(2002) 01 GUJ CK 0051

In the Gujarat High Court

Case No : Civil Revision Application No. 1492 of 2001 with Civil Application No. 190 of 2002

Rajkot Muni. Corpo. APPELLANT

Vs

Pioneer Flaot Glass Pvt. Ltd. RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2002) 01 GUJ CK 0051

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Advocate : A.K. Clerk, for Petitioners No. 1-2, for the Appellant; R.E. Variava and Natwarlal M. Shah, for the Respondent

Judgement

Sharad D. Dave, J.—With the consent of the LAs for the parties the matter is taken up for final hearing.

2. Rule. The present appellant in Civil Application No. 190 of 2002, has filed one Reg. Civil Suit No. 1741 of 2001 against the Rajkot Municipal Corporation and Ors. (hereinafter referred to as RMC) on the ground that the plaintiff is a company registered under the Companies Act, 1956 and the present plaintiff is a Director. The company is doing the business of glass sheets and mirrors at Rajkot. That the defendant No.1, RMC, a corporate body, under the Bombay Municipal Provincial Act, 1949 (B.P.M.C Act). The respondent No.2 is a Commissioner and Respondent No.3 is an octroi officer.

3. The R.M.C. has right to collect the cess or octroi from a person, carrying the goods inside the city limit for the purpose of consuming or sale. Accordingly, the RMC is entitled to collect the octroi. The plaintiff''s goods such as of glass sheets came from Ankleshwar to Rajkot by truck bearing registration No. GJ-12U-5395, under the bill No. 1511 dtd. 6.10.2001. However, along with the truck, the goods loading slip, receipt memo showing that the goods loaded by the driver and that the excise clearance unusage bill No.1430 dtd. 6.12.2001 was also given. Due to

the mistake of the driver of the truck, he stopped the truck after crossing the octroi naka and thereupon, the octroi checking squad came and inquired as to whether he has paid the octroi or not ? And after hearing the reply, the truck was restrained and thereupon the driver of the truck informed the plaintiff. While the truck of the plaintiff was retained by the RMC, no procedure as contemplated under the B.P.M.C. Act, is followed nor receipt regarding retainin of truck with goods was supplied and nor any demand for octroi as per Schedule T of the Act, has not been given, thereupon, the plaintiff wrote a letter dtd. 7.12.2001, to the RMC requesting the concerned officer to collect the octroi and release the goods along with the

truck. The officer of the RMC failed to reply the plaintiff as well as failed to release the truck with the goods nor acted to collect the octroi. Again the plaintiff wrote a letter on 12.12.2001 to the officers of the RMC and also met personally but his all steps went in vain.

4. According to the plaintiff the defendants are entitled to recover the octroi, when no octroi is paid, for the goods, as per Rule 49 of Chapter 2 of the Act. As per the rule of the Act, when the officers of the Corporation detain the goods, as well as the truck of a person who fails to pay the octroi, Corporation is required to inform regarding the same to the driver and all the holder of the goods for making payment of the octroi levied. Thereupon the plaintiff company filed a suit requesting for release of goods as well as the truck, which are illegally detained by the RMC.

5. The Notice of Motion was filed below Exh. 5 & 6 seeking mandatory order to release the truck bearing registration no. GJ 12 U 5395 and also the goods loaded therein. During the pendency of the suit, as well as the notice of motion, the plaintiff gave an application, to which the defendant filed his objections against the grant of any prayer under Sec. 151, Rule 1 & 2 of Order 39 of CPC and prayed for the dismissal of the whole application filed by the plaintiff.

