

(2011) 01 CAL CK 0004

In the Calcutta High Court

Case No : G.A. No. 262 of 2011 and C.S. No. 10 of 2011

Rotomac Electricals Private Limited

APPELLANT

Vs

National Railway Equipment Company

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Specific Relief Act, 1963 — Section 41

Citation : (2011) 4 CHN 740

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : Jayanta Kumar Mitra, Ranjan Bachawat and Ravi Kapoor, for the Appellant;

Judgement

Indira Banerjee, J.—This application has been taken out by the petitioner, seeking orders restraining the respondent from initiating or proceeding with any legal proceedings in any Court in Illinois or in any other place in the United States of America or in any forum other than this Court.

2. The plaintiff-petitioner is engaged in manufacture, sale and repair of locomotive traction motors, spare parts and other ancillary commodities. The registered office of the plaintiff-petitioner is situate in Kolkata, within the jurisdiction of this Court.

3. On or about 1st October, 2008, the petitioner entered into an agreement in writing with the respondent for supply of traction motors to the respondent on terms and conditions stipulated in the said agreement.

4. The execution of the aforesaid agreement was preceded by negotiations and exchange of correspondence including e-mails within the jurisdiction of this Court. It is alleged that the respondent and/or its representatives even inspected the factory of the petitioner in India.

5. Pursuant to and/or in terms of the aforesaid agreement, the petitioner shipped traction motors to the respondent in Illinois in USA, on freight on board basis,

from Kolkata, The particulars of the shipments have been given in sub-paragraph (1) of paragraph 1 of the petition. The respondent paid US \$1,371,000 to the petitioner through its banker's at Kolkata.

6. It is alleged that when supply of motors had made substantial progress, the respondent raised disputes with regard to Axle Caps attached to the said motors. The representative of the respondent alleged that the Axle Caps fitted to the motors being defective, the Axle Caps were dismantled from the locomotives and the locomotives were re-fixed with new locally sourced Axle Caps.

7. According to the petitioner, it was agreed that the petitioner would absorb 25% of the cost of US \$2,30,000 incurred by the respondents towards cost of repair, renewal and replacement, would grant deduction rebate of US \$54,000 in respect of the last of its invoices and would further pay a sum of US \$25,000 to M/s. Logistics Plus India Pvt. Ltd., the freight agent of the respondent towards compensation. Additionally, a sum of US \$1,00,000 would be adjusted against the future orders to be placed by the defendant at the rate of 10% of each order value.

8. By a letter dated 28th October, 2010, the respondent terminated the said agreement and demanded \$1,137,393.00 USD from the petitioner. Correspondence ensued and ultimately the petitioner filed the instant suit.

9. The question in this application is whether this Court ought to pass an anti-suit injunction in terms of prayer (a) of this petition, restraining the respondent from initiating or proceeding with any legal proceedings in the United States of America or in any forum other than this Court.

10. Mr. Jayanta Kr. Mitra, Senior Advocate appearing on behalf of the petitioner submitted that the cost of defending proceedings at Illinois would be prohibitive for the petitioner. The balance of convenience was, therefore, overwhelmingly in favour of orders being made as prayed for in the petition since the petitioner has already initiated a suit in this Court, which is a Court of competent jurisdiction. This Court has jurisdiction to adjudicate all disputes arising out of the contract for supply of Locomotive Traction Motors.

11. Mr. Mitra argued that there being no forum selection clause in the contract this Court not only had jurisdiction to adjudicate the disputes arising out of the contract, but was the convenient forum for adjudication of the disputes. Mr. Mitra argued that this Court was competent to interpret the laws of Illinois.

12. Mr. Mitra argued that even though the parties agreed to be governed by the laws of Illinois, the parties consciously did not opt for adjudication of disputes in Illinois.

13. Mr. Mitra argued that a strong prima facie case has been made out and ad interim orders, therefore, ought to be passed, to prevent multiplicity of proceedings in relation to the same transactions.

14. May be, as argued by Mr. Mitra, there is no forum selection clause. If there is no forum selection clause, the plaintiff-petitioner is not debarred from initiating the suit in this Court. If this Court has jurisdiction and if this Court is otherwise the convenient forum, this Court might entertain and adjudicate the suit. Even if the suit filed in this Court is-maintainable, the mere filing of a suit in a competent Court is no ground for grant of a blanket order of injunction restraining the defendant respondent from filing any legal proceedings anywhere else.

