(2015) 01 KAR CK 0262

In the Karnataka High Court

Case No : M.F.A. No. 8489/2014(CPC)

Rawther Spices Private Limited APPELLANT

Vs

The Jammu and Kashmir Bank Ltd. RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)

Citation : (2015) 01 KAR CK 0262

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : Diwakara K., for the Appellant

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—The matter is taken up for final disposal with the consent of both the learned counsel, after admitting the appeal.

2. The order dated 17.12.2014 passed by the Court of I Addl. City Civil and Sessions Judge, Bangalore on I.A. 1 filed under Order 39 Rule 1 and 2 of CPC. in O.S. 8247/2014 is called in question in this appeal.

3. The appellant herein is the plaintiff in an original suit bearing O.S. 8247/ 2014. Respondent No. 2 is the contesting defendant in the suit. Respondent No. 1 is the Jammu and Kashmir Bank which has issued as many as 21 Letters of Credit in favour of respondent No. 2, supplier of pepper to the plaintiff. According to the plaintiff, the defendant No. 2 has supplied about 700 MT of pepper to the plaintiff and in this regard as many as 21 Letter of Credit has been executed by respondent No. 1 in favour of respondent No. 2. According to the plaintiff, about 30% of the supply so made by the respondent No. 2 is substandard and as a result of the same fraud has been played upon by the defendant No. 2 on the plaintiff and in this regard suit has been filed seeking declaration to the effect that the Letters of Credit so executed in favour of respondent No. 2 by the

defendant No. 1 are vitiated by fraud and for permanent injunction to restrain defendant No. 2 from encashing the letter of credit from defendant No. 1.

4. During the pendency of the suit, application came to be filed under Order 39 Rule 1 and 2 of CPC supported by an affidavit sworn to by the plaintiff. The said application came to be contested by filing detailed objection. The learned Judge has chosen to dismiss the application on the ground that balance of convenience does not lie in favour of the plaintiff. It is this order which is called in question on various grounds as set out in the appeal memo.

5. Heard the learned counsel for the parties at length. Copies of all the documents produced by the parties in the trial court, have been produced before this Court. Perused the same.

6. After hearing the learned counsel for the parties, the point that arises for consideration before this Court is:

"Whether the learned Judge is justified in dismissing the application filed under Order 39 Rule 1 and 2 of CPC?"

7. A party seeking equitable relief of injunction must first make out the existence of prima facie case as reiterated by this Court in the case of Sri Gowrishankara Swamigalu Vs. Sri Siddhaganga Mutt, . Mere existence of prima facie case is not sufficient to grant the equitable relief of injunction. The party seeking equitable relief of injunction must also demonstrate that balance of convenience lies in his/her favour and irreparable hardship would be caused in the event of non granting of injunction.

8. ''Prima facie'' means party seeking equitable relief of injunction must have an arguable case both on facts and law. The letter of credit and bank guarantee stands on the same footing. Injuncting either letter of credit or bank guarantee is an exceptional to the general law.

9. In the case of U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd., Hon''ble Apex Court has dealt with the aspect of invoking bank guarantee. It is made clear that bank guarantee can be invoked only when clear case of fraud is made out in formation of bank guarantee or letter of credit or irretrievable injustice is caused to the party. This decision has been followed in various decision of the Apex Court. It is further held in the said decision that bank guarantee is independent of the contract that has been entered into between the parties. This aspect has been reiterated in greater force in the subsequent decision rendered in the case of Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Company, .

10. What is reiterated in the said decision is that While dealing with an application for injunction in the course of commercial dealings, and when an unconditional Bank Guarantee or Letter of Credit is given or accepted, the Beneficiary is entitled to realize such a Bank Guarantee or a Letter of Credit in terms thereof irrespective of any pending disputes relating to the terms of the

contract. It is further made clear that the Courts must be slow in granting an order of injunction to restrain the realization of a Bank Guarantee or a Letter of Credit since a Bank Guarantee or a Letter of Credit is an independent and a separate contract and is absolute in nature and the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of Bank Guarantees or Letters of Credit. It is true that fraud of an egregious nature which would vitiate the very foundation of such a Bank Guarantee or Letter of Credit and the beneficiary seeks to take advantage of the situation.

