

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

+ **LPA 147/2010**

% Reserved on: 26th April, 2010

Decided on: 3rd June, 2010

MOHD. HAROON

Prop. M/s Adil Tin Scrap Store

462, Shahzada Bagh

Inder Lok, Delhi-110 035

..... Appellant

Through: Mr. Varun Goswami, Advocate.

versus

1. **UNION OF INDIA**

Through Managing Director

Container Corporation of India Ltd.

C-3, Mathura Road, Opposite Apollo Hospital

New Delhi-110 076

2. Chief General Manager, Northern Region

Container Corporation of India Ltd.

Inland Container Depot

Tughlakabad

New Delhi-110 020.

..... Respondents

Through: Mr. R.K.Joshi, Mr. Jyotindra Kumar,
Advocates for R-2.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment?

Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported
in the Digest? Yes

MUKTA GUPTA, J.

1. The present appeal lays a challenge to an order dated 8th January, 2010 dismissing the writ petition being WP(C) No.10617/2006 filed by the Appellant.

2. The brief facts leading the Appellant to file the writ petition are that he was trading in metal scrap in the name of M/s. Adil Tin Scrap Store and pursuant to an auction notice dated 15th June, 2005 in the leading newspapers, proposing to dispose of different scrap materials including HMS contained in 30 containers by public auction on “As is where is” basis, the Appellant applied for the same. In the auction notice, neither the reserve price nor weight nor quantity was mentioned. He paid the entry fee of Rs.250/- and deposited the refundable security of Rs.20,000/- for participating in the auction. Prior to the auction, the Appellant also inspected the goods. The Appellant participated in the auction and being the highest bidder, his bid for lot Nos.39 and 59 was accepted whereupon he tendered the advance of 30% amounting to Rs.4,55,000/-. According to the Appellant he later on had

reasons to believe that the weight of the scrap was not as was orally informed to him by the officers of the Respondent. As weight of the scrap was not reflected in the respective bills of lading and also the Import General Manifest, he approached the custom authorities to know about the valuation of the goods put up for auction under the Right to Information Act vide application dated 20th April, 2006. As the Appellant wrongly mentioned the date of auction, no information was provided. The custom authorities refused to give the information otherwise also and vide letter dated 6th May, 2006 and 8th May, 2006, the Respondents called upon the Appellant to take delivery of the goods which were auctioned on “As is where is” basis. According to the Appellant he not only lost because the weight of the scrap was far less than was represented to him but was also losing Rs.5,000/- per day on account of ground rent and payment to the transporters, besides, brokerage and huge amount of capital invested in the goods.

3. The Appellant thereafter filed a writ petition being WP(C) No.10617/2006 inter alia praying for quashing of the entire auction held on 15th June, 2005 vide lot Nos.39 and 59 comprising of 5 containers of HMS scrap, quashing of old demand raised by the Respondents towards the ground rent and penalty for the three trucks lying loaded in the bonded area at Inland Container Depot, Tughlakabad, refund of Rs.19,17,760/- with interest and

refund of Rs.2,70,000/- paid to the transporters with interest. The learned Single Judge dismissed the writ petition vide order dated 8th January, 2010 on the ground that the writ petition involved serious disputed questions of fact, however, gave liberty to the parties to get their disputes adjudicated in the appropriate forums.

4. According to the learned counsel for the Appellant, the writ petition was pending in this Court since 2005 and finally on 8th January, 2010 it was dismissed on account of the fact that it involved disputed questions of fact. It is contended that the learned Single Judge ought not to have relegated the Appellant to a tedious, lengthy and alternate remedy of filing a suit. According to him there were absolutely no questions of fact on record which were required to be relegated for adjudication by filing a civil suit.

5. The Appellant in support of his contentions has relied upon the decisions of this Court in *Manju Gupta and Another v. Delhi Development Authority*, 103(2003) DLT 776 and *Videocon Leasing and Industrial Finance Ltd. and Another v. Municipal Corporation of Delhi and Others*, 117 (2005) DLT 260.

6. Per contra learned counsel for the Respondents submits that there is no merit in the present appeal. The contention of the learned counsel for the

Appellant that there is no dispute on facts is wholly incorrect. The Appellant had inspected the goods prior to the auction and had certified that the inspection has been carried out to his satisfaction. The Appellant cannot now turn around and say that he was not aware of the weight of the goods. It is contended that proper adjudication of all these disputes on fact can only be gone into after the parties have adduced their evidences and the same cannot be done merely by filing of affidavits in a writ petition. According to him, the learned Single Judge rightly declined the discretionary relief under Article 226 of the Constitution of India.

7. After hearing learned counsel for the parties, we find that undoubtedly the present petition involves serious disputed questions of fact which require proper adjudication after adducing of evidence. According to learned counsel for the Appellant, the Appellant was disclosed the weight orally by the officers of the Respondents whereas the same is denied by the Respondents. According to the Respondents the auction was not conducted by them but by the auctioneers SMG B.T. Pvt. Ltd. and thus there was no occasion for the officials of the Respondents to have disclosed the weight of containers orally to the Appellant. To ascertain whether the officers of the Respondents represented the weight as stated by the Appellant and whether the actual weight of the auction material was as was being projected by the Respondents

or 40% to 50% less than the weight indicated in the IGM, the same cannot be adjudicated without recording evidence in respect of the claims and counter claims.

8. The decision rendered by this Court in the case of ***Manju Gupta and Another*** has no application to the facts of the present case as in the said case the area was specified in the auction, however, on inspection at the time of auction it was found to be incorrect. The Respondent therein sought to subsequently clarify that the areas specified in the auction included 50% of the basement area forfeited. Thus, this Court held that it was obligatory on the part of the Respondents to inform the right area to the Petitioner's therein. Even the judgment rendered in ***Videocon Leasing and Industrial Finance Ltd. and Another*** has no application to the facts of the present case. In the said case this Court held that the covenant in the lease deed which was in relation to "as is where is" status of structure and land, cannot extend to accepting liability of property tax payable for previous years, that is, even prior to the execution of the lease deed.

9. The law, on the point, has been settled by the Hon'ble Supreme Court in a catena of decisions. In ***ABL International Ltd. and another vs. Export Credit Guarantee Corporation of India and others, 2004 (3) SCC 553***, the Hon'ble Supreme Court held that if the dispute related only to examining the

terms of the contract without taking recourse to any external aid then the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, can examine the case. However, in the present case the issue is not that of interpretation of the contract but the Appellant is seeking variation of the terms of contract by invoking Sections 91 and 92 of the Evidence Act, stating that the weight of the auctioned material was orally informed to him by the Officers of the Respondents and he has reasons to believe that the weight as informed to him was incorrect. Thus, this being the variation to the terms of the contract, evidence would have to be led to find out the veracity of the same. The said issue cannot be decided merely on affidavits filed in the writ petition without putting the parties to cross examination.

10. We find no infirmity in the order passed by the learned Single Judge. Hence, the appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(MADAN B.LOKUR)
JUDGE

JUNE 03, 2010
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