(2004) 04 MAD CK 0195

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 174 of 2003 and C.M.P. No. 1348 of 2003

Sri Govindaraja Mills Ltd. — APPELLANT

Vs

Banque de Commerce et de Placements, Canara Bank, Aruppukottai Branch and Tradex (UK) Ltd. — RESPONDENT

Date of Decision : 01-04-2004

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 10, Order 1 Rule 10(2)

Citation : (2004) 4 LW 831

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : Srinath Sridevan, for the Appellant; V. Raghavachari, for R1 and R3 and N.V.S. Associates for R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Gnanaprakasam, J.—Civil Revision Petition is directed against the order dated 28.10.2002 passed in I.A.No.246/2001 in C.M.A. No. 36 of 1999 on the file of Principal District Court at Srivilliputhur

2. The Revision Petitioner is the plaintiff, who had engaged in the manufacture of various counts of yarn. The first defendant is a company incorporated in London and engaged in the business of sale of cotton and the second defendant is a Banking Institution. The Plaintiff placed orders with the first defendant for supply 530 tonnes of CIS UZBEK original cotton with an assured 50% span length of 13 mm and trash content not exceeding 15%. Based upon such contract, the plaintiff opened three Letters of Credit in the second defendant, viz., Canara Bank (the Letters of Credit are dated 23.10.98,23.10.98 and 6.11.98) for the value of the cotton. The first defendant failed to supply cotton as per order. But it supplied useless, trashy and waste cotton and not complying with the terms of contract and thereby played fraud on the plaintiff. The first defendant offered to

settle the issue but has not done so. The plaintiff gave a fax message to the first defendant on 13.2.1999 calling upon them not to invoke Letters of Credit and also take back the consignment which they are holding only as bailee.

3. Plaintiff''s claim is that usually the Letters of Credit cannot be revoked but when an element of fraud has been played in the goods supplied, other than one which was ordered, the Letters of Credit can be revoked and only on that account, the plaintiff instituted the suit for permanent injunction not to invoke the Letters of Credit and also not to honour the Letters of Credit by the second defendant, and obtained interim orders in the same line. As against the said orders the Banker namely, Canara Bank preferred C.M.A. and the same is pending.

4. Feeling that the second defendant is not properly conducting the appeal, the first respondent herein viz., Bankque de commerce et de Placements has filed an application to implead itself as a party to the appeal and the same was allowed. Aggrieved by the same, the plaintiff has preferred this revision.

5. The first respondent in the affidavit filed in support of the application in the Court below, has stated that the plaintiff had opened three irrevocable negotiable Letters of Credit through the second defendant in favour of the first respondent towards the payment for the cotton to be supplied by the first defendant to the plaintiff. The said Letters of Credit, namely L.C.NO.1801 FLC 18398 for U.S Dollors 1,53,276.20 and for L.C.No.1801 FLC 18498 for U.S.Dollars1,52,118,78 and for L.C 1801 FLC 19098 for U.S. Dollars 2,35,923,70 were negotiable. The supplier, namely, first defendant supplied the requisite cotton and the same was received by the plaintiff and the second defendant negotiated the said three Letters of Credit with the Negotiating Bank, the first respondent herein, on the explicit acceptance by the plaintiff of all the documents, under the said three Letters of Credit and the same were conveyed to the first respondent herein by the second defendant, namely, Canara Bank vide their telex message dated 5.1.99. The second defendant being issuing banker of the Letters of Credit also confirmed the date of acceptance and the maturity dates for payment to the first respondent herein. It is stated that on the effective communication made by the second defendant , the first respondent negotiated the said three Letters of Credit and paid the amount mentioned in the Letters of Credit to the first defendant. It is further stated that the business of these kind are being done as per the "Uniform Customs and Practice for Documentary Credits I.C.C.NO.500" U.C.C. Article 3 of U.C.C. provides that credits by their natureare separate transactions from the sales or other contracts on which they may be based and banks are in no way concerned with or bound by such contracts, even if their reference whatsoever to such contracts i.e. included in the credit. Further Article 4 of U.C.C clearly indicates the credit operations of all parties concerned deal only with documents and not with goods, services and/or other performances to which the documents may relate. Further according to Article 15 of U.C.C. banks assume no liability or responsibility for the sufficiency, accuracy, genuineness,

