

(1991) 02 DEL CK 0030

In the Delhi High Court

Case No : Civil Miscellaneous Petition No. 2642 of 1990 and Civil Writ Petition No. 1721 of 1990

Transworld Shipping Service (P) Ltd.

APPELLANT

Vs

Central Warehousing Corporation and Others

RESPONDENT

Date of Decision : 25-02-1991

Acts Referred:

Citation : (1991) 43 DLT 588 : (1991) 33 ECC 114

Hon'ble Judges : M.L. Verma, J

Bench : Single Bench

Advocate : D.S. Narula, K.C. Mittal and Manvendra Verma, for the Appellant;

Judgement

M.L. Verma, J.

(1) This order will dispose of the above Civil Miscellaneous Petition for interim relief seeking a direction to respondent No. 1 to destuff the container No. CTIU-4419530 and release and deliver the same to the petitioners.

(2) The petitioners have filed the above writ petition in which rule nisi has been issued. Apart from seeking the relief of release of the container, it has also been prayed in the writ petition that respondents 1 and 2 be directed not to make a claim of ground rent or such other charges against the petitioners, because according to the petitioner, it was not liable to pay the same.

(3) Some relevant facts necessary for disposing of this application may be noticed here. The petitioner is a registered company which inter-alia carries on the business of shipping, brokers and clearing agents. It is stated that 103 and 33 woollen bales were imported by two parties of Panipat namely M/s. Aggarwal Woollen Spinning and Weaving Mills and M/s. Jindal Woollen Industries respectively. The said bales have been imported from Melbourne, Australia through the petitioner. This cargo came to New Delhi via Bombay in a container stated to belong to one Malaysia International Shipping Corporation, Kuala Lumpur. The container came by ship to Bombay. From there it was brought by

respondent No. 2 to the Inland Container Depot. (hereinafter referred to as ICD) at Pragati Maidan, New Delhi on 9.12.87 under Import General Manifest No 2653. There is a slight variance about this fact because according to respondents 2 and 2A the container reached Icd on 4.12.87. However, this will not have any material bearing in disposing of this application.

(4) The container was not emptied at Icd because it was not a full container load (hereinafter referred to as FCL) but less than a container load (hereinafter referred to as LCL) meaning thereby that the container had cargo for more than one consignee viz. the two parties of Panipat. It is stated that there is no bonded warehouse of Customs Authorities at the Icd in Pragati Maidan, New Delhi. It is also stated that consequently only Fcl is destuffed at the Icd and not LCL. The petitioners were informed by respondent No. 1 that the cargo cannot be delivered from Icd at Pragati Maidan but would be delivered from Container Freight Station (hereinafter referred to as CFS) at Patparganj, Delhi. Respondents 2 and 2A were in charge of the Icd and Cfs is under respondent No. 1.

(5) On being so informed, the petitioner requested respondent No. 1 on 15.12.87 to shift the container from Icd to CFS. The ground rent claimed by respondent No. 2 was also paid by the petitioners on 15.12.87 for the period up to 19.12.87 although according to the petitioner it was not liable to pay it. It is the petitioner's case that the container had been brought to Icd erroneously without any fault on the part of the petitioners. A railway receipt No. 278818 was issued for the said ground rent paid on 15.12.87. A copy of this receipt is on the record. On 19.12.87, the petitioners also paid the shifting charges to respondent No. 1 for shifting the container from Icd to CFS. It is an admitted position that as on 19.12.87 no payment was due from the petitioner to any of the respondents. However, the container of the petitioner was still not shifted from Icd to CFS.

