
(1968) 10 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Revision Petition No. 491 of 1968

Rajasthan State Electricity Board, Jaipur

APPELLANT

Vs

Hindustan Brown Boveri Ltd., Bombay

RESPONDENT

Date of Decision : 11-10-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Specific Relief Act, 1877 — Section 10, 41, 42

Citation : AIR 1969 Raj 212 : (1969) RLW 176 : (1968) WLN 83

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Advocate : C.L. Agarwal and R.S. Kejriwal, for the Appellant; P.L. Vohra, P.N. Dutt and U.C. Bapna, for the Respondent

Final Decision : Allowed

Judgement

Kan Singh, J.—This is a revision application by the Rajasthan State Electricity Board, hereinafter to be referred as the "Board", and is directed against an order dated 28-8-68 passed by the Additional District Judge, Jaipur on an application by the respondent Messrs. Hindustan Brown Boveri Limited, hereinafter to be referred as the "Company" for grant of a temporary injunction in certain proceedings instituted by the Company against the petitioner Board u/s 20 of the Indian Arbitration Act. By his order under challenge the learned Additional District Judge directed the petitioner Board "to refrain itself from making purchases of the material of the specifications for which order was placed with the Company by the Board to the extent of 9000 kilometers of All Aluminium Conductors till the matter was disposed of through arbitration." The relevant facts are briefly these:

2. According to the Company, the Board had invited tenders sometime in the early part of 1965 for the supply of All Aluminium Conductors as per their specifications. The company submitted its tender in response to the tender notice and, according to the Company, its tender was accepted by the Board. All

Aluminium Conductors of three categories were to be supplied. 6000 kilometers of the specification known as "Ladybird" were to be supplied at the rate of Rs. 770/- per kilometer, 2000 kilometers of the category known as "Fly" were to be supplied at the rate of Rs. 1135/- per kilometer and the third category was "Blue Bottle" and 3000 kilometers of that category were to be supplied at the rate of Rs. 1305/- per kilometer. The total value that was to be paid by the Board after making discount of 5 per cent, was Rs. 1,02,64,000/- and odd. Then there was some correspondence between the parties and on account of the devaluation of the Indian rupee that had come in the meantime the Company claimed increased rates on account of the consequences arising out of devaluation and it is averred that this was agreed to by the Board.

Thereafter a meeting of the representatives of the Board and the Company had taken place and certain schedule of delivery was agreed upon. The case of the Company inter alia was that on receiving despatch instructions from the Board the Company had supplied "ladybird" conductors which were 2000 kilometers and the supply had been accepted by the Board. This happened sometime in February, 1967. According to the company, the Board had failed to give further despatch instructions for the remaining quantity of goods to be supplied, of the three categories, and eventually in violation of the terms of the contract between the Company and the Board, the Board invited fresh tenders for the purchase of 3000 kilometers of "ladybird" Conductors and 2000 kilometers of "Blue Bottle" Conductors sometime in the last week of April, 1968. The advertisement containing a tender notice is said to have been published in the Times of India on 28-4-68.

This inviting of fresh tenders, according to the Company, was in breach of the contract between the Board and the Company and as according to the Company, there was an arbitral clause in the tender notice which formed the basis of the contract between the Board and the Company, the Company invoked that arbitral clause and on 13-5-68 put in an application u/s 20 of the Arbitration Act in the Court of the Senior Civil Judge No. I, Jaipur City which court after June, 1968, came to be redesignated as the Court of Additional District Judge No. 1, Jaipur City. In this application it was inter alia prayed that the Board be directed to produce the conditions of the contract containing the arbitration agreement between the parties and the dispute between the parties be ordered to be referred to arbitration as per the aforesaid arbitral clause. It was further prayed that during the pendency of the proceedings before the court and the arbitrator the Board, its servants and agents be restrained by an injunction from taking any action on the notice issued by the Board inviting tenders on 28-4-68.

