

(2007) 04 DEL CK 0137
In the Delhi High Court
Case No : CS (OS) No. 1705 of 2002

Swati Aluminium Ltd. and Others

APPELLANT

Vs

Mullins Steering Gears and Others

RESPONDENT

Date of Decision : 25-04-2007

Acts Referred:

Citation : (2007) 2 CTLJ 51 : (2007) 1 ILR Delhi 215

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : K.T.S. Tulsi and Gaurav Bhargava, for the Appellant;

Judgement

Sanjay Kishan Kaul, J.—plaintiff No. 1 is a public limited company engaged in business of supplying steering boxes. plaintiff No. 2 is a director of plaintiff No. 1 and is stated to have represented plaintiff No. 1 in the negotiations with defendants for supply of such steering boxes. plaintiff nos 3 & 4 are stated to be proprietor firms.

2. The aforesaid negotiations are stated to have been done on or about 20.01.1999 which resulted in the plaintiff No. 2 receiving a memorandum from one Mr. Bill Mullins of defendant No. 1/Company regarding steering boxes and blue prints along with drawings and specifications for the steering boxes which the defendant No. 1 wanted to procure. The supply is stated to have started some time in July, 2000. The invoices expressly state declaration of exclusive jurisdiction of Delhi Courts. plaintiff No. 1 is also agreed to have invested \$ 60,000 vide its letter dated 16.07.2001 to get the tooling of Vega Boxes ready but subject to the condition of defendant No. 1 procuring at least 150 boxes per month for the next five years.

3. The dispute started between the parties on 24.04.2002 almost a year after supply on account of the allegation of defendant No. 1 that there were problems with the consignments received. Defendant No. 1 even initiated recall proceedings before the National Highway Traffic and Safety Administration

categorizing the consignment as hazardous for use in USA. Thereafter the defendants on 09.08.2002 are stated to have approached the District Courts in Arizona for grant of injunction in favor of the said defendants against the plaintiffs to prevent the continued distribution of the product being supplied by the plaintiffs as also for damages.

4. The plaintiffs have thus filed the present suit in the nature of anti suit injunction in view of the exclusive jurisdiction conferred on the Delhi Courts by reason of agreement between the parties. Summons in the suit and notice in the application were issued by the Court but no interim injunction orders were granted in favor of the plaintiffs. This resulted in the plaintiffs filing an appeal before the Division Bench which granted such an interim order on 18.11.2002 and confirmed the same on 19.08.2003 in FAO (OS) No. 382/2002. Defendants herein did not put in appearance before the Division Bench. In the present suit also, the defendants have also not put in appearance and have been proceeded ex parte.

5. The plaintiffs have filed the affidavits of evidence of Mr. Vivek Lakhota, plaintiff No. 2 who has proved the relevant resolutions authorizing institution of the suit on behalf of plaintiff nos 1, 3 and 4 as ExPW1/A, ExPW1/B & ExPW1/C respectively. The memorandum dated 20.01.1999 has been proved as ExPW1/D and the copy of the initial invoice dated 11.07.2000 has been proved as ExPW1/E. Another set of invoices has been proved as ExPW1/H. The affidavit affirms to what has been set out in the plaint and it is not necessary to get into greater detailed discussion in this behalf since the matter only relates to an anti suit injunction. The initial invoice dated 11.07.2000 and other invoices contained the following declaration:

We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct. All dealings are subject to Delhi Jurisdiction.

6. A reading of the afore-declaration shows that the parties have agreed to confer exclusive jurisdiction on the Delhi Courts. It is trite to say that the parties are not precluded from conferring exclusive jurisdiction on any Court which would be one of the Courts having territorial jurisdiction to try and determine the suit. The bar comes into play only on conferring the jurisdiction on a Court which has no jurisdiction in respect of the subject matter. The exception to this is where parties agree to confer jurisdiction on a foreign court in a neutral territory.

7. Learned senior counsel for the plaintiff contends that the anti suit injunction prayed for in the present suit is liable to be granted by this Court in view of the Delhi Courts certainly being one of the Courts having jurisdiction, the plaintiffs being based and the goods being supplied from Delhi. Thus the Delhi Courts alone would have the jurisdiction in the matter.

8. Learned Counsel for the plaintiff has relied upon the judgment of the Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd., dealing with

the ambit and scope of an anti suit injunction to restrain proceedings in a foreign court. It has been observed that Courts in India are both Courts of law and equity and the principles governing grant of injunction - an equitable relief - by a Court will also govern grant of anti suit injunction which is but a species of injunction. It has further been observed that Courts in India have power to issue anti suit injunction to a party over whom it has personal jurisdiction, in an appropriate case though the power ought to be exercised sparingly. The relevant principles have been extracted in Para 24 as under:

From the above discussion the following principles emerge:

1) In exercising discretion to grant an anti suit injunction the Court must be satisfied of the following aspects:

a) The defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the Court;

b) if the injunction is declined, the ends of justice will be defeated and injustice will be perpetrated; and

c) the principle of comity - respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained - must be borne in mind.

2) In a case where more forums than one are available, the Court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (forum convenience) having regard to the convenience of the parties and may grant anti suit injunction in regard to proceedings which are oppressive or vexatious or in a forum non convenience.

3) Where jurisdiction of a court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or non exclusive jurisdiction of the court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case.

4) A court of natural jurisdiction will not normally grant anti suit injunction against a defendant before where parties have agreed to submit to the exclusive jurisdiction of a court including a foreign court, a forum of their choice in regard to the commencement or continuance of proceedings in the court of choice save in an exceptional case for good and sufficient reasons, with a view to prevent injustice in circumstances such as which permit a contracting part to be relieved of the burden of the contract; or since the date of the contract the circumstances or subsequent events have made it impossible for the party seeking injunction to prosecute the case in the court of choice because the essence of the jurisdiction of the court does not exist or because of a vis major or force majeure and the like.

5) Where parties have agreed, under a non exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti suit injunction will be granted in regard to proceedings in such a forum convenience and favored forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to the non exclusive jurisdiction of the court of their choice which cannot be treated just as an alternative forum.

6) A party to the contract containing jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or non exclusive jurisdiction is created, the proceedings in that court cannot per se be treated as vexatious or oppressive nor can the court be said to be forum non convenience.

7) The burden of establishing that the forum of choice is a forum non convenience or the proceeding therein are oppressive or vexatious would be on the party so contending to aver and prove the same.

9. A perusal of the aforesaid principles shows that while examining the question of grant of anti suit injunction, the aspect of forum convenience would have to be considered. However, where jurisdiction of a court is invoked on the basis of a jurisdiction clause in a contract, anti suit injunction would not normally be granted to restrain proceedings before said exclusive jurisdiction of a Court including of a foreign court.

10. In the present case, if this principle is applied then it would equally mean that if the courts in India have been granted exclusively jurisdiction in the matter, especially where the Court is at least one such court of a competent jurisdiction, then an anti suit injunction must necessarily follow. The exception to this would be where the other party is still able to establish that the forum of choice is not forum convenience, the proceedings are oppressive and vexatious, but on the condition that the parties so contending would have to prove the same. This would have required in the present case the defendants to appear and establish such a plea. The defendants have, however, chosen to absent themselves.

11. In view of the aforesaid, a decree for permanent injunction is passed in favor of the plaintiffs and against the defendants restraining the defendants from initiating or continuing any legal proceedings against the plaintiffs in the courts of United States of America in respect of the business transaction and goods delivered in pursuance to the invoices proved in the present suit.

12. plaintiffs shall also be entitled to costs.

13. The decree sheet be drawn up accordingly.