11. In the present case, facts do disclose that defendant No. 2 had been supplying pepper to the plaintiff for several years and defendant No. 2 is not a new customer of the plaintiff. Total value of the letter of credit numbering 21 would be Rs. 30,95,81,100/-. The main relief sought for in the plaint is to declare all the 21 letter of credit having become vitiated because of the fraud played on the plaintiff. During the course of the arguments advanced before this Court by the learned counsel for the plaintiff has submitted that about 30% of the supply of pepper so made is substandard and defendant No. 2 has played fraud on the plaintiff and therefore, defendant No. 2 is not entitled to encash letter of credit. It is ununderstandable as to how the relief of declaring entire 21 letters of credit could be sought in the light of making allegation that only 30% is below standard or substandard. In one of the letter of credit furnished before this Court, it is mentioned that form of documentary credit is "irrecoverable" in nature. In so far as applicable rules to the Letter of Credit is concerned, it is stated as UCP latest version''. Article 34 of UCP latest version speaks about} the "disclaimer on effectiveness of documents". Article 34 of UCP latest version is extracted hereinbelow:

"Disclaimer on effectiveness of documents:

A bank assumes no liability or responsibility for the form, sufficiency, occurrence, genuineness, falsification or legal effect of any document, or for the general or particular conditions stipulated in a document or superimposed thereon; nor does it assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance represented by any document, or for the good faith or acts or omissions, solvency, performance or standing of the consignor, the carrier, the forwarder, the consignee or the insurer of the goods or any other person.".

12. On going through Article 34 of UCP, it is evident that formation of letter of credit is independent of all the formation of the agreement between the parties relating to supply of pepper. In this view of the matter bank is obliged to honour the letter of credit irrespective of what has happened between the parties relating to performance of the contract i.e., supply of pepper. The learned Civil Judge has passed a detailed order adverting to various contentions raised by the learned counsel before which all the 3 important points which are essential for considering the application seeking temporary injunction have been framed in

paragraph 12 of the impugned order. In the said order, detail discussion is made about the non existence of prima facie case.

13. As pointed out by the learned Judge in paragraph 16, there is dispute between the quality of goods supplied by defendant No. 2 to the plaintiff. It is not the case of the plaintiff that the defendant No. 2 has played fraud on the plaintiff while obtaining letter of credit from defendant No. 1 at its direction. As rightly pointed out by the trial court, nitty-gritties of the contents of the documents relied upon by the plaintiff or documents disputing the aspect relating to fraud will have to be proved at the time of trial. Documents so produced on behalf of the plaintiff cannot be considered as one depicting established fraud.

14. The learned counsel for the appellant has relied upon the letter addressed by defendant No. 2 to its Director in regard to quality certificate, quantity of pepper supplied and it does not speak about any fraud being played on the plaintiff. Even otherwise 30% of pepper so supplied by the defendant No. 2 to the plaintiff which is stated to be substandard was subjected to testing two months after the delivery was made that too at Andhra Pradesh. Considering all these circumstances, the learned Judge has come to the conclusion that there is every possibility of contamination of the quality of the pepper and that cannot be ruled out.

15. Even other wise the first appellate court dealing with an appeal under Order 43 Rule 1(r) of CPC plaintiff cannot substitute its finding with the finding of the Trial court unless the order suffers from perversity or absurdity.

16. Viewed from any angle the order passed by the learned Judge cannot be found fault with and there is no perversity or illegality. There is no ground to interfere with the well considered order passed by the Trial Court.

ORDER

Appeal is dismissed. The order dated 17.12.2014 passed by the Court of I Addl. City Civil and Sessions Judge, Bangalore on I.A. 1 filed under Order 39 Rule 1 and 2 of CPC in O.S. 8247/2014 is confirmed.

Parties to bear their own costs.