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(1996) 10 DEL CK 0065

In the Delhi High Court

Case No : Interim Application No. 8118 of 1996 and Suit No. 2138 of 1996

Polyglass Acrylic Mfg. Co. (P) Ltd. APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1996) 64 DLT 720 : (1996) 39 DRJ 459

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : G.L. Rawal, Kuljeet Singh, Rawal and A.K. Vali, for the Appellant;

Judgement

K. Ramamoorthy, J.

(1) The plaintiff has filed this suit against the Commissioner of Customs and Asstt. Commissioner of Customs (ICD) and State Bank of Bikaner and Jaipur. The plaintiff prays for the relief of permanent injunction restraining the defendants 1 & 2 from enforcing the Bank Guarantee No. 389/95-96 of the amount of Rs. 20,45,244.00 and also restraining defendants 1 & 2 from encashing the bank draft No. 354925 dated 29.8.96.

(2) The case of the plaintiff stated briefly is. As per the Import Policy of the Government, the plaintiff was permitted to import of Methyl Metheorylate regenerated second grade monomer. The plaintiff placed an order on its foreign seller M/s. Fast Rise Trading Company, Kowllon, Hongkong. The foreign supplier dispatched the consignment of 60.80 MTs at 300 US$ per M.T. and the total value was 18,240 US$ under invoice dated 16.4.1996, The consignment was dispatched by vessel Tiger Cape from the port of Singapore with final place of delivery at Patparganj, Delhi, the port of discharge being Madras. The consignment was discharged at Patparganj in May 1996. After complying with the provisions of 46 of the Customs Act, 1962 the importer can seek clearance of the goods for home consumption. The plaintiff filed the Bill of Entry on 5.4.1996.

According to the plaintiff, there is no dispute regarding the rate of duty though the value of the consignment is disputed by the defendants .The value becomes relevant because of the duty payable. On 14.6.1996 the second defendant wrote stating that some investigation is going on, as such the consignment cannot be released. On 7.6.1996 the plaintiff sent a reply as sample.. had already drawn the consignment need not be detained because that would involve payment of huge demurrages, that the consignment is highly inflammable and the user of the consignment would be very much effected. This reply was sent u/s 80 of the Customs Act, 1962. The sample was sent for testing to its own Laboratory of the Customs Department, Central Revenue Control Laboratory in Delhi. The consignment was lying in Central Warehousing Corporation. By letter dated 13.6.1996 the second defendant asked for Manufacturer''s Price List and by letter dated 16.6.1996 desired to take other sample. On 27.6.1996 the plaintiff requested for the clearance of the goods. According to the plaintiff, the information was conveyed to it that from the test made by the Crcl the outcome was that whether the drug is prime or regenerated second grade that could not be decided by the Laboratory because it is not in possession of necessary equipment to conduct the test. The sample was sent to I.I.T., New Delhi by the order dated 14.6.1996 by the Deputy Commissioner Customs. The defendants directed the plaintiff to execute a bond for Rs. 25,56,555.00 and bank guarantee for Rs. 20,45,244.00 . The bank guarantee was executed on 29.6.1996 and was accepted on 1.7.1996. The consignment was delivered on 1.7.1996. The plaintiff had to pay demurrage to the tune of Rs. -60,000.00 and odd. The plaintiff wanted to get the bond discharged. After the report from the Iit it wanted to know the outcome made by the IIT. plaintiff came to know that the Iit had reputed that the consignment declared was regenerated second grade, that means the plaintiff had not made any declaration wrongly. inspire of it, the defendants did not release the bank guarantee. According to the plaintiff, the bank draft also should have been returned to the plaintiff. According to the plaintiff, the defendants were harassing the plaintiff without any justification whatsoever and the copy of the report of the Iit was also not given to the plaintiff. By letter dated 16.8.1996 the plaintiff wrote to the defendants about the report of the Iit, for the cancellation of the bond and the return of the bank draft. It is stated in the plaint that the officers of the defendants started harassing the plaintiff and they went even to the extent of coming to the hospital where the plaintiff''s director was admitted and threatened the doctors to act according to the directions of the officers of the defendants. According to the plaintiff, the defendants have been acting in flagrant violation of the provisions of the Statute and in an illegal manner. Therefore, the bank draft and. the bank guarantee ought not to be encased by the defendants pending the final adjudication by the authorities under the Act.