Along with this application a separate application u/s 41 and Schedule II of the Arbitration Act read with Order 39, Rules 1 and 2, as also Section 151 of the CPC was moved. By this application it was urged that in the light of the contract between the parties the Board was not entitled to buy the Conductors stipulated to be bought from the Company from any other source till such time that the

supplies under the contract had been received by the Board from the Company. It was further urged therein that as there was a subsisting contract between the Board and the Company, it was essential that status quo be maintained and the Company be not allowed to alter or change the situation to the detriment of the Company. It was pointed out that the Company has made a huge investment to [he tune of rupees one crore in buying the imported aluminum ingots for the manufacture of the Conductors and since the programme of manufacture of these Conductors had to go on for a sufficiently long time, the Company had not accepted any other orders for manufacture of such goods in its factory at Ghaziabad and further, according to the Company, there was no ready market for these specific goods to be manufactured for and supplied to the Board. The balance of convenience according to it was that the Board be prevented from committing any breach of contract by accepting supplies from other sources. This application of the Company was opposed by the Board. It is unnecessary to refer to the intervening proceedings and I straight off come to the order under challenge.

3. The learned Judge observed therein to start with, that the facts were almost admitted on behalf of the Board and the Board had admitted that an order for the supply of 11000 kilometers of All Aluminium Conductors was placed with the company and that 200 kilometers of All Aluminium Conductors had been received. It was further admitted that new tenders for the supply of the same type of Conductors had been invited by the Board and that the quantity was much less than the quantity which the Company was required to supply under the contract. It was contended by the Company before the learned Judge that the Board had not pointed out any defect or deviation from the specifications that were required or supplied and for no reasonable cause the Board had taken up the attitude of not accepting the goods from the Company which were ready for despatch. In spite of this, on the other hand, the Board had invited fresh tenders for the supply of the same material. It was further urged that this gave a reasonable apprehension to the Company that the Board was bent upon committing a breach of the contract for no fault of the company and this, according to the Company, demonstrated lack of good faith and bona fides on the part of the Board. Then it was argued that in order to save the Company from incurring future losses which were heavy and which could not be measured in terms of money immediate protection of the court was essential in the interest of justice. It was also stated before the court that the Conductors were specially produced under the specific orders of the Board and since the material was of particular specific type, it could not be disposed of elsewhere.

4. In resisting the contentions of the Company it was argued on behalf of the Board before the learned Judge that the court had no power to make any order u/s 41(2) of the Arbitration Act read with Schedule II thereof, because there was no negative covenant in the alleged agreement between the Company and the Board and it is only where there was a negative covenant that an injunction of the kind that was prayed for could be issued by the court. The arguments then

proceeded regarding the existence of the so-called negative covenant in the alleged agreement. It was argued on behalf of the Company that the Board had admittedly invited tenders of a quantity lesser than the quantity which had been agreed to be purchased from the Company and this showed that there was a negative contract inasmuch as the Board was not entitled to purchase the quantity less than the balance quantity lying with the Company for despatch.

Four cases namely. *Jairam Valjee Vs. Indian Iron and Steel Co. Ltd., Madras Railway Co. v. Thomas Rust* ILR (1891) Mad 18, *Subba Naidu v. Haji Badshah Sahib* ILR (1903) Mad 108 and *National Advertisers v. Mysore State Road Transport Corporation*. AIR 1904 Mys 220 were cited before the learned Judge by learned counsel for the parties. I ought to mention that there is an inaccuracy in the citation regarding the second Madras case ILR (1903) Mad 108 in the judgment. The reference is said to be ILR 26 Mad 168 and not P.V. Veeranan *Ambalam Vs. Ayyachi Ambalam*, but nothing turns on that.

After noticing the rival conclusions of the parties the learned Judge thought that a negative covenant will have to be imported to the contract in question so far as the quantity ready for despatch with the Company was concerned and, in his view, the court was competent to grant an injunction for the preservation of that material. I will let the learned Judge speak for himself, as learned counsel have placed their own interpretations on the several observations made by the learned Judge in the order under challenge: said he:--

"I have carefully considered the arguments advanced by the learned counsel for both the parties and in my view the position taken up by the learned counsel for the applicant appears to be more convincing. A negative covenant will have to be imported to the contract in question, so far as the quantity ready for despatch with the firm is concerned, and the court is competent to grant an injunction for the preservation of that material. So long as the contract subsists the Board has to accept the quantity from the firm and from no one else. No doubt, there is no express stipulation to this effect but there is an implied covenant to this effect."

