courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 02/09/2026

(1998) 10 DEL CK 0067

In the Delhi High Court

Case No : I.A. No''s. 11560 and 12336 of 1996, 1494 and 1479 of 1997 and in S. No. 2805 of 1996

State Bank of India APPELLANT

Vs

Glavkosmos and Others RESPONDENT

Date of Decision : 01-10-1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1998) 76 DLT 362

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : A.M. Singhvi, P.K. Bansal, Rina Barne and Vikas Goel, for the Appellant; Ram Jethamalani Arvind K. Nigam and Kamini Jaiswal for Defendant No. 1, S.K. Garg, for Defendant No. 2 and P.P. Malhotra and Vineet Malhotra, for Defendant No. 3, for the Respondent

Judgement

K. Ramamoorthy, J.—The plaintiff, State Bank of India, has filed the suit claiming the following reliefs :

"(a) A decree for Rs. 6,98,24,219.12 (Rupees Six crores ninety eight lakhs twenty four thousand two hundred nineteen and twelve paise only) in favor of the plaintiff and against the defendant No. 1;

(b) Grant pendente-lite and future interest @ 24% per annum till the realisation of the amount against the defendants;

(c) Costs of the suit be awarded in favor of the plaintiff and against the defendants."

The plaint was presented on2.11.1996. In LA. 11560/96 underOrder39, Rules land 2 read with Section 151 of the Code of Civil Procedure, the plaintiff has prayed for the following reliefs:

"It is, Therefore, most humbly prayed that this Hon''ble Court may kindly be pleased to pass ex-parte ad-interim orders, thereby restraining the defendants

No. 1 and 2 from transferring, withdrawing, debiting or otherwise parting with the funds of the defendant No. 1 lying in the account of defendants No. 1 with the defendant No. 2."

The first defendant had filed reply to this I.A. The plaintiff filed another I.A. 12336/ 96 under Order 39, Rules 1 & 2 read with Section 151 of the CPC and prayed for the following reliefs :

"It is, Therefore, most humbly prayed that this Hon''ble Court may kindly be pleased to pass ex-parte and-interim orders, thereby, restraining Mr. G. Perumal, Project Director, GSLV, Vikram Sarabhai Space Centre, ISRO Post, Thumba, Trivandrum from transferring, debiting or otherwise parting with the funds of Glavkosmos lying wi the ISRO to the extent of Rs. 6,98,24,219.12 (Rupees six hundred ninety eight lakhs twenty four thousand two hundred nineteen and paisa twelve only)."

On 20.11.1996 this Court passed an ad-interim order in I.A. 11560/96 and the same is as follows:

"Issue notices to the defendants returnable on 11.4.1997. I have gone through the plaint and application and I am satisfied that the plaintiff has made out a prima facie strong case for injunction. There shall be an injunction restraining defendants 1 and 2 from transferring, withdrawing, debiting or otherwise parting with the funds of defendant 1 lying in the account of defendant 1 with defendant No. 2 until further orders.

Compliance of Order 39, Rule 3, CPC be made within three days."

In I.A. 12336/96 on 9.12.1996 this Court passed the following order :

"This is an application under Order 39, Rules 1 and 2 read with Section 151, CPC for injunction. Issue notices to the defendants returnable on 11.4.1997. I have gone through the petition and I am satisfied that the plaintiff has made out a prima facie strong case for injunction. There shall be an injunction restraining Mr. G. Perumal, Project Director, GSLV, Vikram Sarabhai Space Centre, ISRO Post, Thumba, Trivandrum from transferring, debiting or otherwise parting with the funds of Glavkosmos lying with ISRO to the extent of Rs. 6,98,24,219.12 until further orders. dusty on payment of necessary charges."

The first defendant filed reply to this LA. and the plaintiff filed rejoinder.

2. On 12.2.1997 the first defendant filed I.A. 1494/97 for vacating the ad-interim orders passed on 20.11.1996 and 9.12.1996 which had been extracted above. The plaintiff filed reply to this I.A. These are the I.As which were heard at length and these I.As are to be disposed of by this order.

3. The matter was argued covering a very wide ground and, Therefore, it has become necessary to give briefly the case of the parties as reflected in the pleadings.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

4. The case set out in the plaint could be tersely given in the following words.

The first defendant who is having its office in Moscow is a specialist in the space department in the filed of satellite technology. The ISRO Satellite Centre, Bangalore had entered into a contract with the first defendant for the purpose of providing facilities and to have the technological knowledge of Indian Engineers and for launching IRS 1-C Satellite. As per the terms of the contract, money was to be paid in installments. The ISRO released an amount of Rs. 4.8 crores towards the second milestone payment in accordance with article 7.3.2 of the contract. As the money was to be sent to Non Resident Account, on 31.3.1992 Reserve Bank of India, Bangalore granted permission to ISRO Satellite Centre to transfer Rs. 4.8 crores, which represented 15% of the contract value, and that was towards second milestone payment. The permission granted by the Reserve Bank of India was to expire on 30.5.1992. The plaintiff sent the amount to the third defendant through the Vimanpura Branch at Bangalore. The Vimanpura Branch of the plaintiff Bank had covered the funds transmitted by the Telegram Transfer and the same was sent to the Vostro Account (Current Account of the third defendant with the plaintiff). The third defendant credited the account of the first defendant with the amount on 2.4.1992. The plaintiff could not credit the account of the third defendant as the third defendant''s account had been frozen by the Reserve Bank of India on 27.12.1991. The cover funds were being held by the plaintiff in its branch on Sundry Deposit.

5. On 17.6.1992 the plaintiff sought permission of the Reserve Bank of India to transfer the cover funds held by the plaintiff to the Central Account of the third defendant with the Reserve Bank of India. The Reserve bank of India, Mumbai accorded an approval to the plaintiff to regularise the payment of Rs. 4.8 crores, the second milestone payment to the first defendant by crediting the account of the first defendant with the second defendant Bank (Bank of Rajasthan).