(3) The defendants 1 & 2 filed written statement stating, inter-alia, that the suit is not maintainable u/s 155 of the Customs At, 1962; that the defendants on secret information that the consignment was of a prime quality and the value of

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the consignment has been under valued while the normal rate is 1700 Us $ per M.T. while the value shown by the plaintiff is 300 Us $ per M.T.; that Therefore there were reasonable grounds'' for further investigation and the consignment was detained u/s 110(i) of the Customs Act, 1962. The plaintiff was asked to supply the price list of the Japanese manufacturers by letter dated 13.6.1996 and that has not been done by the plaintiff; the consignment was released u/s 18 of the Customs Act, 1962. In paragraph Ii, the defendants stated thus :-

"THE contents of this para as stated are wrong and denied. The Central Revenue Control Laboratory (CRCL) is equipped to test such consignments and C.R.C.L. vide their final report dated 12th of July, 1996 has confirmed that, "The Physico Chemical constants of the sample are in conformity with those reported in literature for Chemically pure methyl methacrylate (Minomer), a separate Chemically defined organic compound." They also clarified that "FTIR (Fourier Transform Infra Red Spectra Photometer) Spectra in respect of all the absorption peaks of the sample are also exactly similar to that of standard methyl methacrylate monomer-Merck of purity above 99%" The report is annexed herewith as Annexure D-2. The said test report thus makes it abundantly clear that the goods imported are pure and of prima grade and not of regenerated second grade. The said test report thus discharges burden of proof on the department that the goods are of pure quality i.e. prime grade and not of regenerated second grade."

In paragraphs 12 and 19 the defendants had given an Explanation about the report of the Crcl and the Iit, which are as under :-

"IN reply to para 12 it is submitted that at the first instance since specific report was not received from Central Revenue Control Laboratory the sample was drawn and sealed in the presence of the party and sent to Iit for analysis. Para 19 as stated is wrong and vehemently denied in toto. In reply it is submitted that the department/ defendants have already obtained the final report from C.R.C.L. Delhi confirming that the goods are prime quality and the Test Report given by Indian Institute of Technology (IIT), Delhi is not complete as detailed Chemical analysis was not provided and no Chemical properties were given, Iit, Delhi has been asked to furnish the same and reply in this regard is still awaited from them. Since the entire case is under process of investigation the plaintiff was asked to furnish certain information such as manufacturer''s Invoice, packing list and manufacturer''s analysis certificate but the plaintiff company has refused to furnish the same."

The defendants have also mentioned about the application for bail filed by Mr. Ashok Kumar Singla, a director of the plaintiff in Ambala Court. In paragraph 29 the defendants have mentioned about the statement given by the Director of the plaintiff voluntarily. Paragraphs 29 and 30 are relevant and they read as follows :-

"CONTENTS of para 29 as stated are wrong and vehemently denied. The Director of the plaintiff was given a summon on 28th of August, 1996 for his appearance

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before the officer of defendants on 29th of May, 1996. The plaintiff although did not receive the summon but stated that he shall appear in response on 29th of August, 1996 and then appeared voluntarily on 29th of August, 1996 and made a statement which shall be shown to this hon''ble Court at the time of arguments. Not only these two relatives of the plaintiff accompanied the plaintiff and they also endorsed the statement made by the Director of the plaintiff company. The very read of the statement shall amply prove the voluntary nature of the statement. Therefore, all the allegations leveled in this para under reply are concoction and have been leveled to gain the sympathy of this hon''ble High Court as well as to prejudice the judicial mind of this hon''ble High Court. Contents of para 30 are wrong and vehemently denied. However, Shri Singhla''s voluntary statement in his own hand was received by the investigating officer, wherein he has admitted that the imported goods are of prime grade and he has also accepted the fair value for the prime grade goods i.e. W.S. US$, 1700, Delhi and Cfs, Ludhiana. For the differential duty Demand Draft No. 085827 dated 29th of August, 1996 for Rs. 5,96,481.00 and D.D. No. 354927 dated 29th of August, 1996 for Rs. 3,40,878.00 were furnished to the Customs office and Shri Singla gave his no objection for the encashment of the Bank Guarantee. is reiterated that the statement was voluntary and without any protest. No retraction was ever sent excepting this advised legal action which is under reply. The allegation that the said statement was recoded under duress is totally false and fabricated. The said statement was recorded in presence of two independent witnesses who are also the relatives of the Director Mr. Ashok Kumar Singla and, Therefore, the allegation of statement under duress are emphatically denied."