6. According to the plaintiff, in Reg. Civil Suit No. 1714 of 2001, he gave one application exh. 10 on dtd. 18.12.2001 interalia praying that, vide letters dtd. 7.12.01, and 12.12.01, the plaintiff has shown his willingness to pay the octroi amount Rs.4141.25ps and they are also ready and willing to pay the deposit amount of Rs. 2000/-. The plaintiff has also shown his willingness to appoint the court commissioner before taking the possession of the goods, with the truck, and also ready to pay the court commissioner''s fee. On the said application the advocate for the RMC made an endorsement in a vernacular language which if we translate the same into English it says that, "the plaintiff should approach the Corporation office and decide the amount of octroi and the amount of penalty and the cost amount to be deposited with the corporation."

7. After hearing both the parties, Ld. 4th Jt. Civil Judge (S.D.), Rajkot, passed and order dtd. 18.12.2001, below Exh. 13. The substance of the order of the Ld. Trial Judge is to the effect that the plaintiff should deposit an amount of

Rs.4141.25 ps. towards the octroi of the goods and also to pay Rs.2000/as deposit and further ordered that in case if the corporation fails to prove the liability of the plaintiff company, in a given case, then as per Sec. 143 A of the B.P.M.C. Act, the RMC shall be liable to return the amount so deposited with the RMC, with interest to the plaintiff. The Ld. Trial Judge further ordered that, the respondent/original plaintiff will also be liable to pay the godown charges, charges for unloading the goods and the charges for storage, as per Rule 9 (6) of the Act. The Ld. Trial Court further appointed Shri P.B. Bhatt, Clerk as Court Commissioner and also directed the respondent-original plaintiff to deposit Rs.350/- as fees for the commissioner. The Trial Court further lastly ordered the Court Commissioner to carry out the panchnama in presence of both the parties and to produced the same on or before 24.12.2001 before the Court.

8. Thereafter, the plaintiff gave another application below Exh. 14 dtd. 18.12.2001 saying that as per the order of this Court, passed below Exh.13, he went to deposit an amount with the RMC, along with the xerox copy of the order passed by this Court below Exh.13 and met the Asstt. Commissioner Shri A.C. Rathod, Octroi Officer Shri Gadhavi, and Deputy Octroi Officer Shri Marjaria. However, it is stated by the concerned officers of the RMC that, they are not bound by an order of the Court and further proceedings are going on. Therefore, by not accepting the amount tendered by the plaintiff, the RMC and its officers have committed contempt of court. The application below Exh. 14, further says that, the plaintiff had visited the RMC on 19.12.2001, as per the order passed by this Court below Exh. 13 and accordingly prayed that the Court may be pleased to take an appropriate action against the officers of the Corporation as they are not obeying the order of the Hon''ble Court and also prayed for the release of the goods detained by the RMC.

9. On the said application, the Ld. Trial Judge made an order at 17:45 Hrs. on 18.12.2001, by stating that, there is no reason not to believe the say of the plaintiff as he has stated on affidavit. The advocate for the RMC was called but he was not available. There upon in absence of the advocate for the RMC, the court decided the application upon hearing the plaintiff''s advocate that, even though the court has passed an order after hearing both the parties, below Exh. 13, the defendants are denying to accept the amount. Thereby, they have created hindrances in the judicial process which also caused the loss to the plaintiff. Therefore, when the plaintiff is ready and willing to pay the amount of octroi, as ordered by the Court, the Court ordered the commissioner to carry out the panchanama of the goods in question and hand over the same to the plaintiff and inform the same accordingly to the defendant corporation, after obtaining the signature of the concerned officer of the RMC, regarding the same, lastly, the Court observed that so far as the contempt of court is concerned, it will be decided after hearing the LAs for both the parties.

10. Being dissatisfied with the order passed by the Court below Exh. 13 and 14, the respondent No.1, RMC has filed Civil Revision Application No. 1492 of 2001,

before this court, on 24.12.2001, and stayed the order passed below Exhs. 13 and 14, in Reg. Civil Suit No. 1714 of 2001, passed by the Ld. Civil Judge (S.D.), Rajkot. The petitioner RMC further directed to submit the statement showing the details regarding the amount of octroi leviable and the amount of penalty against the respondent company on or before 4.1.2002. On so furnishing the statement, it will be open for the respondent to deposit the said amount in the Trial Court before the returnable date.

