further restrained the said defendant from making any payment against the Bank Guarantee bearing no. 0006BG0118914 dated 17th October, 2013 of the defendant no.1 for a period of three weeks .

2. The legality of the said order passed by the learned Judge is under challenge in this First Miscellaneous Appeal.

3. After hearing Mr. Bhattacharya, learned advocate appearing for the appellant, we admit this appeal for hearing under the provision of Order 41, Rule 11 of the Code of Civil Procedure.

4. Lower Court records need not be called for.
5. Since the necessary parties are before us, service of notice of appeal upon the defendant no.1/appellant is dispensed with.
6. Immediately after we admitted this appeal for hearing under the provision of Order 41, Rule 11 of the Code of Civil Procedure, we were requested by the learned counsel appearing for the parties to dispose of the appeal itself on merit by dispensing with the requirement of filing paper books in this appeal.
7. We are informed by the learned counsel appearing for the parties that all relevant papers which are necessary for disposal of the appeal are annexed to the stay application.
8. As such, we have decided to consider the appeal on the basis of the papers available before us by dispensing with the requirement of filing paper books in this appeal.
9. Ad-interim order of injunction passed by the learned Trial Judge is under challenge in this appeal. The defendant no.1/appellant has already entered appearance in the suit before the learned Trial Court.
10. However, no objection has yet been filed by the said defendant to the plaintiff's application for temporary application.
11. Since the legality of the ad-interim order of injunction is under challenge, we will have to assess the correctness and/or legality of such impugned order with reference to the pleadings made out by the plaintiff in the plaint as well as in injunction application. We, thus, restrict ourselves to the pleadings of the plaintiff made out in its plaint as well as in the injunction application for assessing the correctness of the impugned order.
12. Here is the case, where we find that legality of invocation of Bank Guarantee by the defendant no.1/appellant is under challenge in this suit. Request of the defendant no.1 for renewal of the Bank Guarantee for a further period of three months is also under challenge in the suit.
13. On perusal of the plaint as well as the application for temporary injunction filed by the plaintiff, we find that the plaintiff itself has admitted that a dispute as to the delivery of defective goods by the plaintiff to the defendant no.1 was raised by the defendant no.1. The plaintiff, however, claims that the said dispute was set at rest when on inspection, it revealed that no defective goods was delivered by the plaintiff to the defendant no.1.
14. Be that as it may, on perusal of the letter dated 25th April, 2016 by which the Bank Guarantee furnished by the plaintiff was invoked by the defendant no.1, we find that the reason for such invocation of the Bank Guarantee has not been mentioned in the said invocation letter. In fact, the plaintiff has challenged the legality of invocation of the Bank Guarantee as the Bank Guarantee was invoked by the defendant no.1 without mentioning the reasons for such invocation and/or

the terms of the contract which was allegedly breached by the plaintiff for which the defendant no. 1 had to invoke the Bank Guarantee. Even assuming that the dispute with regard to delivery of defective goods by the plaintiff to the defendant no.1 has not yet been set at rest, still then our prima facie view is that invocation of Bank Guarantee without mentioning the reasons for such invocation, cannot be held to be legal.

15. However, since the plaintiff's application for temporary injunction is yet to be decided finally by the learned Trial Judge, we feel that if we give independent findings at this stage while deciding the appeal arising out of an ad interim order of injunction passed by the learned Trial Court, then certainly our observations in this regard will ultimately influence the learned Trial Judge while deciding the plaintiff's application for temporary injunction.

16. As such, without entering into this part of the dispute between the parties in great details, we like to mention here that justice will be sub-served, if the interim arrangement which was made by the learned Trial Judge in its subsequent order, being No.5 dated 27th June, 2016 is implemented in the meantime with certain modification. By the said order, being No.5 dated 27th June, 2016, the learned Trial Judge after taking into consideration that the Bank Guarantee is going to expire on 30th June, 2016 issued direction for renewal of Bank Guarantee in accordance with law by the defendant no.2 for a period of three months with a rider that the cost of renewal will be paid by the defendant no.1. The learned Trial Judge, also made it clear that this renewal will be subject to the result of the injunction application.

17. This order has not been challenged by any of the parties till date. However, we feel that renewal of Bank Guarantee is not possible unless the plaintiff co-operates with the bank in renewing of the Bank Guarantee for a further period of three months.

18. Mr. Mitra, learned advocate appearing for the plaintiff/respondent in his usual fairness submits before this Court on instruction from his client that his client will co-operate with the Bank so that the Bank Guarantee is renewed for a further period of three months without prejudice to the plaintiff's rights and contentions in the injunction application as well as in the suit.

19. He, however, contends that in case the plaintiff succeeds in the injunction proceeding and the invocation of the Bank Guarantee by the defendant no.1 is found to be illegal, the defendant no.1/appellant should not be permitted to invoke the renewed Bank Guarantee. We are convinced with such proposal by Mr. Mitra.

20. Accordingly, we modify the impugned order in the light of the order dated 27th June, 2016 passed by the learned Trial Judge with certain modifications and direct the plaintiff/respondent to apply before the Bank viz. defendant no.2 for renewal of the Bank Guarantee by today and on receipt of such request of the plaintiff, the defendant no.2-Bank will renew the said Bank Guarantee for a

further period of three months, subject to payment of the renewal cost by the defendant no.1/appellant.

21. It is, however, made clear that this interim arrangement will not create any special right and/or equity in favour of any of the parties. It is also further clarified that in the event the plaintiff succeeds in the injunction proceeding and establishes that the invocation of the Bank Guarantee by the defendant no.1 is not legal and demand of the defendant no.1 for renewal of the Bank Guarantee is not justifiable, the defendant will not be permitted to invoke the renewed Bank Guarantee.

22. Leave is granted to the defendant no.1/appellant to file affidavit-in-opposition to the plaintiff's application for temporary injunction within a week from date; reply, if any, be filed by the plaintiff/respondent within a week thereafter.

23. We request the learned Trial Judge to make all endeavour to dispose of the plaintiff's said application for temporary injunction as early as possible, but preferably by 30th July, 2016 without granting any unnecessary adjournment to any of the parties.

24. Liberty is granted to the learned advocates of the parties to take down the gist of the operative part of this order and to communicate the same to the Bank concerned and the Bank concerned is also directed to act upon such communication without insisting upon production of the certified copy of this order.

25. The appeal is thus, disposed of.

26. Since the appeal is disposed of in the manner as aforesaid, no further order need be passed on the injunction application.

27. The application for injunction being CAN 6344 of 2016 is thus, deemed to be disposed of.

28. Urgent Photostat certified copy of this order, if applied for, be supplied to the Learned advocates for the parties immediately.