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In the Karnataka High Court

Case No : M.F.A. No. 7392/2013 (CPC)

Supreme Overseas Export India (P) Ltd. — APPELLANT

Vs

State Bank of Travancore — RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

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

Citation : (2014) 3 AKR 437 : (2014) 4 KCCR 3135

Hon'ble Judges : Mohan M. Shantana Goudar, J

Bench : Single Bench

Advocate : Joshua Hudson Samuel, Advocate for the Appellant; Shashikiran Shetty for Sri. Murali and Co., Advocate for C/R2 and Sri. Vijayakumar V., Advocate for R-1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantanagoudar, J.—The order dated 21st August 2013 on the application filed under Order XXXIX Rules 1 and 2 of CPC in O.S. No. 26084/2012 is assailed in this Miscellaneous First Appeal. By the impugned order, the Court below has rejected the application filed by the plaintiff/appellant herein for injunction restraining the 1st defendant/1st respondent herein from making any payments under the Letters of Credit bearing Nos. 7030012I0000003, 7030012IM0000004, 7030012-IM0000040 and 7030012IM0000041 issued on 2.1.2012, 2.1.2012, 22.3.2012 and 27.3.2012 in favour of the 2nd respondent herein and restraining 2nd defendant/2nd respondent from realizing said amounts.

2. O.S. No. 26084/2012 is filed by the appellant herein for declaration that the aforementioned Letters of Credit issued by the 1st defendant-bank in favour of the 2nd defendant are liable to be cancelled on account of fraud played by the 2nd defendant; Mandatory injunction is sought for payment of damages assessed at Rs. 12,50,000/- tentatively; Perpetual Injunction is also sought restraining the 1st defendant from paying any amount under the aforementioned Letters of

Credit to the 2nd defendant or any person claiming through or under the 2nd defendant. In the said suit, an application came to be filed for Temporary Injunction under Order XXXIX Rules 1 and 2 of CPC restraining the defendant No. 1 from making any payment and consequently restraining the defendant No. 2 from realizing the payment under the aforementioned Letters of Credit.

3. It is the case of the plaintiff that it is in the business of manufacturing and exporting of finished leather and leather garments; on various occasions, the plaintiff has imported raw animal skins in various categories from the 2nd defendant for manufacture of finished leather and leather goods and had done business of more than 2 million US dollars with the 2nd respondent on Letters of Credit opened in favour of the 2nd defendant; raw animal skins supplied by the 2nd defendant in favour of the plaintiff in the month of October-2011 were of inferior quality and consequently the plaintiff has suffered severe problems in the finished products; e.mails were sent by the plaintiff on 29.10.2011 and 10.1.2012 to the 2nd defendant highlighting the defect; on the assurance of the 2nd defendant that no future complaints would arise, the plaintiff placed orders in respect of several varieties of sheep skin, goat skin and cow skin/hides; Accordingly, the 2nd defendant sent proforma invoices dated 19.12.2011, 7.2.2012 and 9.2.2012 for the requirement of the plaintiff''s specification such as Sawakini Sheep skins W/B, Goat skins W/B, Arabic Sheep skins of different grades etc. As per the agreement, the plaintiff opened the Letter of Credit with the 1st defendant bank in the name of the 2nd defendant and issued instructions to the 2nd defendant to land the consignment at Chennai Port for further delivery of the consignment of goods to their factory at Ambur, Tamilnadu; As per the proforma invoices, the 2nd defendant raised invoices on various dates as also the bill of lading; the plaintiff approached their banker with a request to open an import letter of credits and the bill of lading against the consignment of goods pertaining to certain invoices; the plaintiff received consignment of goods at Chennai port on 9.3.2012 and 23.3.2012 respectively through a sealed container; the containers were subjected to inspection by qualified Surveyor; after verification of the consignment of goods of Sawakini Sheep skins randomly, it was found that skin sizes of certain varieties were smaller than the required sizes and they were defective; the Surveyor found that there was damage of 30% of the goods in each container; after going through the process of dyeing, it was found that the goods were unshaped, thin, tanning fault etc., Accordingly, the Surveyor opined that there was around 20% of loss on the dyed crust seen under the damaged condition. Inspite of repeated requests of the plaintiff and despite assurance by the 2nd defendant that it would replace the defective goods, the 2nd defendant did not replace the defective good''s; However the plaintiff has subsequently sent back the defective goods to the 2nd defendant.