(6) "ANNEXURE P. 2" to the writ petition is a letter dated 22.12.87 written to the petitioner from the Cfs of respondent No. 1 informing the petitioner that the railways had not loaded the container of the petitioner on the vehicle of respondent No. 1 in spite of repeated requests because the container was stated to be stuck up in the yard of the railways known as Y-yard in ICD. In the additional affidavit dated 21.8.90 of Shri R.C. Bhardwaj filed on behalf of respondent No. 1, it has been stated that trailer No. Dig 3168 was made available to the railways and that vide letter dated 19.12.87, respondent No. 1 requested the Senior Manager, Icd, Northern Railway, Pragati Maidan, for loading of the petitioners' container on the said trailer. A copy of this letter dated 19.12.87 written by respondent No. 1 to the railways is annexed to this additional affidavit of 21.8.90. In the affidavit of Shri J.S. Mani dated 6.9.90 filed on behalf of respondents 2 and 2A, it is stated in paragraph 3 that the container could not be loaded due to heavy rush of work.

(7) There is no dispute about the fact that as the aforesaid container of the petitioner was in the railway yard at Icd, the petitioner could not shift the container and it was only respondent No. 1 that could do so after collecting it

from the railways. The shifting had to be done by respondent No. 1 from Icd to Cfs on the vehicle of respondent No. 1 for which payment had to be made by the petitioners. As noticed above, the payment had in fact been made by the petitioner and respondent No. 1 had called upon the railways on 19.12.87 to load the petitioners container on their vehicle/trailer for shifting the same to CFS. The railways, however, did not do so. Obviously, this was not because of any lapse on the part of the petitioners. It is not clear as to when there was respite in the rush of work at the Icd and whether the railways communicated with respondent No. 1 as to when the container of the petitioners could be loaded on the vehicle provided by respondent No. 1 for shifting the same to the CFS. In the normal course, it would have been expected that the railways would have loaded the container on the vehicle of respondent No. 1 on 20.12.87 or soon thereafter if they could not do so due to rush of work on 19.12.87. This was not done.

(8) It appears that the representatives of the petitioners had been pursuing the matter with the respondents regarding the shifting of the said container from Icd to CFS. Respondent No. 1 also wrote various letters to the petitioners to the effect that they had issued job orders to the contractor for shifting the container of the petitioners to the Cfs but the job could not be executed since the railways had not released the container. It appears that the railways were demanding ground rent/demurrage from the petitioners for the period after 19.12.87. On 26.12.87, the petitioners wrote to the railways protesting against their unreasonable demand of ground rent after 19.12.87 even though the container could not be shifted for reasons attributable to the railways alone. This letter was in vain and elicited no response from the railways. On 20.1.88, the petitioners again wrote to the railways pointing out that it was for no fault of the petitioners that the container has not been shifted. The petitioners again requested that the railways should waive the demurrage/ground rent ; since it was because of the railways that the container had not been shifted to CFS.

(9) It is the case of the railways that Rs. 1.000.00 per day is chargeable as ground rent on the container. The request for waiver made vide letter dated 20.1.88 was declined in early March 1988. The petitioners again wrote to Chief Marketing Superintendent, Northern Railway, Baroda House, New Delhi appealing against rejection of the request for waiver which was also addressed to him vide letter of 20.1.88. It also appears from Annexure P. 10 to the writ petition that the Senior Manager Icd had written to the Northern Railway, Headquarters on 27.2.88 regarding waiver of ground rent in respect of the container of the petitioners.

(10) The decision regarding waiver of 50 per cent of the ground rent was communicated from the office of the Chief Marketing Superintendent of the Northern Railways, vide letter dated 18.8.88 which is the aforesaid Annexure P. 10. No reasons are stated therein for doing so and for rejecting the request for waiver of the balance 50%. No hearing was afforded to the petitioner for deciding upon the request for waiver of demurrage. According to the railways,

the demurrage/ground rent kept on accruing to them in the meanwhile at the rate of Rs. 1,000.00 per day. The petitioners have also paid Rs. 9,000.00 as demurrage charges to the railways.

(11) It is the case of the railways that under the normal circumstances containers are not shifted from Icd unless all their dues are cleared in advance. It has been so stated in paragraph 14 of the counter-affidavit on behalf of respondents 2 and 2A, sworn by Shri J.S. Mani on 19.6.90. According to the railways this procedure is followed as a rule. In paragraph 20 of Mr. Mani's affidavit, it is stated that the petitioners should have paid the ground rent to the railways and obtained "No Dues Certificate" and that the container had been shifted to Cfs on 6.3.88. It is an admitted position now that none of the respondents informed the petitioners about shifting of the container from Icd to Cfs on 6.3.88 although numerous correspondence had been exchanged between the parties ; copies of which have been annexed to the petition.

