

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

**C.S. (OS) No.2234 of 2009 & I.A. Nos.15337 of 2009,
15338 of 2009 and 16353 of 2009**

%

23.12.2009

TUFF DRILLING PRIVATE LIMITED

.....Plaintiff

Through: Mr. Gaurav Kejriwal, Advocate.

Versus

JUBLIANT OIL & GAS PVT. LTD. & ANR.

.....Defendants

Through: Mr. Amit S. Chadha, Sr. Advocate with
Mr. Dheeraj Nair & Mr. Divyanshu, Advs.

Date of Reserve: 21st December, 2009

Date of Order: 23rd December, 2009

JUSTICE SHIV NARAYAN DHINGRA

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

J U D G M E N T

1. The plaintiff has filed this suit for permanent injunction with following prayers.

- i. *pass a decree for permanent injunction restraining the defendant no.1/its officials/nominees from terminating the Letter of Award dated 21.8.2009 and further restraining the defendant no.1 from acting upon letter dated 17.11.2009; and*
- ii. *pass a decree for permanent injunction restraining defendant no.1/its officials/nominees from awarding tender being tender document number JOGPL/602/09-10/TD/0001 dated 29.5.2009 granted to plaintiff vide Letter of Award dated 21.8.2009, to any third party; and*
- iii. *pass a decree for injunction restraining the defendant no.1 and defendant no.2 from invoking Performance Bank Guarantee dated 26.8.2009 amounting USD 159,162.90 with defendant no.2 bank.*

2. The plaintiff was awarded a contract by defendants vide letter dated 21st August, 2009. One of the conditions of the awarding contract was that the plaintiff would furnish performance bank guarantee of USD 159,163 within seven days of issue of Letter of

Award. The plaintiff furnished performance bank guarantee dated 26th August, 2009 in terms of the contract. The contract awarded to the plaintiff was for drilling an oil well in terms of the contract. The plaintiff was to depute a rig for the execution of work at the site of the work. This rig was not deputed by the plaintiff till October, 2009. A meeting took place between the parties regarding deputation of the rig and equipment on the site and a schedule of deputation of rig was agreed between the parties. As per this schedule the deputation of rig and equipment had to start by 5th November, 2009 positively. The schedule provided a programme in the shape of load 1, load 2, etc., upto load 49. The programme shows that load 1 to load 49 vis-à-vis equipment and rig were to be in place by 13th November, 2009. The schedule as agreed between the parties was not adhered to by the plaintiff and it appears that the rig to be deputed by the plaintiff was under finance from a financier and the financier had filed proceedings against the plaintiff before Calcutta High Court and got a court receiver appointed with the result that the rig was not permitted to leave Gujarat. The defendants wrote letter dated 12th October, 2009 to the plaintiff about its apprehension that the rig was being taken over by financier through a court receiver. The plaintiff, however, denied this apprehension of the defendants vide its response dated 14th October, 2009. However, it is clear that the Calcutta High Court did pass an order on 23.9.2009 for appointment of receiver and the court receiver was in the process of taking over the rig. Some talks took place between the plaintiff and the defendants for deputation of another rig, however, the other rig also was not deputed and the defendant terminated the contract and encashed the performance bank guarantee. The plaintiff's contention is that the defendants had failed to inspect the rig and had also not written a letter for movement of the equipment which resulted into non-deputation of the rig within time. There was no fault of the plaintiff.

3. Notice of the suit was not served upon the defendants, however, counsel for the

defendants after finding the case in the cause list, put appearance in the court and brought it to the notice of the court that the plaintiff has not placed full facts on record and has also not brought to the notice of the court that the rig was attached by Calcutta High Court and receiver was appointed. He placed on record a copy of Calcutta High Court judgment showing that the movement of rig outside State of Gujarat was prohibited and court receiver was appointed.

4. The defendant in this case had got contract from another party and had sub-contracted a part of the work to the plaintiff. The defendant on finding that non-adherence to the schedule and non-deputation of the rig would entail enormous damages for the defendant, it terminated the contract and invoked the performance bank guarantee. Learned counsel for the defendants informed that the contract has already been awarded to a third party.

5. Even otherwise, I consider that where the contract is terminable by nature, a suit for injunction restraining one of the parties from terminating the contract does not lie. Section 14 of the Specific Relief Act provides that a contract which in its nature is determinable cannot be specifically enforced.

6. When the attention of counsel for the plaintiff was brought to this provision of Specific Relief Act, the counsel for the plaintiff pleaded that the case of the plaintiff was covered under Section 14 (3) (c) and submitted that the contract was such that the compensation in money would not be an adequate relief. He submitted that rig was not a common commercial item and the plaintiff had been keeping the rig in waiting for deputing at the site and termination of contract would cause an irreparable loss to the plaintiff which cannot be compensated.

7. I do not agree with the plaintiff's contention. Firstly, the rig was not in awaiting, in fact, the rig was under attachment of the order of the court and could not move out of Gujarat and a receiver had been appointed by Calcutta High Court. Secondly, the plaintiff has not placed on record any other material that the other rig was also in awaiting. Thirdly, even if the rig had been in the waiting, the waiting charges can always be claimed by the plaintiff by way of damages/compensation along with other damages, if any, in case the plaintiff considered that the contract had been illegally terminated. In the contract of given nature, the only remedy available to the plaintiff, in case of wrongful termination of contract, is to claim damages and compensation. Specific performance of such a contract or injunction prohibiting termination cannot be granted.

8. A suit for permanent injunction restraining the defendants from not invoking the bank guarantee or from not awarding contract to anyone else and forcing the defendants to accept services of the plaintiff is not maintainable. I, therefore, find that the present suit is not maintainable and is liable to be dismissed. The plaintiff would be at liberty to avail the remedy of claiming damages and compensation, if so advised.

9. In view of the above observations, the suit is hereby dismissed.

SHIV NARAYAN DHINGRA J.

DECEMBER 23, 2009
'AA'