The sum and substance of the case of the plaintiff is that the 2nd defendant cheated the plaintiff by supplying the defective goods and despite several requests made by the plaintiff, the 2nd defendant did not make original documents available in order to facilitate the plaintiff to get replaced containers

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released and that the plaintiff approached the 1st defendant-bank and requested them not to make payment against the Letters of Credit; but the 1st defendant expressed its inability in view of the banking regulations and consequently requested the plaintiff to approach the Court. If the amount under the Letter of Credit is released, the plaintiff would be put to irreparable damage and losses as the 2nd defendant Company is at Riyadh, Saudi Arabia and that therefore the plaintiff would not be in a position to recover the amount paid to the 2nd defendant under the Letters of Credit. The plaintiff alleges that it has suffered huge loss firstly because of delay in shipment; secondly for non-supply of goods as per the proforma invoice; thirdly for procuring goods at exorbitant prices for supply of finished goods. Thus according to the plaintiff, it has got prima-facie case and the balance of convenience lies in its favour.

4. Per contra, it is the case of defendant No. 2 that the plaintiff has tried to mislead the Court by concealing the true and material facts; the 2nd defendant is supplying raw skins of animals to the leather industry in India for several years; The plaintiff placed purchase orders with the 2nd defendant for supply of raw skins of sheep, goats etc.; On the basis of proforma invoices and purchase orders, the plaintiff procured irrevocable Letters of Credit in respect of four proforma invoices; the 2nd defendant released its final invoices in pursuance of the purchase orders; the 2nd defendant called upon the plaintiff to visit its factory at Saudi Arabia for inspecting quality of goods and confirm if the goods were in a condition to be shipped to India and to satisfy itself; the Chief Technician of the plaintiff travelled to the 2nd defendant factory situated at Riyadh in Saudi Arabia and inspected the goods; After confirming the quality of goods, the Chief Technician issued inspection certificate; since the quality of goods was approved by the buyer, the 2nd defendant packed and sealed the said goods in four containers in presence of Mr. R. Govindraj, the Technician/ representative of the plaintiff company and got the bills signed by him in respect of four consignments. Only thereafter, the defendant No. 2 submitted the bills of lading to the bankers and sought payment of prices payable to it by invoking the Letters of Credit; the plaintiff despite taking delivery of goods shipped in the four containers as mentioned supra and also using the same for its manufacturing activities, has made a false claim by filing the suit; The plaintiff has gone one step ahead and used the goods to carry out its business; subsequently ordered and sought for delivery of two additional containers of goods from the 2nd defendant; accordingly two containers were shipped by the 2nd defendant in February 2012 on the assurance of the plaintiff that the plaintiff would open the appropriate value of irrevocable Letter of Credit in the name of the 2nd defendant. However after the goods arrived at Chennai Port under two invoices, both dated 7.2.2012, the plaintiff failed to provide requisite irrevocable Letters of Credit and sought for accommodation. The 2nd defendant waited till June-2012 for the plaintiff to furnish requisite irrevocable Letters of Credit and when there was no response from the plaintiff, the 2nd defendant resold the two subsequent containers to another customer in India, because keeping the raw materials idle

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on the port was causing loss to the business of the defendant No. 2. According to the 2nd defendant, the plaintiff had played fraud on the 2nd defendant and has approached the Court with unclean hands and with a fraudulent intention to make an unjust gain out of its willful reach; It is further alleged by the 2nd defendant that the plaintiff is perpetrating fraud on defendant No. 2 and abusing the process of the Court. The defendant No. 2 has pleaded that the application for Temporary Injunction is liable to be rejected. In the alternative, it is the case of defendant No. 2 that as the plaintiff is entitled to claim compensation by liquidated damages if he has got case on merits, he is not entitled for discretionary relief of Temporary Injunction.

5. The 1st defendant-bank has also filed objections to I.A. No. 1 before the trial Court and has admitted that the 1st defendant has issued four Letters of Credit. It has also admitted the Bill of Lading and the fact that the consignment of goods had arrived at Chennai Port; as per the Bills of lading, after customs verification, the sealed containers were sent to the plaintiff''s factory at Amboor; the 1st defendant has denied the survey report produced by the plaintiff as the Surveyor was appointed unilaterally by the plaintiff; Defendant No. 1 being a issuing bank is irrevocably bound to honour the Letters of Credit and release of payment as and when it becomes due without any delay or demur; if the goods were defective, the importer shall settle the matter with the exporter and should not make the bank as a party to it; the defendant No. 1 being the bank which has issued the Letter of Credit, squarely deals with only document and not with the goods; the 1st defendant is not at all concerned with the quality and quantity of goods, delay in delivery, services to be rendered by the consignor etc., the plaintiff has raised objections only with regard to the goods and not with the documents and as such defendant No. 1 who had commitments on the Letters of Credit, should fulfill the said commitment to ensure smooth contract and trade. The defendant No. 1 has sought for dismissal of the application for Temporary Injunction.