(12) According to respondent No. 1, they follow the procedure for handling cargo and the container as per the Cfs Procedure and Tariff. Under these tariffs, ground rent is charged on the containers as per the schedule given therein. According to respondent No. 1, 48 hours after 6.3.88 the petitioners became liable to pay ground rent to respondent No. 1 in respect of the container. up to 13.7.90 the claim made by respondent No. 1 in this regard is Rs. 6,17,800.00 .

(13) The railways do not have any separate procedure for handling the containers/cargo in the ICD. It appears that in the recent past, the Icd came under the charge of Container Corporation of India (hereinafter referred to as the CCI) which has since been established. However, even Cci has no procedure laid down for the aforesaid purpose. Mr.Manvendra Verma, learned counsel appearing for the respondents 2 and 2A, stated that the procedure of respondent No. 1 is followed by respondents 2 and 2A and now by the Cci in that regard. Surprisingly, however, neither the railways nor the Cci has any rules whatsoever for imposition or reduction and/or waiver of demurrage/ground rent.

(14) There are no rules of respondents 2 and 2A or even Cci authorising imposition of any such demurrage/ground rent or the authority who can impose or reduce or waive such demurrage/ground rent and if so, the circumstances under which the same can be done. There are no rules as to whom should an application be made for reduction or waiver of demurrage/ground rent, the time limit within which such an application should be made and in what manner should such an application be made. Consequently, the charge of demurrage itself appears to be without any authority. However, I am not expressing any final opinion in this respect. Mr. Verma did point out that there was a schedule of rates for the imposition of demurrage but even this document has not been placed on record so far.

(15) The dues of the railways had been paid up to 19.12.87 and evidence of such payment furnished to respondent No. 1. Respondent No. 1 knew that the

container had not been shifted by the railways inspire of repeated requests. It is now an admitted position that there is no proforma for any "No Dues Certificate" nor is any such phrase used in the Procedure and Tariff of respondent No. 1, filed on behalf of the railways by Shri Verma in Court on 15.12.90 pursuant to the order dated 5.11.90. In this document it is mentioned that respondent No. 1 will be responsible to the railways if it permits destuffing of the container before realisation of the dues of the railways. It is important to note here, however, that in view of the rule of the railways not to release the container from the Icd or permit shifting of such container to the Cfs without payment of its dues there was no reason for respondent No. 1 to think that the container had reached Cfs without the dues having been cleared. There was no communication from the railways to respondent No. 1 in this regard till 21.6.88 which is a letter written by the railways to Cfs of respondent No. 1 ; a copy of which is on the record. In this letter also what the Manager of Cfs was asked to confirm was that the cargo of the container in respect of which ground rent and other charges were outstanding and payable to the railways should not be delivered without "No Dues Certificate" from Icd office. Admittedly, nothing was due to respondent No. 1 as on 6.3.88.

(16) Mr. D.S. Narula, learned counsel for the petitioners, has urged that this is an unfortunate case where the agencies of the State have involved the petitioners in unnecessary complications. He submitted that the petitioner, are in an unfortunate situation where the consignees have not got their cargo destuffed from the container nor cleared them and the respondents have not released the container. He submitted that there is no authority in law for the railways to claim or charge demurrage or ground rent and in any case they cannot claim it on account of the faults which are attributable to them in not loading the container of the petitioner on the vehicle of respondent No. 1 to shift it to CFS. He further submitted that in the first instance there was no reason why the container in question should have gone to Ico and should not have been sent directly to Cfs since according to the respondents themselves the container which was Lcl could not be destuffed at ICD.