6. Pursuant to the approval granted by the Reserve Bank of India the plaintiff issued a banker''s cheque for Rs. 4.8 crores in favor of Bank of Rajasthan, second defendant, on account of first defendant on 3.11.1993.

7. Thus, according to the plaintiff double payment of Rs. 4.8 crores had come to be made to the first defendant and the account of the first defendant was credited with the amount of Rs. 4.8 crores once by the third defendant at Moscow and the other by the second defendant at Delhi. The plaintiff had referred to the subsequent correspondence between the parties. According to the plaintiff, that double payment had been made to the first defendant and, Therefore, the plaintiff is entitled to the refund of the sum of Rs. 4.8 crores together with interest of Rs. 2,18,24,219.12 and the plaintiff has also claimed subsequent interest @ 24% per annum. Along with the plaint, the plaintiff had filed the following documents:

1. Copy of the Gazettes Notification dated 27.3.87.

2. Copy of permission granted by RBI Bangalore dated 31.3.92.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

3. Copy of the cable it dated 31. 3.92.

4. Copy of letter from SBI to RBI dated 17.6.92 seeking permission to transfer funds to Central Account of BFEA with RBI.

5. Copy of letter dated 7.4.93 from RBI to SBI regularising the payment.

6. Copy of the cheque dated 3. 1 1 .93 in favor of Bank of Rajasman A/c Glavokosmos for Rs. 4.8 crores.

7. Copy of telex dated 21.1.95 from SBI, ISRO Branch to SBI Overseas Branch, New Delhi.

8. Copy of letter dated 19.12.95 from Vnesheconombank to SBI demanding credit of Rs. 4.8 crores.

9. Copy of telex dated 11.1.96 from SBI to Vnesheconombank.

10. Copy of telex dated 13.1.96 from Bank of Rajasthan to Glavkosmos.

11. Copy of telex dated 23.1 .96 from SBI to Vnesheconombank.

12. Copy of letter dated 31.1.96 from Vnesheconombank to SBI.

13. Copy of letter dated 8.2.96 from Vnesheconombank to SBI.

14. Copy of letter dated 14.2.96 from SBI to Vnesheconombank.

15. Copy of letter dated 14.2.96 from SBI to Glavkosmos.

16. Copy of telex dated from Vnesheconombank to SBI.

17. Copy of letter dated 5.3.96 from SBI to Vnesheconombank.

18. Copy of letter dated 14.3.96 from SBI to Glavkosmos.

19. Copy of letter dated 14.3.96 from Glavkosmos to SBI.

20. Copy of letter dated 19.3.96 from Bank of Rajasthan to SBI.

21. Copy of letter dated 17.4.96 from Glavkosmos to SBI.

22. Copy of letter dated 17.4.96 from Glavkosmos to BOR.

23. Copy of letter dated 26.4.96 from SBI to Vnesheconombank.

24. Copy of telex dated 1.5.96 from SBI to Vnesheconombank.

25. Copy of letter dated 5.5.96 from SBI to Glavkosmos.

26. Copy of letter dated 5.5.96 from Vnesheconombank to SBI and Glavkosmos.

27. Copy of letter dated 14.5.96 from Glavkosmos to SBI.

28. Copy of letter dated 14.5.96 from SBI to Glavkosmos.

29. Copy of letter dated 15.5.96 from SBI to Vnesheconombank.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

30. Copy of letter dated 15.5.96 from SBI to Glavkosmos.

31. Copy of letter dated 12.6.96 from BOR to RBI.

32. Copy of telex dated 17.6.96 from SBI to Vnesheconombank.

33. Copy of telex dated 20.6.96 from SBI to Glavkosmos.

34. Copy of letter dated 24.6.96 from Glavkosmos to SBI.

35. Copy of telex dated 26.6.96 from SBI to Vnesheconombank.

36. Copy of telex dated 26.6.96 from SBI to Glavkosmos.

37. Copy of telex dated 28.6.96 from SBI to Vnesheconombank.

38. Copy of telex dated 2.7.96 from Glavkosmos to SBI.

39. Copy of telex dated 10.7.96 from SBI to Glavkosmos.

40. Copy of letter dated 12.7.96 from SBI to Glavkosmos:

41. Copy of letter dated 20.9 .96 from Vnesheconombank to Glavkosmos.

42. Copy of letter dated 25.9.96 from Vnesheconombank to Glavkosmos.

43. Copy of telex dated 8.10.96 from Vnesheconombank to SBI.

44. Copy of letter dated 1.10.96 from SBI to Bank of Rajasthan.

45. Copy of telex dated 18.10.96 from Vnesheconombank to SBI.

46. Copy of legal notice dated 26.10.96 from SBI to Glavkosmos.

8. On 14.2.1997 the first defendant filed its written statement. Inter-alia, the first defendant denied the case of double payment put forth by the plaintiff. The first defendant asserted :

"This defendant did not receive the said amount nor was the said amount placed at this defendant''s disposal. Even if a credit entry was made in favor of this defendant, the same does not constitute payment. A credit entry made by an insolvent Bank is neither payment in law or in fact."

According to the first defendant, the third defendant became insolvent. It is also asserted by the first defendant:

"It is false that a double payment has been received by this defendant. The defendant No. 3 could not have communicated the factum of credit because in fact no payment had been made to this defendant."

The first defendant admitted having written letter dated 14.3.1996 but denied that the first defendant admitted any double payment. What is stated by the first defendant in reply to paragraphs 25 to 35 of the plaint assumes importance in view of what has been stated by the third defendant. The first defendant stated :

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

"This defendant has not withdrawn any moneys alleged to have been credited by the defendant No. 3 in favor of this defendant, specially in view of the fact that the account of this defendant with the defendant No. 3 was frozen during that period of time. This defendant also admits the writing of the letter dated 24.6.1996 to the plaintiff and will refer to the effect, import and true construction of the said letter when produced."