falsification or legal effect of any documents and they do not assume any liability or responsibility for the description, quantity weight, quality, condition, packing, delivery, value or existence of the goods represented by any documents. On the basis and in accordance with the U.C.C. guidelines, international commercial transactions take place. The suit transactions have emanated through U.C.C. Guidelines and therefore, irrespective of the fact whether he goods supplied by the first defendant is as per the terms and conditions of the contract or not, the second defendant has to honour the Letters of Credit to the Negotiating Bank.

6. The first respondent further contended that their principal negotiated the three Letters of Credit and parted with huge amount anticipating reimbursement by the second defendant. But, it was informed that the second Defendant Bank has colluded with the plaintiff with common intention of defrauding the principal, the first respondent herein. Now, it appears that the plaintiff and the first defendant have colluded together and the plaintiff had obtained an order of injunction and though the second defendant Bank preferred an appeal, the same is an eye wash and a puppet battle as the second defendant bank had not taken proper steps to vacate the order and only in the said circumstances, the first respondent filed the application to implead it as a party. By such impleadment no prejudice would be caused to the plaintiff or to any one and on the other hand, it would avoid multiplicity of procedings.

7. The Revision Petitioner/Plaintiff resisted the said application on the ground that the supply of goods by the first defendant was not in terms of the contract and hence the Letters of Credit cannot be invoked and honoured. It is also stated that the first respondent was not at all a necessary party to the Appeal and prayed for dismissal of the application.

8. Now, the question is whether the first respondent is a necessary party for proper and effective adjudication of the proceedings.

9. Heard the learned advocate for the petitioner and the respondents.

10. The Plaintiff placed orders with the first defendant for purchase of cotton and in respect of the same, he had guaranteed the payment of the amount under three Letters of Credit with the foreign body, i.e. the Negotiating Bank, the first respondent herein through the local Issuing Bank, namely, the second defendant, in this case, Canara Bank. Letters of Credit once opened cannot be revoked. But, however, it is the contention of the parties that it would not apply if there is an element of fraud in the transaction. According to the plaintiff the first defendant has played fraud and therefore, it is entitled to avoid invoking and honouring Letters of Credit and only in the said circumstances, the plaintiff has filed the suit and also got an order of injunction.

11. It is the contention of the learned advocate for the revision petitioner that the first respondent has not satisfied any of the conditions to show that they are having subsisting right over the property in the suit and therefore, it is not a necessary party to be impleaded in the Appeal.

12.The learned advocate for the revision petitioner to substantiate his submission relied upon the case of M. Abdul Razack Vs. S. Mohammad Shah, wherein this Court was of the view that the power to implead a party to the suit is governed by O.1 Rule 10 C.P.C. A party can be impleaded only when he is a necessary or a proper party. It cannot be stated that a person claiming an adverse title to the estate of the deceased would be either a necessary or a proper party in a suit for administration of the estate. It may be that in certain cases, the plaintiff can implead such a person claiming adverse title in a partition or even administration suit; but where the plaintiff does not want him to be impleaded, it will only be embarrassing the trial of the suit if every adverse claimant to the estate were to be allowed to come in as defendant to get his claim adjudicated. A third party can institute his own suit for the protection of such right as he may have in the property."