15. The contract was to be governed by the laws of Illinois. Even though this Court may be competent to interpret the laws of Illinois, Courts in Illinois are more experienced in interpreting the laws of Illinois and, therefore, perhaps a more convenient forum for adjudication of disputes in accordance with the laws of Illinois.

16. It is perhaps true that the costs of proceedings at Illinois would be much higher than the costs of proceedings in India. However, if Courts in Illinois are otherwise competent, this Court cannot grant an anti suit injunction on the ground of costs of proceedings in Illinois being higher, in the absence of cogent materials to show that the petitioner would not be able to afford to contest legal proceedings in the United States of America. Anti suit injunctions should not ordinarily be granted in view of section 41(a) and (b) of the Specific Relief Act, 1963.

17. There is only a sweeping allegation, based on apprehension that the respondent is threatening to institute proceedings against the petitioner in Illinois. By the letter dated 2nd October, 2009, the defendant called upon the plaintiff-petitioner to settle the claim of the defendant amounting to US \$5,00,000. The aforesaid letter is not notice of any suit or proceedings in Illinois. In fact, the said letter highlights costs of litigation in general, whether in the United States or in India.

18. By a letter dated 28th October, 2010, the Lawyers of the defendant called upon the plaintiff petitioner to settle the claims of the defendant, failing which action for relief to which the defendant was entitled would be pursued. The defendant might make a counter claim in the suit filed by the plaintiff-petitioner in this Court. There is only an apprehension that a fresh suit might be instituted in the United States. From the correspondence annexed it cannot be deduced that the defendant does not intend to contest the suit in this Court.

19. The Courts in India are Courts of both law and equity. The principles governing grant of injunction, an equitable relief, by a Court will also govern grant of anti-suit injunction which is but a species of injunction. When a Court restrains a party to a suit/proceeding before it from instituting or prosecuting a case in another Court including a foreign Court, it is called anti-suit injunction. As held by the Supreme Court in *Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd.*, , cited by Mr. Mitra in support of the claim of the

plaintiff-petitioner to an anti-suit injunction, the Courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case. This is because Courts of Equity exercise jurisdiction in personam. However, having regard to the rule of comity, this power will be exercised sparingly because such an injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another Court.

20. In *Modi Entertainment Network* (supra) the Supreme Court held that in exercising discretion to grant an anti suit injunction, the Court had to be satisfied that the defendant, against whom injunction is sought, was amenable to the personal jurisdiction of the Court; if the injunction was declined, the ends of justice would be defeated and injustice would be perpetrated, and the principle of comity that is respect for the Court in which the commencement or continuance of action/proceeding was sought to be restrained, had to be borne in mind.

21. In *Modi Entertainment Network & Anr.*(supra) the Supreme Court upheld the refusal of anti suit injunction, inter alia holding, in effect, that the fact that the foreign Court had no nexus with the parties or was not the natural or the convenient forum were not valid grounds for grant of anti suit injunctions in foreign proceedings.

22. As observed above, the parties have agreed to be governed by the Laws of Illinois. Even though there may not be any forum selection clause, having regard to the rule of comity, this Court is not inclined to grant a blanket order of injunction restraining the defendant-respondent from initiating and/or proceeding with any legal proceeding before any Court in Illinois or any other place in the United States of America or in any forum other than this Court, for such an order would in effect amount to interference under exercise of jurisdiction by a foreign Court.

23. When two parties to a contract belong to two different countries and proceedings are initiated in the country of origin of one of the parties to the contract, it cannot be said that the proceedings are initiated in a forum of non-convenience, if the forum is competent otherwise. When the parties to a suit belong to different countries thousands of miles away from each other, one or the other of the parties would be inconvenienced. Proceedings in India would not be convenient for the party from the United States and proceedings in United States would not be convenient for the party from India.

24. In any case, anti suit injunction ought to be granted only in very rare and exceptional cases and not for the asking. The judgment of the Delhi High Court in *(India TV) Independent News Service Pvt Limited Vs. India Broadcast Live LLC and Others*, , was rendered in the special facts and circumstances of the case where long after initiation of proceedings in India, the defendants, who were found to have no connection with Arizona, initiated proceedings in Arizona.

25. In the instant case, this Court is not satisfied that refusal to grant of injunction as prayed for would defeat the ends of justice or perpetrate injustice.

On the other hand, grant of injunction would violate the rule of comity. The prayer for blanket injunction is declined. Injunction having been declined no useful purpose would be served by keeping the application pending.

26. The application is disposed of.

27. This order will not, however, prevent the plaintiff-petitioner from filing an application in future should any suit be filed.

28. Urgent certified photocopies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.