
(2007) 05 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1270 of 2007

State Trading Corpn. of India Ltd.

APPELLANT

Vs

Don Valley Rice Ltd.and others

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Citation : (2007) 3 RCR(Civil) 621

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. H.S. Hooda, Sr. Advocate with Mr. G.S. Hooda, Advocate.,
Advocates for appearing Parties

Judgement

Vinod K. Sharma, J. (Oral)

1. This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit for declaration and mandatory injunction with consequential relief of permanent injunction, filed by the plaintiffrespondent was ordered to be decreed.

2. The plaintiffrespondent had received an export order from the appellant defendant No. 2 for supply of 10,500 M.T. +/- 5% of Indian NonBasmati parboiled rice to Mongla Port by part transfer of letter of credit No. JBD/175/95 dated 20.7.1995 of Janta Bank, Dhaka, Bangladesh. After obtaining the aforesaid export order, defendant No. 1, State Bank of India, (SBI) main Branch, Karnal executed the performance guarantee (PG) No. 41/20 dated 9.11.1995 for value of Rs. 50 lacs in favour of the appellant on behalf of the plaintiff firm and the plaintiff company executed the export order successfully by loading rice in two vessels. It was also the case of the plaintiffrespondent that relevant documents as per the terms and conditions of the letter of credit duly passed by Custom Authorities were submitted by the plaintiff company to SBI for negotiations in order to obtain the payment against the said export order and SBI Karnal accordingly submitted the documents to letter of credit opening bank i.e. Janta Bank, Dhaka, Bangladesh and as per the reimbursement clause, defendant No. 1, SBI Karnal received all the payments from the reimbursing Bank i.e. Bank of

Tokyo, Calcutta. SBI has also remitted the necessary service charges and commission to STC as per the contract. The plaintiff vide its letter dated 9.2.1996 requested the defendant No. 1, SBI to treat the performance guarantee dated 9.11.1995 as cancelled. As the export contract has been executed satisfactorily by the plaintiff and all the payments have duly been received by defendant No. 1. The appellant defendant thereafter issued a letter dated 8.3.1996 and also a fax message calling upon the bank to extend the validity of performance of guarantee and in the alternative they also desired to encash the said performance guarantee. The said letter was claimed to be arbitrary, null and void and is not binding on the right of the plaintiff on the ground that the defendant bank was not authorised to extend the period of performance guarantee or encashing the same. It was further claimed that in spite of letter of cancellation having been issued to the bank the margin money was not credited by the plaintiff bank and it refused to admit their claim.

3. The suit was contested by the defendant by filing separate written statement. It was claimed that suit was not maintainable in the present form; and the suit was bad for nonjoinder of necessary parties and the plaintiff was estopped from filing the present suit by his own act and conduct and the plaintiff had not come to the Court with clean hands.

4. On merits, it was admitted that plaintiff deals in the export of rice. It was also admitted that the order was placed with the plaintiff by the State Trading Corporation of India for the export of rice to Bangladesh. It was also admitted that defendant issued a bank guarantee on the request of the plaintiff in favour of the State Trading Corporation on 9.11.1995, which was valid upto 18.2.1996 for a sum of Rs. 50 lacs. The successful execution of the contract was denied for want of knowledge. It was claimed that it was to be confirmed by the State Trading Corporation. The appellant through its letter dated 13.2.1996 has alleged that plaintiff company had not fulfilled and discharged all their obligations under their back to back contract with STC as well as export contract. It was claimed that plaintiff company defaulted in the matter and, therefore, it cannot be said that the plaintiff company successfully executed the export order. The negotiation of documents was admitted. It was further claimed that bank guarantee was extended upto 18.3.1996 as per the request of the State Transport Corporation and the last date for lodging the claim was fixed as 28.3.1996. The plea of estoppel was also taken against the plaintiff respondent.

5. Defendant No. 2 filed a separate written statement and took preliminary objections regarding maintainability; nonjoinder of necessary parties; estoppel and suppression of material facts from the Court.

6. On merits, it was claimed that the plaintiff deals in the export of rice and an order was received from the State Trading Corporation New Delhi for export of rice for a quantity of 10,500 M.T. +/- 5% to Govt. of People's of Republic of Bangladesh, Ministry of Food, Dhaka, Bangladesh by transfer of its letter of credit for the abovesaid quantity in favour of the plaintiff. It was claimed that SBI,