11. In compliance to the order passed by this Court (Coram: J.R. Vora, J), the RMC produced a statement of octroi in January 2002, and stated that, the octroi amount is Rs.4392/- and the penalty (ten times of the octroi amount) amount Rs.43,920/- which come to a total leviable amount of Rs.48,312/-. There upon, vide Exh. 33, the plaintiff filed its objections against the defendant''s statement for the leviable amount on 8.1.2002. In the said objections/reply, the plaintiff has stated that as per the order of the Court, he has deposited an amount of Rs.4246/- under the heading of octroi amount and Rs.2000/- towards the deposit in all Rs.6246/- is deposited on 19.12.2001 vide receipt No.221126/C 118 in the Court of Civil Judge (S.D.), Rajkot. The plaintiff further submitted that, how the RMC has calculated the amount of octroi, is not mentioned and as per Rule 2 of Rule 33 of Chapter VIII, of schedule _ A, of the B.P.M.C. Act, the defendant RMC is bound to supply the data how and on what basis the calculation of octroi amount is made and thereby, violated the order of this court. The amount shown in the statement is not binding to the plaintiff. The RMC is not entitled to collect the penalty amount of Rs.43,920/- U/s. 398 of the B.P.M.C. Act, the corporation is entitled to file complaint before the Criminal Court and as the same is already filed by the RMC. However, no such summons is received by the present plaintiff company. As per Sec. 398 of the Act, if any person with an intention to cheat the corporation brings any vehicle, animal or any goods inside the municipal limit, without paying octroi leviable thereon, at the octroi naka, then such a person if found guilty for evading the payment of octroi, shall be liable to pay the octroi amount plus penalty ten times to the octroi amount or Rs.250/whichever is more to be recovered as fine and such powers are entrusted to Criminal Court only. According to the plaintiff, the officers of the defendant-RMC, by undue pressure, wanted to impose the penalty amount forcibly on the plaintiff by violating the rules of the Act as stated in para 4 of the objection statement made by the plaintiff and thereby, committed a criminal offence.

12. The RMC has filed affidavit-in-reply through Bhagwanji Durlabhji Purohit who is holding the post of Octroi Inspector. In his affidavit-in-reply, Mr. Purohit has denied the say of the applicant company, and stated that, the truck driver wanted to evade the octroi and for that reason, he had driven the truck ahead the octroi naka, which he should not have done so. The appellant company may be paying lacs of rupees towards octroi per month. However, in the present case, the applicant''s truck, with a view to evade the payment of octroi, went ahead the octroi naka, which shows malafide intention on the part of the applicant. Mr. Purohit in para 6 of the affidavit-in-reply stated that on stock of Rs.1,39,436/the

payment of octroi amount Rs.4183/- with interest @ 3% and 5% surcharge comes to Rs.209/- making in all Rs.4392/-. The criminal complaint is already filed against the applicant. But the Civil Court has not jurisdiction to order for release the goods as the Criminal Court has already seized with the matter. In a similar case, being Reg. Civil Suit No. 1732 of 2001, interalia praying for interim injunction Exh. 5, for releasing of the goods was dismissed by the 4th Civil Judge (S.D.), Rajkot by an order dt. 11th January, 2002.

13. According to Mr. Purohit, still, in the case before me, Exh. 5 is not heard or no order is passed below notice of motion which will attract the appellant to rush to this court by filing this CRA and obtain the order in their favour. Accordingly, Mr. Clerk, LA for the RMC prayed for disposal of this CRA with costs.

14. It is true that the appellant herein has rushed to this Court only on application given by it to the Trial Court showing his willingness to pay the octroi duties. But till date no order is passed below Exh. 5 and according to Mr. Clerk, LA for the RMC, this CRA is premature and requires to be rejected in limine.