(17) Mr. Narula submitted that since the container had gone to Icd and there was a dispute raised unnecessarily by the railways regarding the ground rent/ demurrage charges and further since according to the procedure followed by the railways, containers are not shifted from Icd without payment of the dues of the railways, there was no reason for the railways to shift the container to Cfs so that the petitioners would have had to deal only with the railways. However, the container having been shifted to Cfs on 6.3.88 without any notice to the petitioners, the respondents should have intimated to the petitioners about the said container having been received in Cfs and should thereafter have destuffed the cargo and released the container after seizing/withholding the cargo. His contention is that as on 6.3.88 respondent No. 1 had no reason to withhold the container and even in the letter of 21.6.88 the railways had merely requested that the cargo should not be released.

(18) Mr. Narula points out that inspired by having sent a notice u/s 48 of the Customs Act, respondent No. 1 has till date not sold the cargo to realise its dues. He submitted that the cargo and the container are two separate things and even under the Customs Act it is only the cargo and not the container which can be withheld/seized. Mr. Narula points out that nobody is benefitting by the non-release of the container for the reason that according to respondent No. 1 ground rent is mounting every day and the petitioners have to bear the cost at the rate of US \$ 10 per day as hire charges for the container. Besides the container is unnecessarily occupying space of respondent No. 1 in Cfs and the owner of the container viz., Malaysia International Shipping Corporation is pressing the petitioner for return of the container. According to Mr. Narula, the petitioner is a company of international repute and at any given point of time 30 to 50 containers of the petitioners are either in Icd or in CFS.

(19) Mr. Narula has submitted that if ultimately the petitioners are found liable to pay the charges claimed by the respondents they would do so but he seeks a mandatory injunction at the interlocutory stage directing the respondents to destuff, release and deliver the container to the petitioners without insisting on the payment of any charges or amount. He has cited the judgment of this Court in the case of Ashok Dhawan Vs. Union of India and Others, wherein this Court had ordered release of the goods ; without payment of demurrage pending final decision in the writ petition. He has also cited the judgment of the Supreme Court in the case of Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, in support of the contention that this is an eminently suitable case where the Court must exercise its power of granting mandatory injunction at the interlocutory stage.

(20) Mr. Narula further submitted that the respondents; which are agencies, organs and instrumentality of the State ; must exercise their power and follow procedures which are reasonable, fair, just and consistent with good governance. Exercise of power by the respondents is an administrative action which must stand the test of Article 14 of the Constitution and should not be arbitrary and unfair. In this connection he has relied upon the judgment of the Supreme Court in the case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, .

(21) Finally, Mr. Narula had submitted that the petitioners have filed an affidavit of Shri V. Ram Narayan undertaking that if the container is ordered to be released and delivered to the petitioners without payment of ground rent and if ultimately the petitioners fail in the writ petition then it shall furnish to respondent No. 1 a container of similar specification as the one lying with respondent No. 1 for restitution. He submits that, Therefore, the respondents should have no objection to the prayer in this application being allowed. It may be noticed that an affidavit dated 19.11.90 has been filed by one Shri V.Ram Narayan, Director of the petitioner. Along with this affidavit and extract of the minutes of the Board of Directors" of the petitioner authorising the said Mr. Ram

Narayan to file the affidavit in this regard, has also been placed on record.

(22) Mr. K.C. Mittal learned counsel for respondent No. 1 and Mr. Verma submitted that the respondents are not opposed to the container being destuffed and released to the petitioners but before that was done, they contended, that the petitioner must clear the dues of the respondents. According to Mr. Verma the petitioner should have paid the dues of the Railways and should have got the container released. Similarly Mr. Mittal contended that if the dues of respondent No. 1 were paid then the container would have been destuffed and released. It is evident, Therefore, that the release of the container is not opposed if the dues of the respondents are paid. The question is whether anything is payable by the petitioners to the respondents for the container to be released and whether till the final disposal of the case the release of the container should be conditional upon payment of the claimed amount. Neither counsel, however, disputed that mandatory injunction can be issued at this stage and that interim injunction in mandatory form can be granted,