Karnal, defendant No. 1 had issued a bank guarantee on the request of plaintiff in favour of the State Trading Corporation, New Delhi on 9.11.1995 which was valid upto 18.2.1996 for a sum of Rs. 50 lacs. It was claimed that plaintiff cannot give a certificate to himself about the successful execution which can only be confirmed by the State Trading Corporation, New Delhi from whom they have got the export order or from the buyer. It was asserted that vide letter dated 13.2.1996 it was claimed that the plaintiff M/s Doon Valley Rice Mills Ltd. has not fulfilled and discharged all their contractual obligations under the back to back contract signed between the plaintiff and defendant No. 2 State Trading Corporation as well as export contract. However, the factum of loading the rice to Mongla Port, Bangladesh and Chittagong, Bangladesh, was admitted. It was claimed that whole of the contract was required to be discharged at Mongla Port, however, on the request of plaintiff company, the State Trading Corporation had got the nomination of M.V. Yanmit's acceptance from buyer from Chittagong Port. It was further claimed that 428.858 M.T. rice was found short and 95.850 M.T. rice as quality short at Mongla Port for which buyer had claimed a sum of USD 1,39,572.33 vide its claim letter dated 11.12.1996. It was claimed that M.V. Yanmit fled away from Chittagong Port with 6500 M.T. rice on board for unknown destination without any information to the State Trading Corporation/MOF (buyer). Buyer the Government of Bangladesh had claimed USD 17,29,000.00 the invoice value of 6500 M.T. rice of Yanmit which fled away with cargo on board. Other amounts were also claimed. The said damages were claimed from State Trading Corporation. The respondent plaintiff have already paid their money on encashment of their letter of credit. It was also claimed that plaintiff had not submitted the export document for negotiations to the negotiating bank as per the terms and conditions of letter of credit. Further plea was that these letters were to be negotiated at Delhi. The other pleas were also raised.

On the pleadings of the parties, following issues were framed :

1. Whether letter No. SIB/CDJK/38 dated 8.2.1996 and also Fax message No. SIB/CPK/42 issued by defendant No. 1 bank is arbitrary, null and void and not binding on the plaintiff ? OPP
2. Whether defendant No. 1 bank is liable to be restrained from encashing/ extending performance guarantee No. 41/20 dated 19.11.1995 ? OPP
3. Whether the bank guarantee No. 41/20 dated 19.11.1996 shall be deemed to be cancelled ? OPP
4. Whether plaintiff is entitled to refund of amount of Rs. 50 lacs of bank guarantee No. 41/20 dated 19.11.1995 executed by plaintiff in favour of defendant No. 2 ? OPP
5. Whether the suit is not maintainable ? OPD
6. Whether the suit is bad for nonjoinder of necessary parties ? OPD
7. Whether the plaintiff is estopped by its own act and conduct from filing the

present suit ? OPD

8. Whether the suit has not been filed by duly competent and authorised person ? OPD

9. Relief.

Issue Nos. 1 to 4 were decided in favour of the plaintiff whereas issue Nos. 5 to 8 were decided against the defendant and in favour of the appellant. Consequently, the suit of the plaintiff was decreed.

7. Mr. H.S. Hooda, Sr. counsel appearing on behalf of the appellantdefendant had challenged the finding recorded by the learned Courts below primarily on the ground that the contract of guarantee was between the defendantappellant and the Bank and, therefore, it was not open to the plaintiffrespondent to challenge the invocation of the guarantee. The contention of the learned counsel for the appellant was that as per the terms of the guaranteed deed the presumption of breach of terms of the obligation was to be drawn merely on invoking of guarantee and it was not open to the bank to refuse the encashment of the said guarantee. The learned counsel for the appellant further contended that once it was proved on record that there was breach of contract on the part of the plaintiffrespondent as it had failed to (get) rice tested at buyers export, the suit filed by the plaintiffrespondent against the agreement of the appellant in invoking the bank guarantee deserves to be dismissed. In the contention raised by the learned counsel for the appellant, I find no force. The learned Courts below on appreciation of evidence have recorded a concurrent finding of fact that plaintiffrespondent had completed its part of contract and in fact the rice was sent at the port of Chittagong, Bangladesh as agreed between the parties. It was also proved on record that notices were issued to the appellantdefendant for negotiating the terms as the Govt. of Bangladesh, as the Ministry of Foods were not accepting the consignment and the vessel was suffering damages. However, consequent upon the letters, a request was made by the appellantdefendant for sending the consignment to Mongla Port at the expenses of the buyer was sought. Consequently, on appreciation of evidence, the learned Courts below have recorded a concurrent finding of fact that after the contract was complete terms of guarantee deed stood satisfied and it was not open to the defendant to invoke the bank guarantee except in case of breach of the terms of the contract which they failed to prove by leading any cogent evidence with regard to right of the appellantdefendant to invoke the bank guarantee. The learned Courts below have recorded a finding on appreciation of evidence that the action of appellantdefendant was arbitrary, null and void.

8. I have heard the arguments raised by the learned counsel for the appellant and found that as the findings recorded by the learned Courts below are based on appreciation of evidence and documents produced on record, which are not in dispute.

9. No question of law much less substantial question of law arises for

interference by this Court. The concurrent finding of fact recorded by the learned Courts below is not open to challenge in this second appeal.

Dismissed.