15. Assuming for the sake of argument that, whatever Mr. Clerk has said is correct and this Court dismiss the CRA, ultimately, the matter will go to Trial Court for hearing the Notice of Motion and on its rejection, the appellant will again come to this Court by filing a fresh CRA. I fail to understand as to why Mr. Clerk, LA for the Corporation-RMC is so much technical, for hearing of the notice of motion ? Prayer prayed in the suit as well as in the Notice of Motion, filed by the present appellant being Reg. Civil Suit No. 1714 of 2001, is the same. It is true that once, the goods in question is handed over back to the appellant company, the whole suit/Notice of Moition will come to an end. But I am of the opinion that when the goods item being glass sheets, are in the custody of the RMC, and that apprehension of the appellant that while transferring the goods in question from one place to another place, it is likely to be broken or there may appear some scratches on the glass sheets, which result into throwing out the glass sheets at a cheaper price and would cause monitary loss to the appellant company and the people as well as the courts are now wanted to see that the matter is disposed of as early as possible. Therefore, it will not cause any damages or injuries to the either parties, if the present application, which is under challenge, is disposed of. Pragmatic view is required to be taken when the petition of such nature such as goods, which is a very delicate item which may break while handling the same by the labourers should be disposed of as early as possible.

16. The truck bearing registration No. GJ 12 U 5395 is already handed over on 7.12.2001 by paying detention charges. Therefore, the only question left before this Court is regarding the release of goods involved in the case. I agree to the submission of LA Mr. Clerk that, once a criminal case is filed against the appellant, the judgment of the Civil Court is outstayed ? The criminal court has power to impose the penalty of 10 times over and above the normal octroi will be chargeable on the goods in question. As per the order of this Court, in CRA 1492

of 2001, the RMC has stated that the total octroi amount which is payable is Rs.4392/- and ten time of penalty over the same comes to Rs.43,920/i.e. to say Rs.48,132/-. But the said amount cannot be said to be a final amount in view of the fact that still the appellant company is required to pay the handling charges, godown charges etc. etc. and what will be the godown charges and the handling charges is not known. Therefore, keeping in view the balance on both the sides and principle of natural justice, it will be proper to direct the appellant to deposit lumpsum amount of Rs.30,000/out of total due and payable (which includes octroi leviable, unloading charges, ten times penalty amount etc.) and to furnish the bank guarantee worth Rs. 1 lac of any nationalised bank in favour of the RMC.

17. Therefore, keeping aside the result of the criminal complaint, filed against the present appellant to secure the amount of octroi and other charges, which ultimately is imposed by way of fine, I order the appellant to deposit Rs.30,000/- in cash in the RMC within a period of one week and also to furnish the bank guarantee worth Rs. 1 lac in favour of the RMC or in the name of Municipal Commissioner, RMC with direction to appellant''s bank that if the criminal court imposes ten times penalty then, after calculating the total amount of penalty as well as the total amount of other charges such as handling charges, godown charges etc. the appellant''s bank shall pay the amount directly to the RMC or to any officer, authorised thereof, without any murmur.

18. In view of the above facts, this CRA is allowed subject to cash payment of Rs.30,000/- in the Corporation and furnishing of bank guarantee worth Rs.1 lac in favour of the RMC. The appellant shall take possession of the goods in question in presence of the Court Commissioner who will, in presence of both the parties shall carry out the commission work and submit the report before the Trial Court, thereof within 48 hours.

19. The appellant is at liberty to move the Criminal Court to dispose of the criminal case pending against it. Without being influenced by the order passed by this Court, the Criminal Court shall dispose of the case pending before it in accordance with law. The amount of Rs.30,000/- so deposited with RMC is ultimately be given credit in final out come of the criminal case. Accordingly this Civil Revision Application is partly allowed. In view of the order passed in the main matter i.e in Civil Revision Application, the Civil Application does not survive. Accordingly Civil Application shall stand disposed off. No orders as to costs.