In support of this above conclusion the learned Judge cited a passage from Volume 21 of Halsbury's Laws of England in Para 799 at page 380. It is a fairly long passage and I need not encumber my judgment by reproducing the passage in its entirety. Suffice it to say that it was said therein that where there was no express negative covenant, but only an affirmative covenant, the court, although it cannot enforce affirmatively the performance of the covenant, will sometimes, in special cases, interpose to prevent that being which would be a departure from, and a violation of the covenant. It has to be further noted that it was emphasised in that passage that the law was, however, in rather an indefinite state as to when an injunction to restrain breaches of covenant ought to be refused on the ground that specific performance was impossible, and there was no distinct line to be found in the authorities dividing the class of case in which the Court, feeling that it had no power to decree specific performance, nevertheless grants an injunction to restrain the breach of one or more of the

stipulations in the contract, from the class of case in which it declines to interfere.

Then the learned Judge proceeded to consider the other requirements for the grant of an injunction namely, about the existence of prima facie case, balance of convenience and irreparable loss. In that connection he felt convinced that it was a fit case in which injunction should be granted till the disposal of the matter by the arbitrator, because the Company had a prima facie case, as it had to supply 11000 kilometers of Conductors and the Board was not accepting the balance for no reason. Then he also observed that the balance of convenience was in favour of the Company inasmuch as the supply that was to be made was in accordance with the terms of the contract and as long as the contract was in force the Board could not be allowed to act in breach thereof.

Then as regards the irreparable loss he felt that as a huge quantity had been manufactured specially for the Board according to the particular specifications and as the goods could not be disposed of elsewhere, there would be irreparable loss to the Company. I may here again extract the observations of the learned Judge in his own words:--

"As regards the irreparable loss, it may be pointed out that a huge quantity to the extent of 9000 KM was manufactured specially for the Board according to their particular specifications which cannot be disposed of elsewhere so long as the contract is in force."

The learned Judge repelled the submission of the Board that the Company could at the most claim the cost of the material which could be assessed in terms of money. The learned Judge also thought that as the Company was prepared to deliver the goods, but the Board was refusing for no reason, to accept the delivery and the company's material was blocked and so was the money and as the damages cannot be adequately compensated, the balance of convenience was in favour of the Company.

5. In assailing this order it was contended by Mr. Agarwal appearing for the Board that the court had no jurisdiction to grant a temporary injunction of the kind as no permanent injunction could have been granted in a suit of the kind for restraining the Board from committing the so-called breach of the contract. It was next argued that there was no negative covenant of the kind spelt out by the learned Additional District Judge. It was maintained that in the absence of there being any negative covenant the learned Additional District Judge had assumed jurisdiction by deciding the conditional fact for the exercise of his jurisdiction wrongly. It was argued that in a case of the kind it cannot be predicated that there will be no standard for measuring the damages or compensation even if it were assumed that the Board is acting in breach of the contract.

6. Learned counsel for the respondent, on the other hand, contended that the revision itself was not competent as no error of jurisdiction had been committed by the court below. According to the learned counsel for the respondent, the court had a discretion in the matter whether to grant or not to grant a temporary

injunction as prayed for and there was sufficient material on the record for deciding this viz., for coming to the conclusion that there existed a negative covenant on the side of the Board for not purchasing such goods from any other party as long as the contract between the Company and the Board subsisted.

Learned counsel for the respondent placed reliance on AIR 1949 156 (Privy Council) Keshardeo Chamria Vs. Radha Kissen Chamria and Others, Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, , Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai, and Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, . Reliance was placed on Rehmatunnissa Begum v. Price ILR 42 Bom 380 : AIR 1917 PC 116 and Jairam Valjee Vs. Indian Iron and Steel Co. Ltd., On the basis of the Bombay case it was submitted that the matter lay within the discretion of the Additional District Judge and in such a discretionary matter there should be no interference in revision. On the basis of Jairam Valjee Vs. Indian Iron and Steel Co. Ltd., it was contended that a negative covenant has to be implied on account of the nature of the contract between the parties. In other words, even if the contract was only affirmative so far as the supply that was to be made by the Company to the Board was concerned; it would imply in the circumstances a negative covenant for not purchasing the supply from any other source as long as the contract subsisted.