According to the first defendant no cause of action had arisen within the jurisdiction of this Court. The claim of the plaintiff, according to the first defendant, is barred by the law of limitation.

9. On 24.2.1997 the plaintiff filed replication to the written statement filed by the first defendant. It is not necessary to set out in extenso the averments in the replication except to note that the plaintiff had denied the averments in the written statement filed by the first defendant.

10. On 18.3.1997 the plaintiff filed an additional affidavit on the basis of the clarifications from the Vimanpura Branch of the plaintiff Bank at Bangalore. As per the additional affidavit, the total amount of contract between the first defendant and the ISRO was Rs. 32 crores. The details of three milestone payments are as follows:

S.No. DATE OF PAYMENT DETAILS OF PAYMENT AMOUNT (RS.)

1. 15.2.91 1ST MILESTONE 9.6 Crore

2. 31.3.93 2ND MILESTONE 4.8 Crore

3. 31.3.93 3RD MILESTONE 4.8 Crore

Four annexures have been filed along with the additional affidavit. The details of the amount due to the first defendant and payments made, as given by the Vimanpura Branch of the plaintiff, is filed as Annexure A. A photo copy of the banker cheque dated 3.4.1993 is filed as Annexure B. A copy of the letter from the first defendant to ISRO is filed as Annexure C. That letter is not dated but was a reply to the Telex issued by ISRO on 4.2.1993. Therefore, it must be after 4.2.1993. The letter dated 12.3.1997 from the third defendant to the plaintiff Branch in New Delhi is filed as Annexure D. On 19.4.1997 the plaintiff filed another additional affidavit setting out the facts and also filed the following documents:

1. Annexure SBI-1 -- copy of letter dated 12.2.91 from ISRO Satellite Centre, Bangalore.

2. Annexure SBI-2 -- copy of Reserve Bank of India, Exchange Control Department, Bangalore Permit No. EC.BG, 155/IMP.1468/90-91 dated 15.2.91.

3. Annexure SBI-2A -- copy of Invoice of Glavkosmos dated 11.1.92.

4. Annexure SBI-2B -- copy of letter of ISRO Satellite Centre, Bangalore dated 12.3.92.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-…

5. Annexure SBI-2C -- copy of letter dated 25.3.92 from ISRO to RBI.

6. Annexure SBI-3 -- copy of A/C No. 57280895 245 dated 2nd April, 1992.

7. Annexure SBI-4 -- copy of A/C No. 67087895 245 dated 11th June, 1992.

8. Annexure SBI-5 -- copy of payment order No. 29 dated 10th June, 1992 of State Bank of India, Moscow.

9. Annexure SBI-6 -- copy of Memorial Order dated 11.6.92 of Vnesheconom Bank.

10. Annexure SBI-7-- copy of A.D. (M. A. Series (Circular No. 1 1 of 1992 dated February 29, 1992.

11. Annexure SBI-8 -- copy of Telex No. F-6362/OB/FBAS/96 dated October 10, 1996 from State Bank of India, Overseas Branch, New Delhi to the Bank for Foreign and Economic Affairs, Moscow.

12. Annexure SBI-9 -- copy of letter dated 12th March, 1992 from Deputy Secretary, Government of India, to the Project Director ISRO Satellite Centre, Bangalore."

11. On 19.4.1997 the third defendant filed its written statement making a counter claim against the plaintiff of Rs. 5,90,40,000/-. Therein the third defendant had set out all the facts about the receipt of the amount and the utilisation of the amount by the first defendant.

12. On 13.10.1997 the first defendant filed a reply to the counter claim made by the third defendant. The following documents have been filed as Annexures A to D by the first defendant:

"1. Copy of letter dated 27.5.1997 of the Ministry of Foreign Economic Relations of Russian Federation.

2. Copy of the Protocol on the Trade Turnover and Payments in 1992 dated 22.2.1992 as supplied by the Ministry of External Affairs, Govt. of India.

3. Copy of Agreement on Trade & Economic, Scientific and Technological Co-operation dated 4.5.1992 as supplied by the Ministry of External Affairs, Govt. of India.

4. Copy of letter dated 18.2.1994 of the defendant No.3 to the defendant No. 1."

It is mentioned therein that the first defendant is a State Organisation of the Russian Federation which is recognised as a Sovereign Foreign State, within the meaning of Section 86 of the Code of Civil Procedure, 1908 and, Therefore, no suit could be instituted against the first defendant except with the consent with the Central Government in the manner provided in the section. No such consent was obtained and, Therefore, the suit is not maintainable. The plaint does not disclose cause of action against the first defendant. The counter claim of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-…

third defendant is not liable to be tried in or with the present plaint and is not maintainable. The payment made on 10.11.1993 of Rs. 4.8 crores was the only due second Milestone payment. The first defendant stated :

"The defendant No. 1 would like to present to the Hon''ble Court the following Explanations:

(a) In accordance with the Russian Law, amounts in foreign currency arriving from outside of Russia and addressed to a Russian enterprises as payments for goods, services, etc. exported abroad are to be first reflected on the so called transit accounts. Within two weeks the Russian beneficiary must instruct the Bank to sell a part of the received amount for Rubles ("Mandatory Sale"). It should be noted that the transit account serves only the technical purposes of keeping currency funds for a particular time period. 11 is not an account of the Russian Enterprise in the legal sense of this word, as it is stipulated in the Russian Federation Civil Code and the Regulations of the Central Bank of Russia.

