

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) NO. 195/2009 and CM No. 7187/2009**

Reserved on : May 26, 2009

Date of Decision : May 27, 2009

Ashok Leyland Ltd. and Ors.

.....Appellants

Through : Dr. Abhishek Manu Singhvi,
Sr. Advocate and Mr. Sanjay Jain,
Sr. Advocate with Mr. S.K.
Bansal, Mr. Tarun Singla and
Mr. Ajay Amitabh Suman,
Advocate.

Versus

Babbar Wreckers Pvt. Ltd. & Anr.

.....Respondents

Through : Mr. A.S.Chandioke, Sr. Advocate
and Mr. J.P. Sengh, Sr. Advocate,
with Mr. Hemant Singh, Mr.
Deepak Dewan, Ms. Mamta R.Jha
and Mr. Manish Mishra,
Advocates, for respondent no.1.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment? ✓
2. To be referred to the Reporter or not? ✓
3. Whether the judgment should be reported in the Digest? ✗

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JUDGMENT

: MUKUL MUDGAL, J.

1. This appeal challenges the ex-parte order of the learned Single Judge dated 4th May, 2009 in Civil Suit (Original Side) No. 803/1999 and IA No. 5916/2009 under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short 'CPC'). The respondent no.1 had filed a suit against the appellants for specific performance and permanent injunction restraining the appellants from infringing the plaintiff's copyright, committing breach of confidence and for rendition of accounts in respect of a supply order 286 LRVs (Wreckers) received by it from the Union of India.

2. The case set up by the respondent no.1 in the plaint was that the appellant no.1 was not lifting the delivery of the vehicles though the respondent no.1's unit to be installed on the appellant's vehicles were ready. The plaint was founded on the exclusive ownership of the copyright of the wrecker unit to be installed on the vehicles by the respondent no.1. The learned Single Judge, at

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the *ex parte* stage formed a *prima facie* view and restrained the appellant no.1 to 3 from using the drawings of the plaintiff to make supply of LRVs (Wreckers) to respondent no.2 found fabricated as per the said drawings upon the cancellation of the appellant's licence. The appellants have come up in appeal and according to it them impugned order has effectively decreed the suit on the first date of hearing by ordering specific performance of the contract, which the plaintiff claims exists in its favour, inasmuch as by grant of an injunction, the respondent no.1 is in fact asking for specific performance of the contract, of it with the appellant, as per which contract the appellant no.1 had promised to take 50 wrecker units to the respondent no.1 to be installed on the vehicles of the appellant for supply to the Union of India. The appellant states that such relief of injunction is barred by Section 14(a) of the Specific Relief Act, 1963 read with Section 41(e) of the said Act inasmuch as if there was a breach of contract as alleged by the respondent no.1, the same could be compensated by money, which relief the respondent no.1/plaintiff has claimed, therefore, in such a case, the respondent no.1 is disentitled to

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specific performance and injunction under the aforesaid provisions of the Specific Relief Act.

3. After notice, Dr. A.M. Singhvi and Mr. Sanjay Jain learned Senior counsel for the appellants and Mr. A.S. Chandioke and Mr. J.P. Sengh learned Senior counsel for the respondent, were heard. During the course of hearing, the appellant had made certain suggestions which in our view would amply meet the interest of justice while protecting the interest of the respondent no.1 which may be available at the interlocutory stage. The suggestions made by the appellant is as under: -

“1. DGQA have already inspected materials/components for all 286 wreckers offered by appellant No. 2 and has given clearance (refer clearance certificate and page No. 703).

2. Now as per norms of R-2, R-2 will not make fresh inspection of material/components which may be offered by R-1.

3. So it will help nobody if appellants are directed to consume 50 wreckers of R-1 for this order.

4. Appellants offer to consume 22 units of R-1 against the order which A-1 has received from Border Security Force, bonafidely, believing that 50 wreckers are fully ready with R-1 as on date as claimed by R-1.

5. For remaining 28 wreckers A-1 undertake to consume against the next order which A-1 may receive. For this A-1 undertake to give priority to R-1 for these 28 units/wreckers against any other vendor.

6. Regarding money – for 22 units for which appellants will place purchase order immediately on R-1 as per order of ESF and for 28 units, appellants are ready to secure R-1, in any way the Court directs (not by paying to R-1 directly, but by way furnishing bank guarantee or in any other form of security to be deposited in Court.)”

4. In our view the suggestion made is just and fair because it provides for payment as per the practice, upon clearance from the Union of India, after installing of the wrecker units on the vehicles given to the appellant by the respondent no.1. Thus, a provision is made that for the installation of 22 units, the respondent no.1 would be paid for immediately out of the 50 units contracted for but even for the future orders of 28 wrecker units, the respondent no.1 is fully protected as appellant had gone to the extent of furnishing the bank guarantee for the price payable to the respondent as per the contract upon receipt of any further orders by the appellant. In our view the offer of the appellant amply protects the interests of both the parties.

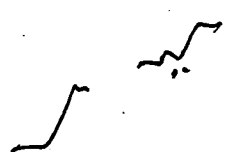
5. Accordingly, suggestions 1 to 6 as given by the appellant are accepted by this Court and we hold the appellants bound by the same. The appellants or any one of them are bound to furnish

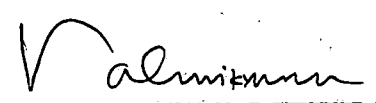
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Bank Guarantees in terms of their suggestion no.6 within a period of two weeks from today and which when filed shall be placed before the Registrar General for scrutiny and acceptance. In addition, we clarify that the injunction qua the copyright claimed by the respondent no.1 shall continue until the application filed under Order 39 Rules 1 and 2 filed by the respondent no.1 and under Order 39 Rule 4 proposed to be moved by the appellant within two weeks from today shall be disposed of, preferably on or before 31st August, 2009.

6. We make it clear that the interim order in respect of copyright protection available, will not be available in respect of the 286 units to be supplied to the respondent no.2 under the existing contract and for 50 units for which we have already passed this order but with respect to further manufacture, copyright shall subsist as claimed by the respondent no.1 until the disposal of the applications under Order 39 Rules 1 and 2 of the plaintiff/respondent no.1 and the application proposed to be moved by the appellants/defendants under Order 39 Rule 4. The appeal is allowed to the extent indicated above and stands disposed of.

7. Parties are directed to appear before the learned Single Judge on 6th July, 2009. The appellants shall file their written statement and their replies/applications within two weeks from today. The learned Single Judge is requested to dispose of the injunction application of the respondent no.1/plaintiff by 31st August, 2009. All the parties state that they shall not seek an adjournment during the hearing of the injunction application under Order 39 Rules 1 and 2 CPC filed by the respondent no.1/plaintiff and the application under Order 39 Rule 4 CPC filed by the appellant. It is further stated that all parties and counsel shall cooperate for an expeditious disposal of the aforesaid application.


(MUKUL MUDGAL)
JUDGE


(VALMIKI J. MEHTA)
JUDGE

May 27, 2009
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Frsh cm 18910/10 u/s 15 CPC for directions (vol. IV)
" 18911/10 Exemption. (vol. IV)