
(1998) 03 P&H CK 0210

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No's. 806, 2268-CII and 2466-CII of 1998

Tarun Builders Pvt. Ltd.

APPELLANT

Vs

Bank of India and Another

RESPONDENT

Date of Decision : 19-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1998) 119 PLR 479 : (1998) 3 RCR(Civil) 273

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : R.C. Setia and Sidharath Swaroop, for the Appellant; Anil Khetarpal, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—The present revision petition has been filed by M/s. Tarun Builders Private Limited (hereinafter described as "the petitioner) directed against the order passed by the learned civil judge (Sr. Division), Jagadhari dated 5.8.1997 and that of the judgment of the learned Additional District Judge, Jagadhan dated 17.2.1998. By virtue of the impugned order the learned trial Court had refused to award an ad-interim injunction to the petitioner and the appeal was dismissed by the learned Additional District Judge.

2. The relevant facts are that respondent No. 2 M/s. Kay Inns. Pvt. Ltd. had invited tenders for construction of a three star hotel at Yamuna Nagar. The tender of the petitioner was accepted. As per terms of acceptance respondent No. 2 was to give Rs. 5 lacs, as mobilisation advance to the petitioner which was to be deducted from the running bill of the petitioner at the rate of Rs. 1 lac per bill. Mobilisation advance was given on 4.4.1996 and 10.4.1996. To secure the return of mobilisation advance the petitioner gave a bank guarantee of Rs. 5 lacs, to respondent No. 1. It was given on 20.3.1996. After the mobilisation advance had been recovered from the running bill, the bank guarantee was to be returned to the petitioner. It is pointed that execution of the work was delayed.

On 26.8.1996 the officers of respondent No. 2 did not allow the petitioner to do any work. The petitioner submitted four running bills for the work done and contends that amount of Rs. 1 lac. had to be adjusted in each of the bill towards re-payment of mobilisation advance. He filed a petition u/s 11 of the Arbitration Act. Meanwhile, respondents No. 2 had sent a person to respondent No. 1 for encashment of the bank guarantee. When petitioner came to know about it, it filed a suit in Delhi High Court. Initially ad-interim injunction was granted. But subsequently the plaint was returned for presenting the same before a proper court having jurisdiction. The petitioner thereupon on the above said facts filed a suit for permanent injunction alongwith an application for temporary injunction to restrain respondent No. 2 from encashing the bank guarantee. Respondent No. 2 contested the petition seeking ad-interim injunction and the suit. It was alleged that work allotted to the petitioner was to be completed within a time frame of 8 months i.e. upto November, 1998. The petitioner completed only 20% of the work and it appeared that it will not be able to complete the work. It is not disputed that Rs. 5 lacs, was towards the mobilisation advance. It was denied that bank guarantee was to secure the bank guarantee of mobilisation advance.

3. The learned Civil Judge heard the parties and refused the temporary injunction. Aggrieved by the same, an appeal was preferred which was dismissed by the learned Additional District Judge, Yamunanagar at Jagadhan. Hence, the present revision petition.

4. The main argument advanced by the learned counsel for the petitioner was that bank guarantee was given amounting to Rs. 5 lacs. It was as a security for repayment of mobilisation advance. The mobilisation advance was to be deducted from the running bill. He further urged that certain bills were submitted and Rs. 1 lacs, was to be deducted from each bill. On facts it was further alleged that respondent No. 2 had delayed in giving the material and, therefore, the construction could not be set up. It was further argued that in case of mobilisation advance, the bank guarantee could not be encashed as is being done by respondent No. 2.

5. To appreciate the said argument reference can well be made to the bank guarantee (mobilisation advance) which reads :-

"We Bank of India, do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on demand from the company stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the company by reason of any breach by the said Contractor of any of terms and conditions contained in the said Agreement or by reason of the contractor failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount of not exceeding Rs. 5,00,000/- (Rupees five lacs. only). We Bank of India, further agree that the guarantee herein contained shall remain in force and effect during the period that would be

taken for the performance of the said agreement and that it shall continue to be enforceable till all the dues of the company under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the company clarifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Contractor and accordingly discharges the guarantee. Unless a demand or claim under guarantee is made on us in writing on or before 19.9.1996 we shall be discharged from all liability under this guarantee thereafter."

Perusal of the same shows that it was bank guarantee given. The same was unconditional. It was with respect to performance of the agreement. The bank had to pay the amount at the asking of respondent No. 2. It cannot be taken to be for a limited purpose. This is the very concept of the bank guarantee. Therefore, the petitioner's argument that bank guarantee could not be encashed is totally devoid of any merit. Close to the facts of the present case is the decision of the Supreme Court in the case of General Electric Technical Services Company Inc. Vs. M/s. Punj Sons (P) Ltd. and another, . While dealing with a similar situation the Supreme Court held :-

"Secondly, the Bank is not concerned with the outstanding amount payable by GETSCO under the running bills. The right to recover the amount under the running bills has no relevance to the liability of the Bank under the guarantee. The liability of the Bank remained intact irrespective of the recovery of mobilisation advance or the non-payment under the running bills. The failure on the part of GETSCO to specify the remaining mobilisation advance in the letter for encashment of bank guarantee is of little consequence to the liability of the bank under the guarantee. The demand by GETSCO is under the Bank guarantee and as per the terms thereof. The Bank has to pay and the Bank was willing to pay as per the undertaking. The Bank cannot be interdicted by the Court at the instance of respondent 1 in the absence of fraud or special equities in the form of preventing irretrievable injustice between the parties. The High Court in the absence of prima facie case on such matters has committed an error in restraining the Bank from honouring its commitment under the Bank guarantee."

Keeping in view the cited decision of the Supreme Court indeed the whole edifice built of the argument advanced by the petitioner's counsel loses its significance. At this stage reference with advantage can be made to the decision of the Supreme Court in the case The State Trading Corporation of India Ltd. Vs. Jainsons Clothing Corporation and another, . The Supreme Court held that in cases of bank | guarantee the court should not interfere with the enforcement of the contract of the | bank guarantee unless there is specific plea of fraud or special equities in favour of the person seeking temporary injunction. In the present case in hand, there is no such fraud pleaded or established and thus the courts below rightly refused to grant the ad interim injunction. Same view prevailed in the case Hindustan Steel Works Construction Ltd. v. Tarapore and Co. and Anr. J.T. 1996(6) S.C. 296.

6. In face of the aforesaid, there is no ground to interfere in the impugned orders
The revision petition, therefore, must fail and is dismissed.