The instruction of defendant No. 1 to transfer the funds from the transit account to the current account was nothing but a mandatory action prescribed by the Legislation, and not the expressed will of the defendant No. 1 to dispose of the funds. In other words, defendant No. 1 had to issue such an instruction under the Russian Law, if the Bank informs it of a credit entry on the transit account. Consequently, the intimation of defendant No. 1 of June 10,1992 (Annex 4 to the affidavit of defendant No. 3) cannot be considered as an evidence of the utilisation of the funds by defendant No. 1.

(b) The Ruble amount gained from the said Mandatory Sale is to be credited to the beneficiary''s current Ruble account and the rest of the currency amount is to be credited to the beneficiary''s current currency account.

In accordance with provisions of the Russian Law on the Mandatory Sale of currency funds for Rubles, the Russian Banks acting as agents of currency control should themselves upon expiration of the said two-week period effectuate the Mandatory Sale on behalf of the client, if the client failed to give an appropriate instruction on the sale, or instructs the Bank otherwise.

In this case, no funds arrived within the Bank [the defendant No. 3] from outside the Country, since the "Cover Payment" was not effected. It remains an enigma, how defendant No. 3 has managed to create the memorial orders indicating the recording of the funds to the transit account of defendant No. 1. Most probably, it is an additional evidence of the negligence of defendant No. 3. Further, the defendant No. 3 does not possess the documents evidencing that the Mandatory Sale had been effectuated.

In any case, all memorial orders presented by defendant No. 3 are the purely internal records of the defendant No. 3 bank and cannot serve as an objective evidence."

It is stated :

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

"Accordingly it is stated that the alleged instructions of this defendant dated June 10,1992 filed by the defendant No. 3 cannot be considered as an evidence of utilisation of the funds by this defendant."

It is all interesting to note the further assertion by the first defendant:

"This defendant further states that the assertions of the defendant No. 3 as regards alleged transfers made by the defendant No. 3 in and from the accounts inter-alia, of this defendant are not understood, in that, the defendant No. 3 Bank did not receive any funds from outside Russia as the ''Cover Payment'' had not been effected. It is a mystery as to how the defendant No. 3 has managed to create the alleged Memorial Orders indicated the alleged credit of funds to the transit account of this defendant and this is evidence of the gross negligence of the defendant No. 3."

The first defendant had denied the averments in the counter claim filed by the third defendant.

13. On 11.11.1997 the plain tiff filed replication to the counter claim filed by the third defendant. It is not necessary for the purpose of deciding the interlocutory application to set out the averments in the replication. Along with the replication, the plaintiff had filed a copy of the Foreign Department Circular No. 92/71 dated 22.8.1992. On 31.1.1998 the third defendant filed rejoinder to the reply filed by the first defendant to the counter claim. Along with the rejoinder, the third defendant had filed a copy of the letter dated 20.10.1997 written by Ministry of Foreign Economic Relations to the third defendant and an English translation of the charter of the first defendant showing the nature of the first defendant Organisation.

14. In the light of the above pleadings, it has to be seen whether the plaintiff has established a, prima facie, strong case for the grant of injunction and 1 have also to consider the question of balance of convenience.

15. On 3.4.1998 the third defendant had filed copies of the following documents to show the details of payments received by the third defendant on behalf of the first defendant from the plaintiff in the transit account and the details about the payments made to the first defendant from the regular account:

"1. Photocopy of statement of Personal Account No. 67107895/ 245 of March 3,1992 Along with English translation.

2. Photocopy of statement of Personal Account No. 67107895/245 dated 6.3.92 Along with English translation.

3. Photocopy of Memorial Order dated 6.3.1992 Along with English translation.

4. Photocopy of statement of Personal Account No. 67107895/245 dated 12.3.92 Along with English translation.

5. Photocopy of memorial Order dated 12.3.1992 Along with English translation.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

6. Photocopy of Payment Order No. 1 dated 4.3.92 signed by defendant No. 1.

7. Photocopy of our telex message dated 12.3.92 to State Bank of Patiala to debit our account as per instruction of defendant No. 1.

8. Photocopy of our telex message dated 12.3.92 to State Bank of Patiala, New Delhi to debit our account as per instructions of defendant No. 1.

9. Photocopy of statement of Personal Account No. 67107895/245 of March 13,1992 Along with English translation.

10. Photocopy of memorial Order dated 13.3.1992 Along with English translation.

11. Photocopy of statement of Personal Account No. 67107895/245 dated 19.3.92 Along with English translation.

12. Photocopy of memorial Order dated 19.3.1992 Along with English translation.

13. Photocopy of statement of Personal Account No. 67107895/245 of April 6,1992 Along with English translation.

14. Photocopy of Payment Order No. 27 dated 1.4.1992 Along with English translation.

15. Photocopy of statement of Personal Account No. 67107895/245 dated 8.4.92 Along with English translation.

16. Photocopy of Memorial Order dated 8.4.1992 Along with English translation.

17. Photocopy of statement of Personal Account No. 67107895/245 dated 22.4.92 Along with English translation.

18. Photocopy of Memorial Order dated 22.4.1992 Along with English translation.

19. Photocopy of statement of Personal Account No. 67107895/245 of April 24, 1992 Along with English translation.

20. Photocopy of Payment Order dated 24.4.1992 by defendant No. 1.

21. Photocopy of Memorial Order dated 24.04.92.

22. Photocopy of statement of Personal Account No. 67107895/245 dated May 19, 1992 Along with English translation.

23. Photocopy of Memorial Order dated 19.5.1992 Along with English translation.

24. Photocopy of statement of Personal Account No. 67107895/245 of June 10, 1992 Along with English translation.

25. Photocopy of Memorial Order dated 10.6.1992 Along with English translation.

26. Photocopy of statement of Personal Account No. 67107895/245 dated 15.7.92 Along with English translation.

27. Photocopy of Payment Order No. 32 dated 13.7.1992 Along with English

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-…

translation.