6. Upon hearing, the Court below has raised the following points for consideration:

1. Whether the plaintiffs have made out a prima-facie case to allow I.A. 1 ?

2. Whether the balance of convenience lies in favour of the plaintiffs ? Whether the plaintiffs will be put to great hardship and injury if temporary injunction is not granted ?

3. What order ?

The trial Court on evaluation of the material on record held that the plaintiff has not made out a prima-facie case in its favour and the balance of convenience also does not lie in favour of the plaintiff and consequently rejected the application for Temporary Injunction.

7. Sri Joshua Hudson Samuel, learned counsel appearing for the appellant has

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submitted before this Court that the trial Court has not appreciated the material on record in proper perspective and consequently has come to a wrong conclusion. He further submits that the trial Court ought to have held that the Health Certificates produced by the 2nd defendant are fake and are not genuine; The trial Court has grossly erred in giving importance to the Certificate issued by the Slaughter House Administrative Manager, Riyadh Municipality dated 18.7.2013 certifying that the Health Certificates bearing Nos. 171, 174, 188 & 191 are genuine, correct and the same were issued from their administration; the trial Court has failed to take note of the fact that it is the 2nd defendant who has claimed that there is a typographical error and that all the four health certificates submitted to the 1st defendant-bank have the same Letter of Credit number; the trial Court has failed to take note of the fact that Riyadh Municipality has not certified with regard to any typographical error on four health certificates. He further submits that the Court below has ignored the dictum laid down by the Apex Court in the case of State Bank of India and Another Vs. Emmsons International Ltd. and Another, wherein the Apex Court has held that the accompanying documents must be in accordance with the Letter of Credit; Clause 4 in 46A of the Letters of Credit specifically states "Health Certificate in One Original and Two copies issued by Competent Authority"; Thus it is mandatory that the genuine Health Certificate having correct LC Number should have been issued by the concerned authority, based on which the payment can be made by the bank; the trial Court has misunderstood and misinterpreted Article 34 of UCP 600 by holding that the bank has no liability or responsibility for accuracy, genuineness or legal effect of any document submitted for honouring the Letter of Credit; The trial Court has also erred in assuming that the bank does not have responsibility for description, quantity, quality, condition, packing, delivery, value or existence of the goods etc., He further argued that the trial Court has wrongly come to the conclusion that the competent person from the plaintiff-company has inspected all the goods before the delivery; On the contrary, the inspection was only of samples in respect of two invoices. Lastly, he submitted that the Kingdom of Saudi Arabia does not recognize the decree passed by the Court in India and hence in the event the Court below decrees the suit, the same cannot be executed at. Saudi Arabia wherein defendant No. 2 company is situated.

The argument of the learned counsel for the appellant mainly centers around the fact that same LC numbers are found on all the four Health Certificates and hence all the four Health Certificates are not genuine but are fake and consequently the 1st defendant-bank cannot release the amount in favour of the 2nd defendant based on Letters of Credit in view of non-furnishing of genuine documents at the time of getting the amount disbursed in its favour.

8. Sri Shashi Kiran Shetty, learned advocate for the 2nd respondent/2nd defendant submitted that in pursuance to the purchase order placed by the plaintiff, the 2nd defendant supplied the raw skins of sheep, goat etc., to the plaintiff; based on the proforma invoices and purchase orders, the plaintiff