(4) The plaintiff challenges the stand taken by the defendants and the statement alleged to have been given by the director was not given voluntarily.

(5) The plaintiff has also filed replication repudiating the averments in the written statement filed by the defendants.

(6) The plaintiff has filed the following documents :-

"1.Copy of the Sales confirmation dt. 6.6.96 from Fast Rise Trading Company, Hong kong to the plaintiff. 2. Copy of the order dt. 27.2.96. 3. Copy of invoice dt. 16.4.96, packing list dt. 16.4.96, Bl 4. Copy of invoice dt. 16.4.96 of 60.80 MTs & BL. 5. Copy of duty challan. 6. Copy of Bill of Entry dt. 4.5.96. 7. Copy of the letter dt. 4.6.96 of Assistant Commissioner of Customs to CWC. 8. Copy of Fax Message from Cwc to M/s. Npil 9. Copy of Test memo of office of the Asstt Commissioner. 10. Copy of the letter dt. 7.6.96 to Assistant Commissioner of Customs from pltff. for provisional clearance. 11. Copy of letter dt. 13.6.96 from Assistant Commissioner of Customs to the plaintiff for providing details. 12. Copy of the letter dt. 14.6.96 to pltff. for drawing samples. 13. Copy of the letter from pltff. to Foreign Supplier. 14. Copy of the letter dt. 24.6.96, 26.6.96 and 27.6.96 for provisional clearance. 15. Copy of P.D. Test bond with bank guarantee. 16. Copy of test memo dt. 3.7.96. 17. Copy of summons u/s 108 of Customs Act dt. 9.7.96. 18. Copy of the reply dt. 24.7.96. 19. Copy of summons dt. 27.7.96 u/s

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108 of the Customs Act. 20. Copy of letter dt. 1.8.96 from Deputy Commissioner to the plaintiff to produce evidence. 21. Copy of the affidavit dt. 14.8.96 of Sh. Ashok Kumar Singla. 22. Copy of the letter dt. 14.8.96 from Customs. 23. Copy of the summons dt. 14.8.96 from Customs. 24. Copy of the notice dt. 14.8.96 from Shri Tarun Aggarwal, Advocate, counsel of the plaintiff to Customs. 25. Copy of the notice dt. 16.8.96 from Shri G.L. Rawal, Advocate. 26. Copy of the notice dt. 17.8.96 from Shri G.L. Rawal Advocate to the Customs. 27. Copy of the notice dt. 19.8.96 from Shri G.L. Rawal, Advocate to the Customs. 28. Copy of the telegram. 29. Copy of the panchnama and Annexures thereto. 30. Copy of the telegram dt. 29.8.96 with better typed copy. 31. Copy of the bank draft dt. 29.8.96 of Rs.3,40,878 and 29.8.96 for Rs. 5,96,481. 32. Copy of the statement of Sh. Singla. 33. Copy of the retraction telegram dt. 29.8.96 the defendant. 34. Copy of letter of retraction dt. 29.8.96 the defendant. 35. Copy of the letter dt. 30.8.96 to State Bank of Bikaner & Jaipur from plff. 36. Copy of notice dt. 31.8.96 from Sh. G.L. Rawal, Advocate to the defendant."

(7) The learned counsel for the plaintiff Mr.Rawal submitted that the defendants had acted in a high handed fashion and inspire of report from the Iit they sought to get second opinion from their own Laboratory just for the purpose of proceeding against the plaintiff and to justify their illegal action. Narrating the incidents mentioned in the plaint, learned counsel argued that the defendants have been following the director of the plaintiff even to the hospital where he was admitted and had snatched away a statement while final assessment had not been made and the learned counsel proceeded with in the light of the facts referred to in the plaint, the plaintiff has made out a prima facie strong case for the grant of injunction and the defendants ought not to be permitted to encash the bank guarantee and the bank draft.