28. Photocopy of Payment Order No.33 dated 13.7.92 Along with English translation.

29. Photocopy of statement of Personal Account No. 67087895/245 dated 31 August, 1992 Along with English translation.

30. Photocopy of Memorial Order dated 19.2.91 Along with English translation.

31. Photocopy of Telex message of Videsh Bank to defendant No. 3 dated 18.2.91 about crediting 235,000,000/00 to Account of defendant No. 1 with defendant No. 3.

32. Photocopy of Telex message of State Bank of India, Valiawala to defendant No. 3 dated 13.02.91 about crediting INR 235 crore to account of defendant No. 1 with defendant No. 3.

33. Photocopy of Memorial Order dated 19.11.91 Along with English Translation.

34. Photocopy of Telex message dated 31.10.91 for crediting INR 235 crore to account of defendant No. 1 with defendant No. 3."

16. Dr. Singhvi, the learned Senior Counsel for the plaintiff, submitted that the facts and circumstances are very clear and they point to the fact that double payment had been made by the plaintiff and that was discovered in 1995 and immediately the plaintiff swung into action and as the first defendant did not effectively respond to the demand made by the plaintiff, the plaintiff had to institute the suit.

17. Mr. Jethamalani, the learned Senior Counsel for the defendant No. 1, submitted that this Court has no territorial jurisdiction as no part of cause of action had arisen within the jurisdiction of this Court. The first defendant is a State within the meaning of Section 86 of the Code of Civil Procedure, 1908 and, Therefore, no suit could be instituted against the first defendant without the consent of the Central Government. The doctrine of Forum Non Conveniens would have to be considered and the Convenien Form is the Court in Russia. The claim of the plaintiff is barred of the limitation. The first defendant had made no admission, as stated by the plaintiff, but assuming there has been any such admission that would not be admissible in evidence u/s 23 of the Evidence Act, 1872 as anything stated during the course of negotiation to settle disputes are not admissible in evidence.

18. The learned Senior Counsel for the plaintiff brought to the notice of the Court the following cases to show the effect of Credit Entry:

1. JUJ Sports Ltd. v. The New Bank of India Ltd., 1948 Com Cas 253.

2.Jantmu and Kashmir Bank Ltd. (In both the Appeals) v. Attar Ul Nisa (In C.A. No. 702/64) and Raja Mohd Afzal Khan(In C.A. No. 769/64).

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

3. Same v. Barclays Bank, (1924) 1 K.B. 775.

Highlighting the doctrine of Unjust Enrichment, the learned Senior Counsel referred to the following authorities :

1. Grindlays Bank P.L.C. Vs. Centre for Development of Instructional Technology, .

2. Thomas Abraham and Others Vs. The National Tyre and Rubber Co., Kottayam, .

3. Mahabir Kishore and others Vs. State of Madhya Pradesh, .

The learned Senior Counsel dealing with the concept of mistake, referred to the following cases:

1. Grindlays Bank P.L.C. Vs. Centre for Development of Instructional Technology, .

2. Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, .

3. Jammu and Kashmir Bank Ltd. (In both the Appeals) v. Attar Ul Nisa (In C.A. No. 702/64) and Raja Mohd Afzal Khan (In C.A. No. 769/64).

The learned senior Counsel for the plaintiff also referred to the following authorities:

1. United Overseas Bank v. Jiwant, 1977 (1) All ER 733.

2. Managing Committee of Bhagwan Budh Primary Teachers Training College and Another Vs. State of Bihar and Others,

3. Mrs. Kavita Trehan and another Vs. Balsara Hygience Products Ltd., .

4. Madan Lal L. Raja Ram and Ors. v. Munshi Datu and Ors. 1996 PEPSU 80.

5. Grindlays Bank P.L.C. Vs. Centre for Development of Instructional Technology, .

6. Prakash Chandra Gangoly Vs. Nawn Estates Private Ltd., .

19. The learned Senior Counsel for the first defendant referred to the judgment of the Supreme Court relating to the scope of expression cause of action. It is not necessary to refer to the case as the Privy Council and the Supreme Court have dealt with the scope of the expression cause of action in several cases.

20. In support of his argument relying upon the Section 86 of the Code of Civil Procedure, the learned Senior Counsel referred to the following authorities:

1. AIR 1938 165 (Privy Council) .

2. Veb Deautfracht Seereederei Rostock (D.S.P. Lines) a Department of the German Democratic Republic Vs. New Central Jute Mills Co. Ltd. and another, .

3. Royal Nepal Airline Corporation and Another Vs. Monorama Meher Singh Legha and Others, .

4. Deepak Wadhwa v. Aeroflot, 1983 (2) Delhi 880.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-…

21. The learned Senior Counsel submitted that sovereign function would be different from commercial activity. To highlight the point, the learned senior Counsel referred to the following authority:

Thai-Europe Tapioca Service Ltd. v. Government of Pakistan, Ministry of Food and Agriculture, Directorate of Agricultural Supplies Imports and Shipping Wing, 1975 (3) A.E.R. 961.

The learned Senior Counsel also brought to the notice of this Court a judgment of the Supreme Court reported in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, wherein a Constitutional Bench of the Supreme Court had considered the scope of the doctrine of Unjust Enrichment.

22. The learned Senior Counsel for the parties argued the matter at length and the arguments covered a very wide field. I don''t think it necessary to consider all the authorities referred to by the learned Senior Counsel and also the submissions made on the facts. In an interlocutory application for injunction, it is well settled that the Court has to see whether the plaintiff has made out a, prima facie, strong case and the Court is to consider the balance of convenience. Prima fade, I do not find any substance in any of the contentions of the learned Senior Counsel for defendant No. 1.

23. The additional affidavit filed on 18.3.1997 by the plaintiff explaining the factual position would be sufficient to show that the plaintiff had made double payment and the first defendant has deliberately made an attempt to escape the liability and had resorted to all sorts of pleas. In the additional affidavit the plaintiff has filed as Annexure A the communication from Vimanpura Branch, Bangalore of the plaintiff Bank to the plaintiff at New Delhi. The same is as under:

"ILLEGIBLE

TO: SBIOSB. NEW DELHI.