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procured irrevocable Letters of Credit in respect of four proforma invoices; the 2nd defendant released its final invoices in pursuance to the purchase orders; the 2nd defendant called upon the plaintiff to visit its factory in Kingdom of Saudi Arabia for inspecting the quality of goods and to satisfy itself; Pursuant thereto, the Chief Technician of the plaintiff factory namely Mr. R. Govindaraj visited the 2nd defendant factory in Riyadh, Saudi Arabia and carried out inspection of goods under four Invoices and confirmed about the quality of goods and thereafter Mr. R. Govindaraj, the Chief Technician issued the inspection certificate.: Only thereafter, the 2nd defendant packed and sealed the said goods in four containers in presence of Mr. Govindaraj, the representative of the plaintiff and got the bills signed by him in respect of all the four consignments. Only after the release of goods in favour of the plaintiff, the defendant No. 2 submitted the Bills of Lading to the bankers and sought for payment of prices payable to it by invoking Letters of Credit. Thus according to him, the plaintiff wants to cheat defendant No. 2, particularly after using all the goods dispatched in four containers by defendant No. 2 in favour of the plaintiff. He further submitted that though the same Letter of Credit number i.e., L.C. No. 70300111M0000075 was mentioned wrongly in all the four Health Certificates, the same would not alter the situation in favour of the plaintiff inasmuch as the concerned authorities of Riyadh have confirmed by their clarifications issued on 14.7.2013 and 18.7.2013 that all the four Health Certificates are genuine.

9. Sri Vijay Kumar, learned advocate appearing on behalf of Respondent No. 1-bank opposed the appeal by supporting the impugned Judgment of the Court below. He submits that one of the documents submitted alongwith the bill by the beneficiary of the Letter of Credit i.e., Respondent No. 2 is the Health Certificate. There are six more certificates produced alongwith the Health Certificate viz., Bill of Exchange, Commercial Invoice, Certificate of Origin, Bill of Lading, Packing List and Beneficiary''s certificate. He also brings to the notice of the Court that Respondent No. 2 has also produced the inspection certificate issued by Mr. R. Govindaraj (plaintiff''s representative). According to learned counsel for Respondent No. 1/defendant No. 1, all the certificates including the Health Certificates were produced by the 2nd defendant alongwith the bill for getting the amount realized in its favour covered under the Letter of Credit; It is no doubt true that in all the four Health Certificates, the same LC No. 70300111M0000075 was mentioned wrongly. However the same was accepted by the Respondent No. 1 bank inasmuch as the same was not objected by the appellant earlier; the plaintiff/appellant herein did not protest regarding the documents submitted by defendant No. 2 within five banking days as required under Article 14(b) of the UCP; no protest regarding bills was raised by the plaintiff until the suit was filed; the dispute as regards the quality of goods is not the reason for the bank not to make payment under the Letters of Credit; Due to some typographical error, all the four health certificates have the same LC number and except this, no discrepancy was noticed; same LC number was mentioned in four Health Certificates pertaining to four Letters of Credit, which were previously opened for

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the plaintiff favouring the 2nd respondent and these facts are accepted by the plaintiff without any objection; the plaintiff after having accepted the documents, took delivery of the goods and no complaint was raised; only on acceptance and taking delivery of the documents from the bank, the plaintiff could take delivery of goods; for all the aforementioned reasons, the 1st defendant.-bank did not consider the typographical mistake found in the Health Certificate as a material error/discrepancy; at no point of time prior to filing of the suit, the plaintiff has raised objection with regard to the typographical mistake found in the Health Certificates and therefore, according to the advocate for Respondent No. 1, the impugned order of the Court below is just and proper.

10. The primary purpose of issuance of the Health Certificate is to provide certification about the animals'' health status and that they have not come in connection with any infected animals of contiguous or epidemical diseases, or passed through infected areas. Only to find out as to whether the skins of animals imported are infected goods or not, the Health Certificates issued by the concerned authority of exporting nation are necessary. An official veterinary Health Certificate issued from the exporting country includes the distinctive marks of the consignment, its origin and evidence that it has been checked directly before shipment and found free of epidemic and contagious diseases. Such certificates are duly attested from the concerned authorities. The Official Veterinary Health Certificate would be valid for one month only.

11. I have perused the copies of four Official Veterinary Health Certificates produced alongwith the memorandum of appeal. All the four Health Certificates are issued officially by the Slaughter Houses Administration Manager. The same are duly signed by Veterinarian also, apart from two other persons. The four certificates clearly reveal that they are issued in favour of the 2nd defendant factory situated at Riyadh pertaining to W/B Sheep Leathers, which are chrome tanned and packed in pallets; Number of pieces as well as gross weight are also mentioned; The name of the plaintiff as well the 2nd defendant are also mentioned. The Health Certificates prima-facie reveal that they are officially issued by the Government Department of Saudi Arabia. It is no doubt true that all the four Health Certificates contain the same LC Number i.e., 70300111M0000075. It is specifically mentioned in all the Health Certificates that sheep leather products fit the veterinary health condition. Since all the four Health Certificates contain the same LC number, according to the appellant/ plaintiff, the Health Certificates cannot be looked into and relied upon for the purpose of three other Letters of Credit, but the Health Certificate at the most can be used for Letter of Credit bearing No. 70300111M0000075 and not for other Letters of Credit. In order to avoid confusion, a certificate dated 14.7.2013 is issued by the Riyadh Municipality wherein it is clearly stated as under:

To whom it may concern:

Date: 14.7.2013

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Ref: Official Veterinary Health Certificate No. 171, 174, 188 & 191.

