

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

Date of Reserve: July 29, 2010
Date of Order : August 06, 2010

+ Crl.M.C.No. 2403/2010

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06.08.2010

**Classic Furniture Manufacturing Co.
Pvt. Ltd.**

... Petitioner

Through: Mr. Sakal Bhushan, Advocate

Versus

DHL Lemuir Logistics Pvt. Ltd. & Ors.

... Respondents

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?

JUDGMENT

By present petition, the petitioner has assailed an order dated 16th April, 2010 passed by learned MM dismissing complaint of the petitioner holding that the petitioner has failed to show the commission of offence.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner filed a criminal complaint against the respondents alleging commission of offence under Section 420/407/120-B IPC. The petitioner, a manufacturer of wooden furniture had entered into a contract with Koti-Idea OY, Finland based company for supply of furniture. Koti-Idea OY appointed DHL Global Forwarding (Finland) as its Original Consolidator, Cargo and Purchase Order Manager for India. The intimation about this was sent to the

petitioner and vide letter dated 22nd May, 2008 and the relevant portion of the letter is as under:

“Effective (05/22/08) you are required to contact the applicable DHL Global Forwarding office to book all cargo. DHL Global Forwarding office will assist you to ensure proper cargo bookings, cargo routing and cargo delivery. You will also be required to submit all necessary and required commercial documents (commercial invoices, packing lists, etc.) for each shipment to the applicable DHL Global Forwarding office.

All bookings must be made in writing. DHL Global Forwarding office will assist you to ensure proper cargo bookings, cargo routing and cargo delivery. All cargo must be booked 14 days before the ETD (Estimated Time of Departure).

Based upon cargo bookings, proper routing, confirmation of cargo delivery and the receipt of complete commercial documents, DHL Global Forwarding will issue a DHL Global Forwarding/Danmar House Bill of Lading to you as a negotiable document for payment to your company by KOTI-IDEA OY. Once you have returned the B/L to DHL Global Forwarding office, please ask them to issue a TELEX RELEASE of the B/L.”

3. The petitioner company in order to fulfill its contract with the Koti-Idea for supply of furniture, booked furniture items at Integrated Container Depot, Tughlakabad (ICD TKD) New Delhi worth US\$ 2,03,064.45. The contract between the petitioner and Koti-Idea OY was “FOB Mumbai”, the freight from New Delhi to Mumbai was to be paid by the complainant company/petitioner and freight charges from Mumbai to Finland were to be borne by Koti-Idea OY. The respondent who was having cargo ships was also acting as a carrier of these items from Mumbai to Finland and carried these goods from Mumbai to Finland. However, when the goods reached at Finland, Koti Idea OY by that time had become insolvent (bankrupt) and was not in a position to take the goods thus, the goods remained parked at Finland

Port and the respondent had to incur demurrage charges/parking charges as well. The respondent had also to recover cargo shipment charges. The petitioner asked respondent to return the goods sending a notice. The stand taken by the respondent was that it had a lien over the goods for recovery of its transportation charges and other charges for being parked at the port etc. and it refused to transport the goods back to India from Finland and handover the same to the petitioner unless the freight charges were paid by the petitioner. Hence, the petitioner filed this criminal complaint.

4. The learned MM referred to Sections 50 & 52 of 'Sale of Goods Act 1930' and came to the conclusion if the buyer of goods becomes insolvent, the unpaid seller who parted with the possession of the goods, has a right of stopping them in transit and under Section 52, the unpaid seller may after exercising his right of stoppage in transit, take actual possession of the goods giving notice to the carrier. Under Section 52(2), when notice of stoppage of transit is given to the carrier, the carrier is duty bound to re-deliver the goods to the seller provided all expenses of re-delivery are borne by the seller. Section 52 of Sale of Goods Act provides that the carrier has a right to exercise its lien over the goods for recovery of freight charges and the learned MM, therefore came to the conclusion that the refusal of the carrier to return the goods, unless the freight charges were not paid, was as per law and no offence was made out against the carrier/respondent.

5. It is argued by the Counsel for the petitioner that the carrier in this case was not a simple carrier, it was an agent of Principal viz. Koti-Idea. The goods were handed over to the agent of the Principal and the agent was bound to return the goods once the Principal had become bankrupt.

6. The letter dated 22nd May, 2008 makes it clear that the respondent was not an agent of the Principal simplicitor but respondent was the cargo booking, cargo routing and cargo delivery agency appointed by the Koti-Idea OY. It is not disputed that the respondent was mainly a cargo company dealing in cargo booking and cargo delivery business. The letter itself shows that the principal function of the respondent was cargo booking, cargo routing and cargo delivery. The respondent therefore was acting as a carrier and unless the freight charges/cargo charges and shipment charges of the respondent were paid, the respondent in terms of Section 52(3) of Sale of Goods Act, had a lien over the goods booked. The respondent was within its rights to refuse to return the goods without receiving its cargo charges/ shipping charges.

7. I find no force in this petition. The petition is not maintainable and is hereby dismissed.

August 06, 2010
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SHIV NARAYAN DHINGRA, J.