(23) Mr. Mittal submitted that the cargo and the container are not separate but one and the same thing. For disposing of this application it is not necessary to decide this point. Mr. Mittal further submitted that even though in the letter of 21.6.88 the Railways had written to respondent No. 1 not to release the "cargo." without the clearance of the dues of the railways yet respondent No. 1 could not destuff and release the "container" till the dues of the railways had been cleared. His contention is that in any case the dues of respondent No. 1 must be paid before the container can be destuffed " and released to the petitioner. He submits that respondent No. 1 did not release the container earlier because of non-payment of the dues of the railways so that according to him, as per the procedure and tariff, if respondent No. 1 had released the goods without the dues of the railways being cleared then the respondent No. 1 would have become liable to pay the same to the railways. He reiterated that respondent No. 1 was entitled to ground rent which must be paid by the petitioners before the container was destuffed, released and delivered to the petitioners.

(24) Learned counsel for the respondents contended that the petitioners are the consignees also and, Therefore, the argument about the consignees and the petitioners being different is untenable according to them. It may be noticed here that a letter dated 30.1.90 which is on record mentions about the notice u/s 48 of the Customs Act having been issued to the aforesaid two parties of Panipat who had imported the woollen bales noticed earlier. In any case whether the petitioners are also consignees or not need not be decided at this stage while disposing of this application.

(25) It is obvious that the container had cargo which was dutiable under the Customs Act and, Therefore, unless the duty had been paid the goods could not be cleared. However, no customs duty is payable on the container. The container had been taken to the Icd but because it was an Lcl, Therefore, subsequently it was sent by the railways to the Cfs, although according to the petitioners it.

should never have gone to the Icd at Pragati Maidan, New Delhi. The petitioners are seeking the release of the container after destuffing it and not with the cargo. It is the case of the petitioners that under the Customs Act the container cannot be seized, and if the container had been lifted and shifted by the railways on 19.12.87 then even if the cargo had not been cleared by paying the duty it could have been destuffed and the container could have been released.

(26) At the present, for deciding this application, it is neither necessary nor appropriate to express a final opinion on these points or on various other points involved in the writ petition such as the question regarding the measure of public accountability of public authorities ; the authority of the railways to charge demurrage/ground rent without there being any rules for the purpose ; the question whether any demurrage is payable to respondent No. 1 or respondent No. 2 or 2A and if so by whom and to whom and at what rate and from "which date. The provisions of Article 300 A of the Constitution of India may also have to be considered while deciding the question of the demurrage or. ground rent being claimed by the railways. The questions whether the container can be retained or detained and whether the container and cargo are the same or separate will be decided, if necessary, when the writ petition is finally disposed of.

(27) The law relating to grant of mandatory injunctions at the interlocutory stage has been discussed and laid down by Supreme Court in the recent judgment in the case of *Dorab Cawasji Warden (supra)*. Paragraphs 12, 13, 16 and 17 of the judgment may be quoted here with advantage :

"12. In *Evans Marshall & Co. Ltd. v. Bertola Sa* the Court of Appeal held that:.
"Although the failure of a plaintiff to show that he had a reasonable prospect of obtaining a permanent injunction at the trial was a factor which would normally weigh heavily against the grant of an interlocutory injunction, it was not a factor, which, as a matter of law, precluded its grant" ;

The case law on the subject was fully considered in the latest judgment in *Films Rover International Ltd. v. Cannon Film Sales Ltd.*, Hoffmann, J. observed in that case : (All Er PP. 780-81)

"BUT I think it is important in this area to distinguish between fundamental principles and what are sometimes described as "guidelines" i.e. useful generalisations about the way to deal with the normal run of cases falling within a particular category. The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the "wrong" decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is Therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been "wrong" in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived

from this principle."

