
(1983) 08 DEL CK 0020

In the Delhi High Court

Case No : Civil Revision Appeal No. 623 of 1983

Sharma Clothiers Private Ltd.

APPELLANT

Vs

Apparels Export Promotion Council and Another

RESPONDENT

Date of Decision : 18-08-1983

Acts Referred:

Citation : (1983) 24 DLT 291

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : Ravi Kher and G.L. Rawal, for the Appellant;

Judgement

S.S. Chadha, J.

(1) This petition u/s 115 of the CPC can be disposed of on a narrow question of Jaw.

(2) The petitioner brought a suit for permanent injunction against M/s. Apparels Export Promotion Council (respondent No. 1) and M/s. Mercantile Bank (respondent No. 2) praying that respondent No. 1 be restrained from demanding/ realizing from the petitioner, its guarantors and sureties any amount including a sum of Rs. 63,038.80 under the bank guarantee furnished by respondent No. 2 on behalf of the petitioner. The petitioner further prayed for a restraint order against respondent No. 2 restraining it from making any payment under the bank guarantee to respondent No. 1. The suit was accompanied by an application under Order XXXIX Rules I and 2 read with Section 151 of CPC for interim relief. The trial Court vide its order dated August 23, 1980 on a perusal of the guarantee bond and on the facts and circumstances of the case vacated the ex parte ad interim injunction granted on April 14, 1980 and dismissed the application of the petitioner for interim relief. The Lower Appellate Court in the appeal against the order dated August 23, 1980 dismissed the appeal. The learned Additional Senior Sub Judge expressed that when a specified amount of bank guarantee was given which is sought to be realised, the moment the

demand was made by respondent No. 1 from respondent No. 2, the bank was obliged to pay that amount irrespective of any dispute as to whether there was performance of the contract or not. Otherwise, the sanctity behind the bank guarantee and security with a party is lost. The learned Additional Senior Sub Judge had relied upon a case of Calcutta High Court reported in Texmaco Ltd. Vs. State Bank of India and Others, .

(3) I had an occasion to deal with the issue of injunction restraining the Government from encashing the guarantee bond pending reference of the disputes to arbitration, in Rawla Construction Co. Vs. Union of India and Another, . The bank guarantee constitutes an agreement between the bank and the third party under which there is an absolute obligation of the bank to make the payment to the third party merely on a demand from that party. Any demand made on the bank in accordance with the eventualities mentioned in the bond itself is conclusive as regards the amount due and payable by the bank. The disputes between a petitioner and the third party about the amount claimed by reason of any breach by the petitioner or the third party of any of the terms and conditions contained in the contract agreement or by reason of the petitioner's failure or the third party's failure to perform the contract agreement are wholly extraneous. So far as the bank is concerned, it has to make the payment on demand without any demur. An elaborate system has been built on the footing that the bank would always honour without any objection the obligation under a guarantee and on that assurance, the contracts of bank guarantees are accepted in the commercial dealings. In a recent decision of the Supreme Court in United Commercial Bank Vs. Bank of India and Others, it was held that no injunction could be granted under Order XXXIX Rules 1 and 2 of the Code in restraining the enforcement of the bank guarantees unless the petitioner establishes a strong prima facie case. The balance of convenience clearly lies in allowing the normal banking transaction to go forward.

(4) In the instant case, the sole dispute raised by the plaintiff in the plaint of the suit is with regard to the breach of respondent No. 1 and the alleged negligence of respondent No. 1 in sending the quota certificate after the expiry of date of shipment arranged by the petitioner with the foreign buyer. There are no allegations in the plaint of the suit that the bank guarantee was being enforced by respondent No. 1 against the terms of the bank guarantee. Under these circumstances, the petitioner was rightly held not entitled to any injunction restraining respondent No. 2 from making payment in terms of the bank guarantee or restraining respondent No. 1 from enforcing the bank guarantee.

(5) For the above reasons, the revision petition fails and is dismissed with no order as to costs. (D.B.)