FM: SBI ISRO VIMANPURA BR BANGALORE-0 CODE 90480

ATTN. MR. PADMAGIRISAN. CHIEF MANAGER (SERVICES)

MSG NO. 1088 DATED 20 FEE 1997

WITH REF. TO YOUR TELEX MSG TPMO. F-10594 DATED 19.02.97 AND CONFIRMATION COPY OF TELEX, SENT WE FURNISH THE DETAILS CALLED FOR THEREIN IN SerialTIM.

A. TOTAL AMOUNT OF CONTRACT UNDER IRS 1 C:RS. 32CRORE

B. AMOUNT OF INSTALLMENTS PAID : FIVE installments TOTALING TO RS.32CRORE

C. DATES OF PAYMENT : REFER DETAILS D. HOW THE PAYMENTS WERE EFFECTED : BELOW

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

SL DATE OF DETAILS OF AMOUT NO. PAYMENT PAYMENT 1. 15.02.91 1ST MILESTONE RS. 9.6 CRORE

PAYMENT EFFECTED BY it THRU BANK FOR FOREIGN ECONOMIC AFFAIRS MOSCOW FOR CREDIT OF GLAVKOSMOS ACCOUNT WITH USSR BANK FOR FOREIGN TRADE PLUSCHIHA BRANCH. MOSCOW COVER REMITTED THRU YOUR BRANCH.

2. 31.03.92 2ND MILESTONE RS.4.8CRORE PAYMENTS EFFECTED BY it THRU BANK FOR FOREIGN ECONOMIC AFFAIRS MOSCOW FOR CREDIT OF GLAVKOSMOS ACCOUNT WITH USSR BANK FOR FOREIGN TRADE PLUSCHIHA BRANCH MOSCOW. COVER REMITTED THRU YOUR BRANCH.

3. 31.03.92 3RD MILESTONE RS.4.8 CRORE PAYMENT EFFECTED BY it THRU YOUR BRANCH FOR CREDIT OF GLAVKOSMOS MOSCOW ESCROW ACCOUNT ES002 WITH BANK OF RAJASTHAN, SOUTH EXTENSION NEW DELHI 49.

4. 23.03.94 4TH MILESTONE RS.6.4 CRORE PAYMENT EFFECTED BY it THRU YOUR BRANCH FOR CREDIT OF GLAVKOSMOS MOSCOW ESCROW ACCOUNT ES002 WITH BANK OF RAJASTHAN, SOUTH EXTENSION NEW DELHI-49, AMOUNT TO BE CREDITED TO THE CLEARING DOLLAR ACCOUNT WITH BANK OF RAJASTHAN.

5. (I) 01,03.95 75% OF 5TH MILESTONE RS.4.8 CRORE PAYMENT EFFECTED BY it THRU YOUR BRANCH FOR CREDIT OF GLAKOSMOS MOSCOW ESCROW ACCOUNT ES002 WITH BANK OF RAJASTHAN, SOUTH EXTENSION NEW DELHI-49, AMOUNT TO BE CREDITED TO THE CLEARING DOLLAR ACCOUNT WITH BANK OF RA.TASTHAN.

5. (II) 27.10.95 25% OF 5TH MILESTONE RS.1.6 CRORE PAYMENT EFFECTED BY it THRU YOUR BRANCH FOR CREDIT OF GLAKOSMOS MOSCOW ESCROW ACCOUNT ES002 WITH BANK OF RAJASTHAN, SOUTH EXTENSION NEW DELHI-49, AMOUNT TO BE CREDITED TO THE CLEARING DOLLAR ACCOUNT WITH BANK OF RAJASTHAN.

BESIDES ISRO HAS ALSO REMITTED THE FOLLOWING AMOUNTS UNDER THE SAME CONTRACT.

1. USD 5.245.000/- ON 30.1.95 BY it ON SBI NEW YORK FOR CREDIT OF REPUBLIC NATIONAL BANK OF NY. NY CORRESPONDENT A/C NO. 608205893 INKOMBANK. MOSCOW A/C 0020706699 REPRESENTING (ILLEGIBLE) AMOUNT PAYABLE TO GLAVKOSMOS UNDER 1.1. OF ARTICLE 1 Of

2. USD 35,000/- ON 15.03.96 BY it ON SBI, NEW YORK FOR CREDIT OF REPUBLIC NATIONAL BANK OF NEW YORK. NY A/C 608205893 TO THE ACCOUNT OF 002070699 WITH INCOMBANK MOSCOW OF GLAVKOSMOS REPRESENTING REIMBURSEMENT OF CUSTOMS DUTY.

WE ARE GIVEN TO UNDERSTAND FROM ISRO THAT ALL AMOUNTS DUE AS PER TERMS OF CONTRACT ARE TO BE PAID ON DUE DATES. GLAVKOSMOS HAVE

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-…

SENT INVOICES ON DUE DATES OF PAYMENT FOR THE AMOUNT DUE AS PER CONTRACT TERMS AND PAYMENT EFFECTED BY ISRO. WE FURTHER UNDERSTAND THAT GLAVKOSMOS HAVE SENT A LETTER ACKNOWLEDGING THE RECEIPT OF AMOUNT IN THE CSE OF FIRST TWO MILESTONE PAYMENTS ONLY.

WE HOPE THE ABOVE INFORMATION IS SUFFICIENT AND IS AS REQUIRED BY YOU.

PL. KEEP US INFORMED OF THE DEVELOPMENTS.

