(2014) 10 CAL CK 0020

In the Calcutta High Court

Case No : C.O. No. 3339 of 2014

Sasan Power Limited APPELLANT

Vs

G.S. Atwal and Co. RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Citation : (2015) 1 CHN 37

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Anubhav Sinha and S.K. Samanta, for the Appellant

Judgement

Sanjib Banerjee, J.?The petitioner herein is justifiably aggrieved by the manner in which the Trial Court has approached a matter pertaining to an unconditional bank guarantee and the unnecessary adjournments granted by the Trial Court in allowing the plaintiff to enjoy an undeserving order. An unconditional bank guarantee was furnished in favour of the petitioner herein for a sum in excess of Rs. 2.21 crore. The following two clauses of the bank guarantee are sufficient to understand the scope thereof and the obligation of the bank to pay upon a first written demand being made thereunder by the beneficiary:

"4. NOW THEREFORE, in consideration inter alia of the Owner granting the Suppliers the Contract, the Bank hereby unconditionally and irrevocably guarantees and undertakes, on a written demand, to immediately pay to the Owner any amount so demanded (by way of one or more claims) not exceeding in the aggregate Rs. 2,21,25,000.00 (Rupees Two Crore Twenty-one lac Twenty-five thousand Only) without any demur, reservation, contest or protest and/or without reference to the Supplier and without the Owner needing to provide or show to the Bank grounds or reasons or give any justification for such demand for the sum/s demanded.

5. The decision of the Owner to invoke this Guarantee and as to whether the Supplier has not performed its obligations under the Contract shall be binding on

the Bank. The Bank acknowledges that any such demand by the Owner of the amounts payable by the Bank to the Owner shall be final, binding and conclusive evidence in respect of the amounts payable by the Supplier to the Owner. Any such demand made by the Owner on the Bank shall be conclusive and binding, notwithstanding any difference between the Owner and the Supplier of any dispute raised, invoked, threatened or pending before any Court, tribunal, arbitrator or any other authority."

2. For reasons which are not necessary to be gone into at the stage, the petitioning beneficiary invoked the bank guarantee by making a written demand on the bank. That a written demand was made on the bank is not in dispute.

3. The opposite party No. 1, at whose behest the bank guarantee was furnished, filed Title Suit No. 530 of 2014 and sought an ex-parte interlocutory injunction therein. The Trial Court obliged the plaintiff, without a sentence of reason in support of the order restraining payment under the unconditional bank guarantee.

4. Commercial documents as bank guarantees and letters of credit are not to be toyed with. An unconditional bank guarantee is obtained for the purpose of keeping the demand thereunder insulated from the disputes pertaining to the underlying contract. When a bank which has furnished a guarantee agrees to make payment upon the written demand of the beneficiary without any further conditions being attached, the person at whose behest the guarantee has been furnished has no room to interdict the payment unless a strong case of fraud or irretrievable injury is made out.

5. The order dated April 22, 2014 in the present case says this by way of reasons to interdict payment under an unconditional bank guarantee:

"Meanwhile, considering the prima facie case of the plaintiff, balance of convenience and inconvenience and urgency of the situation, the defendants are hereby restrained by an ad interim order from giving any effect to the letter..."

6. The order betrays the complete ignorance of how to approach an interlocutory prayer for injunction and the mandatory requirements of an order, particularly an ex parte order. If reasons have to be indicated to pass an ex parte order, it would not do to merely record the subjective satisfaction that a prima facie case had been made out. Objective reasons indicating why a prima facie view has been taken should be reflected from the order itself. The grounds in the order should indicate why it would be more convenient to pass an order rather than not. By merely parroting the words "prima facie case" and "balance of convenience", a judicial officer does not indicate the reasons that Order 39 of the Code commands him to give in case of an ex parte order.

7. There is further basis to the petitioner''s apprehension that something may have been amiss in this matter. The petitioner says that the City Court did not have the pecuniary jurisdiction to entertain the suit. The petitioner insinuates that since the interlocutory Judge of this Court may have been inconvenient for

this plaintiff to seek an injunction against an unconditional bank guarantee, the plaintiff approached the City Court with a claim beyond the pecuniary jurisdiction of the City Court. The petitioner has applied for rejection of the plaint and says that the matter has been adjourned to allow the plaintiff to enjoy an illegal benefit.

8. There is sufficient basis to the petitioner''s apprehension and insinuation.

9. CO 3339 of 2014 is allowed by staying the operation of the order dated April 22, 2014 and by directing the Chief Judge of the City Court to assign the matter to any bench other than the judge who has heard the matter thus far for the interlocutory applications in the suit to be disposed of within a period of two months from the date of receipt of a copy of this order.

10. In the event the plaintiffs interlocutory application for injunction against the bank guarantee is dismissed or the injunction is not granted, the plaintiff will be obliged to pay costs of Rs. 10 lakh to the petitioner herein.

11. There will be no further order as to costs. Certified website copies of this order, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.