Again at page 781 the learned Judge observed :

"THE question of substance is whether the granting of the injunction would carry that higher risk of injustice which is normally associated with the grant of a mandatory injunction. The second point is that in cases in which there can be no dispute about the use of the term "mandatory" to describe the injunction, the same question of substance will determine whether the case is "normal" and Therefore within the guideline or "exceptional" and Therefore requiring special treatment. If it appears to the court that, exceptionally, the case is one in which withholding a mandatory interlocutory injunction would in fact carry a greater risk of injustice than granting it even though the court does not feel a "high degree of assurance about the plaintiff's chances of establishing his right, there cannot be any rational basis for withholding the injunction."

and concluded that:

"THESE considerations lead me to conclude that the Court of Appeal in *Locabail international Finance Ltd. v. Agroexport* was not intending to "fetter the court"s discretion by laying down any rules which would have the effect of limiting the flexibility of the remedy, to quote Lord Diplock in the *Cyanamid* case. Just as the *Cyanamid* guidelines for prohibitory injunctions which require a plaintiff to show no more than an arguable case recognise the existence of exceptions in which more is required (*Compare Cayne v. Global Natural Resources plc*), so the guideline approved for mandatory injunctions in *Locabail* recognises that there may be cases in which less is sufficient."

On the test to be applied in granting mandatory injunctions on interlocutory applications in *Halsbury's Laws of England*, 4th edn. Vol. 24, para 948, it is stated:

"A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in respect of which complaint is made so that when he receives notice of an interim injunction it is completed, a mandatory injunction will be granted on an interlocutory application."

"13. The law in United States is the same and it may be found in 42 American Jurisprudence 2d page 745 et seq."

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or

the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are : (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction. (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money. (3) The balance of convenience is in favor of the one seeking such relief.

"17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

(28) On the basis of the law laid down by the Supreme Court. I am of the view that this application should be allowed. The petitioners have established a strong case in the petition. The balance of convenience is also in favor of the petitioners. If the railways had not taken the container to Icd and had sent it to Cfs then the claim of the railways for demurrage would not have arisen at all. If the railways had lifted and shifted the container of the petitioners on the trailer of respondent No. 1 made available to the railways on 19.12.87. then the container would have been taken by respondent No. 1 to Cfs from where within 48 hours the petitioner could and would have got his container after the same had been destuffed even if customs duty had not been paid on the cargo. The railways could not load the container on the trailer on 19.12.87 for reasons attributable to them and thereafter the complications started.

(29) The railways claimed demurrage/ground rent for the period beyond 19.12.87; the petitioners contended that it was not liable to pay any such charges. The railways did not release the container. Then suddenly on 6.3.88 they shifted the container to Cfs even without payment of their dues ; which should have been realised ; if any such payment was due ; before Realizing the container. No intimation was sent about this shifting to the petitioner. If the railways had not shifted the container to Cfs of respondent No. 1 then the petitioner would have had to deal with only the railways and the claim of respondent No. 1 for ground rent would not have arisen. After 6.3.88 respondent No. 1 declined to destuff and release the container because of the dues of the railways and meanwhile the respondent No. 1 also claimed ground rent. The owners of the container are supposed to be charging Us \$ 10 per day as was stated on behalf of the petitioners and in any event valuable space of respondent

No. 1 is unnecessarily being occupied by the container.

(30) It is, Therefore, necessary to cut the Gordian knot. There appears no reason to allow the matter to reach a point of no return because rent ; if chargeable ; will keep on mounting and cause irreparable harm to the petitioners. Since the respondents do not oppose the release of the container but insist upon the payment of their dues and since that very question will have to be decided in the writ petition I am of the opinion that the container should be destuffed released and delivered to the petitioner without payment of any amounts to the respondents subject to the final decision in the writ petition. I am of this view because it is evident to me that more damage would be caused if a mandatory order is not made at this stage. There is precedent of a Division Bench of our Court also, in the case of Ashok Dhawan (supra), for ordering release of goods without payment of any demurrage or ground rent pending final decision in the writ petition.

(31) Consequently I direct the respondents to destuff the container No. Citu 4419530 and release and deliver the same to the petitioners within 30 days from today without demanding any further payment or amount from the petitioners. I make this order also because of the undertaking given on behalf of the petitioners regarding restitution, but I am of the opinion that even if such an undertaking had not been furnished to the Court the petitioners would have been entitled to the interim order on this application being made in the mandatory form.

(32) The views expressed in this order will not have any bearing on the final decision of the matter. There will be no order as to costs.