REGARDS

SEAL

SBI, VIMANPURA BRANCH"

The plaintiff has also filed as Annexure C to this additional affidavit the letter written by the first defendant to ISRO, Bangalore wherein the first defendant had admitted the Second Milestone payment made in 1992. The letter reads as under :

"On your Telex No. 8676 dated 4.2.93 I inform you the following :

The first two payments under the contract N 800/1-4 dated 18.1.91 were transferred by you in 1991-92 on Glavkosmos account in Vnesheconombank of USSR.

In April, 1992 Glavkosmos received an authorisation of Central Bank of Russia and of Reserve Bank of India (N EC.COX.COMM.655/95-91/92 dated March 24, 1992) and has open account in Rajasthan Bank in Delhi on which since 1992 all payments of ISRO in Indian rupees under all previously concluded agreements are transferred.

In this connection we ask you to transfer the money due to this year on the account of Glavkosmos in Rajasthan Bank in accordance with the invoice sent to you."

The third defendant who had received the payment on behalf of the first defendant had completely explained the position and the following List of Dates would show that the first defendant had received the payment in 1993 itself.

18.1.1991 Contract between ISRO and defendant No. 1 and Schedule of payments:

15.2.91 1st Milestone 9.6 crores

31.3.92 IInd Milestone 4.8 crores

31.3.92 IIIrd Milestone 4.8 crores

23.3.94 IVth Milestone 6.4 crores

1.3.95 75% of Vth Milestone 4.8 crores

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

27.10.95 25% of Vth Milestone

1.6 crores

(PAGE 90-92 AND 112-VOL.I)

15.3.92 First milestone payment made by Vimanpura Branch through defendant No. 3, as per schedule of payment.(PAGE 85, 88 -VOL.1) President Sanction

12.3.92

(PAGE 145 VOL.1)

12.3.92 Application to R.B.I. by S.B.I. for permit to release 4.8 crores towards IInd Milestone.(PAGE 129 VOL.1) Reminder to letter dated 12.3.92.

25.3.92 (PAGE 131 VOL.1)

31.3.92 Reserve Bank of India, Bangalore, granted permission to State Bank of India, Viman Pura Branch, to transfer 4.8 crores for payment to defendant No. 1.

(PAGE 2 VOL. HI, DOCUMENTS FILE)

31.3.92 State Bank of India, Vimanpura Branch, sent a telex to defendant No. 3 advising defendant No. 3 to pay defendant No. 3 in its current account No. 67087895 a sum of forty eight million being the second milestone payment. It was stated in the telex that the payment was covered through Overseas Branch of the plaintiff bank.

(PAGE 153, VOL. II).

2.4.92 Memorial Order is prepared for crediting the transit account of defendant No. 1 being transit account No. 57280895.

(PAGE NO. 154 AND 155, VOL.11).

2.4.92 The said amount of Rupees forty eight million is transferred to the transit account of defendant No. 1 and the amount in the transit account increases to fifty five million eight lacs and ninety thousand (Rs. 55,890,000.00)

(PAGE NO. 156 AND 157, VOL.11).

2.4.92 Statement of account of the said transit is given to the authorised representative of defendant No. 1 with defendant No. 3.

(PAGE NO. 217 PARA F, INTERNAL PAGE 3 OF COUNTER CLAIM, VOL.11).

8.6.92 Chairman and Chief Accountant of defendant No. 1 gave written instructions to transfer the said funds to the current account No. 67087895 of defendant No. 1 with defendant No. 3.(PAGE NO. 161, ENGLISH TRANSLATION AT PAGE 160, VOL.11)

10.6.92 Payment order duly signed by the Chairman and Chief Accountant of defendant No. 1 to transfer the said sum of 55,89,000.00 from transit account to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

the current account of defendant No. 1 being account No. 67087895.

(PAGE NO. 159 AND 158)

The original is signed and is under the seal of defendant No. 1.

11.6.92 The balance in the transit account became nil.

(PAGE 168 AND 167, VOL.11)

10.6.92 Chairman and Chief Accountant of defendant No. 1 gave Payment order under the seal of defendant No. 1 to transfer 1712420 to Aeroflot International for the purchase of Air tickets (18). It instructed for payment of the said amount to the credit of Aeroflot account No. 97088122.

(PAGE 170 AND 169, VOL.11)

11.6.92 The said sum of 1712420.00 was credited to the current account of EROFLOT and debited to the account of defendant No. 1.

(PAGE 172 AND 171, VOL.11)

A sum of Rs. 3,809/- is debited as telex 28.8.92 charges.

(PAGE 174 AND 173, VOL.11)

31.8.92 A sum of Rs. 1,55,000/- is credited to the current account of defendant No. 1 from account No. 07827725.

(PAGE 178 AND 177, VOL.11)

13.10.92 A sum of Rs. 3809.52 is debited to the said account as telex charges.

(PAGE 180 AND 179, VOL.11)

22.12.92 Chairman and Chief Accountant of defendant No. 1 issued a payment order under the seal of defendant No. 1 to transfer a sum of Rs. 45,600,000.00 to the account of Imperial Bank with defendant No. 3. Photocopy of the order of defendant No. 1 to the plaintiff is at PAGE NO. 184 AND 183, VOL.11. It is relevant to mention that the said Payment order was based upon decision of defendant No. 1 under The signatures of its Chairman, Director General and Deputy Chief Designer which clearly says that the said payment is out of the currency earnings by virtue of the agreement of IRS IS project and the payment received is according to Clause 7.3.1 of the agreement No. 800-1-4 dated 18.1.1991.

(PAGE 186 AND 185, VOL.11)

30.12.9 The payment of 45,600,000.00 is credited to the Imperial Bank account No. 07352063 and debited to the account of defendant No. 1.