(8) The learned Central Govt. Standing Counsel Mr. A.K. Vali submitted that the Civil Court has no jurisdiction and the defendants had not acted, as mentioned in the plaint, and the defendants were only interested in pursuing the matter in accordance with law. Mr. Vali argued that when the defendants wanted to arrest the director, in order to escape the consequences a statement was given by the director and such a statement was voluntary and the fact that a copy was given to the plaintiff would show that it is voluntary. The learned counsel further submitted that assuming the defendants realised the monies and if the plaintiff succeeds ultimately before the Assessing Authority, as per the provisions of the Act which stands amended in 1994, the plaintiff would be entitled to get back the money with interest and, Therefore, no prejudice is caused to the plaintiff. The scope of Section 151 is dealt with by the Supreme Court in Costao Fernades vs State At the instance of D.S.P., Cbi, Bombay : 1996CriLJ1723 following Bhappa Singh vs Rampal Singh, 1981 (Sapp) Scc 12 where the scope of Section 108 of the Gold (Control) Act, 1968 was elucidated by the Supreme Court. Section 108 in pari materia with Section 155 of the CustomsAt,1962.

(9) I heard the learned counsel for the parties for a considerable length of time

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and at the interlocutory stage the factual position cannot be gone into and we have got to proceed only on the broad allegations in the pleadings. As the defendants are functionaries under a Statute, the plaintiff has to establish by producing necessary and cogent evidence that they acted in violation of law with ulterior motives and, Therefore, the plaintiff should be granted the relief. The stand taken by the defendants cannot be said to be totally unfounded as things stand at present. The learned counsel Mr. Rawal submitted that Civil Court has got jurisdiction u/s 9 of the CPC and the scope of the power of the Civil Court had been laid down in a series of cases and that cannot be a matter of any doubt. He relied upon the decision of the Bombay High Court Ganesh Mahadev Jamsandekar vs The Secretary of State for India in Council, and another, 2nd (Vol. XLIII) Bombay Series 221 and other cases. The answer to this question would depend upon the outcome of the trial on facts and I cannot assume either way now. However, in the light of the frame of the suit, the Civil Court cannot be said to have jurisdiction. It is open to the plaintiff to institute appropriate action after issuing notice u/s 80 of the CPC claiming appropriate reliefs.

(10) I feel that having regard to the principles laid down by the Supreme Court in the following decisions relating to the grant of injunction with reference to enforcement of Bank Guarantees, I don''t think I can investigate into the facts to come to a finding on the question mooted out by the plaintiff about the alleged misdemeanour of the defendants:-

1. United Commercial Bank Vs. Bank of India and Others, . 2. U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd., . 3. General Electric Technical Services Company Inc. Vs. M/s. Punj Sons (P) Ltd. and another, . 4. National Thermal Power Corporation Ltd. Vs. M/s. Flowmore Private Ltd. and another, . 5. Larsen and Toubro Limited Vs. Maharashtra State Electricity Board and others, .

(11) The Supreme Court had held in the case of Larsen & Toubro Ltd. (supra) as under :-

"BEFORE we adjudicate the rival plea urged before us by counsel for the parties, it will be useful to bear in mind the salient principles to be borne in mind by the Court in the matter of grant of injunction against the enforcement of a Bank Guarantee/ irrevocable Letter of Credit. After survey of the earlier decisions of this Court in United Commercial Bank Vs. Bank of India and Others, , U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd., , General Electric Technical Services Company Inc. Vs. M/s. Punj Sons (P) Ltd. and another, and the decision of the Court of Appeal in England in Elian and Rabbath v. Matsas and Matsas, 1966 (2) L R 495 and a few American decisions, this Court in Svenska Handelsbanken Vs. M/s. Indian Charge Chrome and others, , laid down the law thus:- ".....in case of confirmed bank guarantees/irrevocable letters of credit, it cannot be interfered with unless there is fraud and irretrievable injustice involved in the case and fraud has to be an established fraud......"(p.523) "...irretrievable injustice which was made the basis for grant of

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injunction really was on the ground that the guarantee was not an cashable on its terms....'' (p.524) ".....there should be prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties ''Mere irretrievable injustice without prima facie case of established fraud is of no consequence in restraining the encashment of bank guarantee...." (pp.526-527)."

(12) I cannot say with any amount of certainty on the materials placed by the plaintiff that the defendants are guilty of any acts of commission or commission and their acts do not have any nexus with the performance of the official duty. I also cannot say that the plaintiff has made out a prima facie strong case for the grant of injunction.

(13) For all these reasons, the application for injunction is dismissed. It is made clear that it is open to the parties to urge all the points available to them under law before the authorities who are entrusted with the task of adjudication. No order as to costs.

(14) Post the matter for further proceedings on March, 1997.

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