7. I consider it unnecessary to discuss all the cases to which my attention was invited by learned counsel for the respondent. The last Supreme Court case namely, Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, has discussed the two earlier Supreme Court cases and I may refer to the observations made by their Lordships in this case. After making a review of the authorities their Lordships observed:

"The effect of these two decisions clearly is that a distinction must be drawn between the errors committed by subordinate Courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection. It is, we think, undesirable and inexpedient to lay down any general rule in regard to this position. An attempt to define this position with precision or to deal with it exhaustively may create unnecessary difficulties. It is clear that in actual practice, it would not be difficult to distinguish between cases where errors of law affect, or have relation to, the jurisdiction of the Court concerned, and where they do not have such a relation."

The effect of the earlier two decisions thus put clearly is that a distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection. It was in their Lordships' view undesirable and inexpedient to lay down any general rule in regard to this position. Their Lordships thought that any attempt to define this position with precision or to deal with it exhaustively may create unnecessary difficulties. It is clear that in actual practice, it would not be

difficult to distinguish between cases where errors of law affect, or have relation to, the jurisdiction of the Court concerned, and where they do not have such a relation. The effect of the several decisions, therefore, is that though interference in the exercise of revisional jurisdiction will be justified only when there is an error of jurisdiction, but whether in a particular case the error committed, if any, by the court below would or would not impinge on the question of jurisdiction, will depend on the nature of the error. If, on account of the kind of error it can be predicated that the court had either wrongly assumed the jurisdiction or has failed to exercise the same or has committed material irregularity or illegality in the exercise of its jurisdiction, then it will be competent for the High Court to exercise revisional jurisdiction for correcting such errors.

Their Lordships have pointed out by way of illustration of court, that questions relating to limitation or res judicata would impinge on the jurisdiction of the Court. In the present case for finding out whether the order of the court below impinges on the question of jurisdiction, the relevant statutory provisions have to be borne in mind. Section 41 of the Specific Relief Act deals with injunctions. It provides that an injunction cannot be granted amongst other things to prevent the breach of a contract the performance of which could not be specifically enforced. Then there is Section 42 which starts with a non obstante clause. It provides that notwithstanding anything contained in Clause (e) of Section 41, where a contract comprises an affirmative agreement, to do a certain act, coupled with a negative agreement express or implied, not to do a certain act the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement, provided of course that the plaintiff has not failed to perform the contract so far as it is binding on him.

A reading of these two sections together shows that before an injunction could be granted for preventing the breach of a contract certain conditions have to be satisfied. One such condition inter alia is that if the contract would not be specifically enforced, it will not be competent for the court to grant an injunction. One has, therefore, to go to Section 10 of the Specific Relief Act. Section 10 which lays down as to in what cases specific performance of a contract is enforceable, it is in the following terms: --

"Section 10. Cases to which specified performance of contract enforceable. -- Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced;

(a) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Explanation.:-- Unless and until the contrary is proved, the court shall presume-

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff."

For seeing whether a contract would be specifically performed the court has to come to the conclusion that there exists no standard for ascertaining the actual damage caused for the non-performance of the act agreed to be done.

8. Now it cannot be gainsaid that the decision of the court regarding the existence of the conditions on the fulfilment of which it could grant an injunction will have a bearing on the question of jurisdiction as well. In *Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi*, it was pointed out by their Lordships that Section 115, Civil Procedure Code, empowers the High Court, in cases where no appeal lies, to satisfy itself on three matters; (a) that the order made by the subordinate court is within its jurisdiction, (b) that the case is one in which the court ought to exercise its jurisdiction; (c) that in exercising the jurisdiction the Court has not acted illegally, that is, in breach of some provision of law or with material irregularity that is by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

According to their Lordships, if an erroneous decision of the Court resulted in its exercising jurisdiction not vested in it by law or failing to exercise the jurisdiction so vested or acting with material irregularity or illegality in the exercise of its jurisdiction the case for the exercise of powers of revision by the High Court would be made out. In that case it was further pointed out that it will not be competent to the subordinate court to give a wrong decision on a collateral fact and then assume jurisdiction and in that event the decision on the collateral fact would be open for examination in exercise of revisional jurisdiction of the court.