(PAGE 188 AND 187, VOL.11)

19.11.93 A sum of Rs. 1,369.72 P is debited as telex charges.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

(PAGE 190 AND 189, VOL.11)

24.2.94 Again a sum of Rs. 1,369.72 is debited as telex charges.

(PAGE 192 AND 191, VOL.11)

28.3.94 A sum of Rs. 7,08,926.30 was credited to the account and a sum of 313.70 was debited.

(PAGE 194 AND 193, VOL.11)

24.5.94 A sum of Rs. 313.70 was credited to the account

(PAGE 198 AND 197, VOL.11)

21.9.94 Debit of INR 40,000.00 and 10,000,000.00 credited to account No. 96321202 and account No. 07827717.

(PAGE 202 AND 201, VOL.11)

29.3.95 A sum of Rs. 12640/- debited to the current account.

(PAGE 204 AND 203, VOL.11)

8.11.95 As per instructions of defendant No. 1 the entire balance was credited to account No. 08207709 and the balance in that account became nil.

(PAGE 206 AND 205, VOL.11)

13.1.96 Telex to Glavkosmos (see PAGE 10, PART III).

P.10 In the said telex, Bank of Rajasthan

V.1II invites the attention of Glavkosmos that the original payment had been received by defendant No. 1 through defendant No. 3.

14.2.96 Letter from State Bank of India to Glavkosmos referring to a telephonic conversation that the amount was credited P. 15 by defendant No. 3 to the account of VOL.III defendant No. 1 with a request to debit the account of defendant No. 3 to solve the matter. Receipt of letter is admitted.

(PAGE 24, PARA 18, VOL.1)

14.3.96 State Bank of India''s letter to Glavkosmos (Receipt of this letter is admitted).

P.18 (PAGE 24, PARA 20, VOL.1). VOL.III 14.3.96 GLAVKOSMOS telex to State Bank of India wherein it is clearly admitted that amount of INR 48 million was credited to P.20 Glavkosmos''s account with defendant No. 3 VOL.III on 2''.4.92 on the basis of a telex dated 31.3.92 from the State Bank of India and was suggested as to what funds would defendant No. 1 like to return to State Bank of India. This is admitted.

(PAGE 24, PARA 19, VOL.1).

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

17.4.96 In letter dated 17th April, 1996 GLAVKOSMOS says that the amount of INR 48 million credited to their account on 2nd P.22 April, 1992 was non-convertible whereas VOL.III the amount credited was convertible. This is admitted.

(PAGE 24, PARA 21, VOL.1).

17.4.96 Telex to Bank of Rajasthan by defendant No. 1 claiming that the amount of INR 48 million credited to their account with P.23 defendant No. 1 was non-convertible whereas V.III the amount credited to the Bank of Rajasthan was convertible.

14.5.96 Letter of GLAVKOSMOS to State Bank of India. The amount of 48 million credited to their account was non-convertible P.30-31 whereas the same amount credited to the V.III Bank of Rajasthan was convertible. Writing of this letter is admitted.

(PAGE 25, PARA 23, VOL.1).

24.6.96 GLAVKOSMOS letter to State Bank of India that the matter is under consideration. P.39 Writing of this letter is admitted. (PAGE V.III 25, PARA 25 TO 35, VOL.1).

Telex sent by defendantno. 1 admitting Telex the first two payments and also admitting between of opening of an account of defendant 4.2.93 no.1 with Bank of Rajasthan after to authorisation dated 24.3.92 of R.B.I. 3.4.93. This telex is not denied.

P.94 VOL.1. (PAGE 103, PARA F, VOL.1)."

24. In the light of this factual position, I am of the view that no other conclusion is possible except to say that the plaintiff has made out a, prima facie, strong case for the grant of injunction. The parties shall be at liberty to urge all the points at the time of the final hearing and whatever that is observed here is only tentative and subject to the ultimate result in the suit. I do not think it necessary to deal with those authorities referred to by the learned Senior Counsel for the parties at this stage.

25. The plaintiff is a leading banker in India and in the event of the first defendant succeeding in the case it can always recover the amount from the plaintiff. If injunction is not granted and ultimately if the plaintiff succeeds, the plaintiff cannot recover the amount from the first defendant. The balance of convenience is in favor of the plaintiff. The attitude of the first defendant also does not inspire confidence in me. Under the circumstances, I am of the view that instead of keeping the money payable by ISRO to first defendant if the plaintiff is permitted to take the amount from ISRO and keep it with the plaintiff can always be directed to pay the amount to the first defendant with interest in the event of first defendant succeeding in the suit. Therefore, instead of granting injunction, I hereby direct the plaintiff to receive from the ISRO the sum of Rs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...

6,98,24,219.12 (Rupees six crores ninety eight lakhs twenty four thousand two hundred nineteen and twelve paise only) plus interest @ 24% per annum (on the sum of Rs. 4.8 crores) from the date of plaint till 30.9.1998. The ISRO shall make the said payment to the plaintiff. However, till that time such payment is made to the plaintiff the in term order passed in I.A.11560/96 and IA.12336/96 shall be in force. The plaintiff through one of its competent officer shall file an affidavit giving an undertaking that in the event of first defendant succeeding in the suit, the plaintiff would pay the amount received by it from the ISRO to the first defendant with interest @ 24% per annum on Rs. 4.8 crores from the date of receipt of the amount till the date of payment within sixty days from the date of the judgment.

26. The interest fixed @ 24% per annum is only on the prima fade view and the parties are at liberty to urge all points available in law with regard to the grant of interest pendente lite. At the time of the passing of the decree this aspect has to be taken into consideration by this Court. The ISRO shall be at liberty to pay any amount available to the first defendant after the payment to the plaintiff is made as per the above directions. I.As. 11560/96, 12336/96 and 1494/97 stand disposed of in the above terms.

In view of the above reasoning, I don''t find any substance in the application filed by the first defendant under Order 7, Rule 11, CPC.

Accordingly, IA.1479/97 filed under Order 7, Rule 11, CPC stands dismissed. S.No. 2805/96.

Post the matter for further proceedings on the 11th of January, 1999 before the regular Bench.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-bank-of-india-appellant-hash-...