13. On the contrary, Mr. Raghavachari, learned advocate for the first respondent, contended that when once the plaintiff opened the Letters of Credit with all requisite documents and after scrutiny accepted by the issuing bank for the agent of the first respondent herein, thereafter, the plaintiff, the person who has opened the Letters of Credit, cannot revoke the same. As the plaintiff is trying to avoid invocation of Letters of Credit on the ground that the first defendant has played fraud in effecting the supply; as the supply was not in tune with the order placed by the plaintiff which is a matter between the plaintiff and the first defendant, for that matter, the plaintiff cannot prevent Banks from invoking the Letters of Credit. In order to support his contention, learned advocate for the revision petitioner relied upon the case in In Re: Kelloth Ibrahim Haji and Others, wherein this Court had observed that Under Order 1 Rule 10(2) confers wide discretion to the Court to meet every case of defect of parties but is subject to two limitations; namely, (1) that the Court has no power to join a person as a party if he could not have been originally impleaded under Order 1 Rule 1 or Rule 23 C.P.C. and (2) that the presence of the person added must be necessary to effectually and completely adjudicate upon and settle all points involved in the suit.

14.The learned advocate for the first respondent would further contend that the first respondent is necessary and proper party to the suit as the second defendant, namely, Canara Bank, is only issuing bank, has not properly protected the interest of the Issuing Bank, the first respondent and the first respondent had already parted with money as the principal of the second defendant and therefore, it is a necessary party to the action.

15. Further, the learned advocate for the first respondent would contend that when it is made out that the first respondent has got subsisting interest in the lis, it is necessary for complete and effectual adjudication of the proceedings, though no relief is sought, he is a necessary and proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted and this is the view taken in the

case of M/s. Aliji Monoji and Co. Vs. Lalji Mavji and others,

16.It is further submitted that as per Order 1 Rule 10 C.P.C , the Court could add any person as a party at any stage of the proceedings, whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. It is submitted that if the impleading party has a cause of action against the plaintiff in respect of the subject matter of the suit, the Court has power to implead the party so as to give effective adjudication of the suit which would avoid multiplicity of the proceedings. It is also submitted that in fact Order 1,Rule 10(2) C.P.C. states that "The Court may at any stage of the proceedings" order the name of the persons to be impleaded or to be struck out when the Court finds that it is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. As such it is submitted that the first respondent herein who is having subsisting interest in the suit and also in the cause of action, is a necessary and proper party for proper adjudication of the proceedings.

17. Learned advocate for the first respondent would further submit that Letters of Credit once opened and the same has been accepted, it cannot be revoked by the party who had opened Letters of Credit except where a fraud has been proved and established.

18. As per Uniform Commercial practice of Documentary Credits (1983) the Negotiating Bank, the first respondent herein has to be reimbursed by the issuing bank, the second defendant, namely, Canara Bank. This is the view taken by the Supreme Court in the case of Federal Bank Ltd VS V.M. Jog Engineering Ltd. and others (2001) I S C C 663 wherein the Supreme Court had taken into consideration the practices in Uniform Custom and Practice for Documentary Credits UCP, by which general provisions and definitions and the Articles following are to apply to all documentary credit and binding upon all parties thereto, unless otherwise expressly agreed and Article 10 of UCP in fact states that it is the duty of the bank ,namely issuing bank to honour the commitment. Further it states that "an irretrievable credit constitutes a definite undertaking of the issuing bank, provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with."

19. Learned advocate for the first respondent has also relied upon several other rulings to strengthen the contention, that the Letters of Credit opened by the plaintiff with the Issuing Bank cannot be revoked, and I have not adverted to the same, as the issue before the Court is only whether a necessary party to be impleaded in the Appeal or not. As the first respondent has established that it is having subsisting right in the lis, this Court also feels that its presence is necessary for proper adjudication of the proceedings.

20. In my view, the first respondent had made out a case that it is a necessary party for proper adjudication of the proceedings and therefore, the order passed

by the Court below that the first respondent has got to be added as a party to the proceedings cannot at al be interfered with.

21. As far as the contention of either side with regard to the nature, terms and condition of the Letters of Credit, the right of Negotiating Bank and Issuing Bank are left open.

22. In the above said circumstances, this Court comes to the conclusion that there is no infirmity in the order passed by the Court below which warrants any interference and therefore, I do not find any good or valid reasons to interfere with the said order. Hence, the Civil Revision petition is dismissed. No costs. Consequently, connected C.M.P is also dismissed.