We confirm that all the above Health Certificates are genuine but due to some typographical error, all of them have the same LC number. Herewith the true copy of each Health Certificate (containing original stamp of Riyadh Municipality).

French Leather Factory General Manager Roland Atik

-sd-

We certify that all above health certificates are correct and genuine. Riyadh Municipality

(Emphasis Supplied)

One more certificate is issued on 18.7.2013 by the Slaughter House Administration Manager, Riyadh Municipality, which reads thus:

To whom it may concern:

DATE: 18-07-2013

Ref: Official Veterinary Health Certificate No. 171, 174, 188 & 191. We confirm that all the above Health Certificates are Genuine, correct and Was issued from our administration. Herewith the true copy of each Health Certificate.

Hamad Saleh A1-Khweiter Slaughter houses administration Manager Riyadh Municipality

(Emphasis Supplied)

Both the certificates are on record. From the aforementioned clarification issued by the Riyadh Municipality on two occasions i.e., on 14.7.2013 and 18.7.2013, it is clear that all the four certificates are genuine and due to some typographical error all of them have the same LC number. It is also clear from the aforementioned two certificates that the clarification is made in respect of all the four Health Certificates bearing Nos. 171, 174, 188 and 191. From the above, it is clear that the inadvertent typographical error is found in the Health Certificates with regard to Letter of Credit number. Riyadh Municipality, which is the statutory authority for issuing Health Certificate to the export country has acknowledged that there is typographical error and all the Health Certificates are indeed genuine.

12. At an earlier point of time i.e., on 31.1.2013 the trial Court has rejected the application for Temporary Injunction filed by the plaintiff. The said order dated 31.1.2013 was questioned by the plaintiff in MFA No. 1301/2013 before this Court. After hearing, this Court remitted the matter to the trial Court, only to consider the contention of the plaintiff regarding the Health Certificate. After remand, the trial Court was required to consider the genuineness or otherwise of the Health Certificate stated to have been issued by the Riyadh Municipality.

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13. From the aforementioned discussion, it is clear that the primary purpose of issuance of the Health Certificate is to provide certification about animal health status and in order to verify as to whether the animal skin is infected with any epidemic disease, or has passed through infected areas etc., In the matter on hand, all the four Health Certificates issued by Riyadh Municipality testify that the goods exported conform to the veterinary health condition, which means that the goods transported are not infected.

Moreover on going through the clarification issued by the Riyadh Municipal Authority, it is clear that all the four Health Certificates are genuine and due to typographical error, all the four health certificates contain the same Letter of Credit number. In view of the same, it is not open for the plaintiff to stop defendant No. 1-bank from making payment in favour of defendant No. 2 based on Letters of Credit.

Added to it, the plaintiff has assessed the damages at Rs. 12,50,000/- for the present though the transaction has taken place in crores. The payment to be made in favour of the defendant No. 2 by defendant No. 1 based on Letters of Credit is stated to be more than 4 crores.

14. It is also relevant to note that prior to filing of the suit, the plaintiff has not raised any objection with regard to the typographical error crept in the Health Certificates. On the other hand, the plaintiff, only on the acceptance and taking delivery of the documents from the 1st defendant bank, could take delivery of goods. In this case, the plaintiff has taken delivery of goods knowing very well about the aforementioned typographical mistake found in the Health Certificates. No protest regarding bills was raised by the plaintiff until the suit was filed. The documents were found acceptable by the plaintiff before taking delivery of goods. However the documents were found unacceptable by the plaintiff only after taking delivery of goods. Moreover the bank is justified in concluding that the error found in the Health Certificates is purely a typographical error and no other major discrepancy is noticed. In view of the same, it is not open for the plaintiff to stop defendant No. 1 from making payment to defendant No. 2.

Be that as it may, since no prima-facie case is made out by the plaintiff for grant of injunction and as the balance of convenience does not lie with the plaintiff, the trial Court is justified in rejecting the application for Temporary Injunction. Hence no interference is called for.

Appeal fails and the same stands dismissed.

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