9. Now before proceeding further I may concentrate on what the learned Judge had himself thought. The passage extracted by me above from the judgment of the learned Additional District Judge shows that he considered that a negative covenant will have to be imported to the contract in question so far as the quantity ready for despatch with the Company is concerned and the Court is competent to grant an injunction for the preservation of that material. It is this basic fact about the existence of jurisdiction in the learned Additional District Judge which calls for close examination. I regret, I have to observe that the learned Additional District Judge has proceeded in premises which have no

factual basis. He thought that since there was quantity ready for despatch with the Company the court was competent to grant an injunction for the preservation of that material and regarding that material a negative covenant will have to be imported. Now what was the so-called material that was ready for despatch? In the second passage that I have quoted above, the learned Judge has again thought that a huge quantity to the extent of 9000 kilometers was manufactured specially for the Board according to their particular specifications. Now, according to the Company's own application for grant of a temporary injunction it had manufactured conductors worth about rupees four lacs only, though it was added that it had necessary raw material and arrangement for manufacture of the balance quantity of the conductors vide para 6 of the application. I fail to understand how the learned Additional District Judge came to assume that the entire quantity of 9000 kilometers of All Aluminium Conductors were manufactured by the Company and was ready for despatch. His entire thinking has been clouded, in my view, by this impression which I should say was perverse.

It was suggested by learned counsel for the respondent that this was nothing but a slip of pen on the part of the learned Additional District Judge. I have considered the matter, but "am unable to accept this suggestion as a sound one". In the first instance, the learned Additional District Judge while referring to Section 41(2) read with Schedule II of the Arbitration Act observed that "the court has wide power to make orders for the purpose of reserving status quo pending arbitration. These powers include those of making orders for the preservation, interim custody or sale of any goods." Then in the passage from the order which I have already extracted, he has clearly stated that "a negative covenant will have to be imported to the contract in question so far as the quantity ready for despatch with the firm is concerned, and the court is competent to grant an injunction for the preservation of that material." Then further, while discussing the question of so called irreparable loss, he observed that "a huge quantity to the extent of 9000 kilometers was manufactured specially for the Board according to their particular specifications which cannot be disposed of elsewhere so long as the contract is in force."

These observations made at different places in the judgment under revision leave no room for doubt that what the learned Judge was thinking related to the so-called existence of a negative covenant qua the quantity of goods that was already manufactured and was available for despatch. He had not at all devoted consideration to the actual facts of the case. Thus, the conclusion that he reached pertained, in his own words, to the quantity of goods already manufactured by the Company. The operative order that he passed is for the entire quantity of 9000 kilometers of All Aluminium Conductors. Thus, in my view, the learned Additional District Judge has committed an error about the existence of a so-called negative covenant in that he fettered himself by the premise that he formulated that the negative covenant for the quantity in hand was to be inferred. This error, in my view, is nothing but a jurisdictional error and

it is idle to contend that a revision against the order of the Additional District Judge, in the circumstances, was not competent.

10. The learned Additional District Judge has not devoted consideration to the principles that should guide the disposal of an application of the kind that he was dealing: He should have directed his attention pointedly to the provisions of Sections 10, 41 and 42 of the Specific Relief Act which he failed to do. He should have examined Section 10, to start with, for seeing whether there existed no standard for ascertaining the actual damage caused for the non-performance of the act agreed to be done or if the act was such that compensation in money or its non-performance would not afford adequate relief. He should have also borne in mind the provisions of Section 41 of the Specific Relief Act as also those of Section 42 of that Act. It was necessary for him to do, because an interim relief like that of granting a temporary injunction could only be granted in aid of the ultimate relief that could be granted to the party on the conclusion of the proceedings. It has to be then remembered that these were only proceedings u/s 20 of the Arbitration Act only. Even the points that were to be referred to the arbitrator had not been specified, nor is it clear as to what prayer the respondent would be making before the arbitrator for grant of a particular relief.

I enquired of the learned counsel who was arguing the case for the respondent on the last day of the arguments, that is, before I commenced dictating this judgment, as to what kind of relief or award he will be praying. For at one time he suggested that an award could be that the Board shall be directed to purchase the goods as per agreement and the Board will have to pay the price but then he added that for the goods there would be no ready market. On being further asked as to what would be the result, if it is assumed that the goods would at the worst fetch zero price. Then he prevaricated and could not furnish a satisfactory answer whether the price that is agreed to be paid for the goods will not furnish a reasonable standard for compensating the respondent even if the contract is not eventually specifically enforced against the petitioner Board. Having considered the matter. I was at a loss to understand that there will be no standard for putting the respondent in a position in which it would be, if the contract were performed.

11. Then it was argued that the respondent would be ruined if temporary injunction were not granted by restraining the Board from purchasing the goods from elsewhere inasmuch as the aluminum ingots had already been purchased or imported. Now it is obvious that consideration for goods that are already manufactured on specifications given by a particular party may not be the same as for the purchase of raw material when the goods have not been manufactured. One could understand that for goods manufactured according to the specifications there may be no ready market, but the same thing cannot be said regarding aluminum ingots. Any way, as the matter was presented to me, I was unable to come to the conclusion that there could be no standard for measuring the compensation or damages awardable to the respondent, if it

eventually succeeds in the case.

12. Various documents were referred to me for showing that the existence of a negative covenant could be inferred and the trial Court was justified in drawing an inference on the material that was before it regarding such a covenant and this is an order which should not be interfered with in the exercise of revisional jurisdiction of the Court. As I have already pointed out by referring at length to the actual observations made by the Additional District Judge in the judgment, his entire approach was wrong and he thought that in respect of the material that was manufactured and was ready for despatch, a negative covenant will have to be imported. It was nobody's case like that. Therefore, since the decision of the learned Additional District Judge on this fundamental fact bearing on the question of jurisdiction was wrong, the order of the learned Additional District Judge cannot be allowed to stand.

13. Reliance was placed by learned counsel on *Jairam Valjee Vs. Indian Iron and Steel Co. Ltd.*, . I have carefully read that judgment. It is true, there are some observations in that case which tend to support the learned counsel for the respondent to some extent. But, if one has to bear in mind the facts of that case there is no doubt that the case is not helpful for inferring the existence of the so-called negative covenant in the present case. There were two letters which were the basis of the agreement and which were reproduced in the judgment of that case. In the first letter which was in the nature of an offer it was said that: "we offer you the contract for the supply of all our future requirements of flux at the following rates". Then the letter of acceptance stated like this: I thank you for your letter No. 350, dated 4th January, 1935 conveying an offer for the purchase of your entire future requirements of "flux" from me at the rates and conditions as stated herein and I have pleasure in confirming my acceptance of your offer. I also undertake to supply your increased requirements for a second furnace when it may be put into blast". That appeared to be a case where all the future requirements of one party were to be met by the other.

In other words, the arrangement that was agreed upon was in the nature of monopoly. Present is not a case of that type. From the long correspondence it cannot be spelt out that the Company had undertaken to meet all the requirements of the Board or that the Board had undertaken to take all the products of the Company. It will, depend on the facts and circumstances of each case whether the existence of a negative covenant would be spelt out. Such circumstances have not been shown to exist. If eventually the Board is held liable to accept all the goods, then it may have to abide by the award of the arbitrator or the decree that the Court might give in pursuance thereof. In a case where the goods, be they manufactured goods, have to be supplied by one party to another at an agreed price, the agreed price itself may provide the standard for the measure of compensation or damages for placing the wronged party in the position it would have been on account of the performance of the contract.

14. Now, in the present case, it is unfortunate that even at an interlocutory stage

something had to be said which may indirectly have a bearing on the merits of the dispute itself. I therefore, make it clear that the arbitrator, if one is appointed in the case, will ignore the observations that the learned Additional District Judge had made or that have been made in this judgment by me. He will be free to decide the dispute on its merits according to his best lights and he should not feel inhibited by one observation or the other.

15. In view of what I have discussed above, I hereby allow this revision application, set aside the order of the learned Additional District Judge, dated 28-8-68 and dismiss the respondent's application for grant of a temporary injunction. The costs of the revision application, in the circumstances, will be easy.