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HIGH COURT OF DELHI: NEW DELHI

Judgment reserved on: January 18, 2011
Judgment pronounced on: March 04, 2011

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C.S. (OS) No. 1553/1997

% M/s. Sehgal Knitwears ... Plaintiff
Through: Mr. Pravir K. Jain, Advocate

versus

Union of India & Ors. ... Defendants
Through: Mr. K.N. Bhat, Senior Advocate with
Mr. H.S. Parihar, Mr. K.S. Parihar,
Advocates for Defendant No. 3 - RBI.
Mr. Jagdeep Kishore, Advocate for
Defendant No. 4-PNB.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | } | No. |
| 2. To be referred to Reporter or not? | | |
| 3. Whether the judgment should be reported in the Digest? | | |

SUNIL GAUR, J

1. This is second round of litigation for the Plaintiff, who seeks to recover a sum of Rs.51,89,972/- with pendentelite and future interest @ 18% per annum, as the interest from 1st September, 1992 till 29th January, 1997, payable on the principal amount, which was released to it by Punjab National Bank in the writ proceedings, i.e. C.W.P. No.2058/1995 and the said petition was

2. The genesis lies in the export of goods by the Plaintiff firm in pursuant to the order placed by Soviet Association for Business Promotion with India with one M/s. Traders India and accordingly opened an irrevocable Letter of Credit (LC) of 10th March, 1992 on VNASECONOM BANK, Moscow, Russia (hereinafter referred to as the Foreign Bank). As per the Plaintiff, subsequently the said Letter of Credit (LC) of 10th March, 1992 was transferred in the name of the Plaintiff firm, who had exported the goods as per Invoices - Ex.PW-1/3 to Ex. PW-1/14, vide Air Bills - Ex. PW-1/15 to Ex.PW-1/24. It is the case of the Plaintiff that Defendant No. 5 – UCO Bank of the Plaintiff had submitted the claim for payment in respect of the exports made, with Defendant No. 4 – Punjab National Bank.

3. Plaintiff claims that on completion of requisite formalities, the Foreign Bank issued necessary instructions to Defendant No. 4 – PNB, who was authorized by Defendant No. 3 - Reserve Bank of India to release the payments to the Plaintiff through its banker Defendant No. 5 – UCO Bank. The precise case of the Plaintiff is that inspite of Tested Payment Advise, released by Foreign Bank vide communications – Ex.PW-1/27 to Ex. PW-1/30 from June, till August, 1992, Defendant No. 1 to 4 failed to release the payments. Plaintiff avers that its banker vide letter of 3rd June, 1992 had furnished the necessary documents to Defendant

paid by Defendant No. 4 bank to Plaintiff's banker and this was communicated vide letter of 27th January, 1997.

4. According to the Plaintiff, its banker, Defendant No. 5 – UCO Bank had granted certain facilities to the Plaintiff for meeting its export commitments and had been charging interest at different rates compounded quarterly from time to time, over and above the bank rate prescribed by Defendant No. 3 - Reserve Bank of India. Copy of certificate issued by Plaintiff's banker in respect of rate of interest prevailing during the period in question, on cash-credit and export packing credit, relied upon is Ex.PW-1/43. Vide Statutory Notice of 7th April, 1997, Plaintiff has called upon the Defendants to pay the interest, i.e., the suit amount, but in vain. Hence, this suit, to which the response of Reserve Bank of India – Defendant No. 3 is that this suit is barred under Section 78 of the Foreign Exchange Regulation Act, 1973. The claim to the suit amount, i.e., the interest is refuted by asserting that as per the then prevailing terms of arrangements between India and Russia, no interest is payable in respect of any such claim.

5. Defendant No. 4 – PNB asserted that there is no privity of contract with the Plaintiff and in any case, there was no money of the Foreign Bank with the answering Defendant and the money could be provided only by Defendant No. 3 - Reserve Bank of

between the two countries had come to a standstill and the operation of the account of the Foreign Bank was stopped in pursuance to the guidelines issued by Reserve Bank of India. The answering Defendant asserts that it is an intermediary bank and in that capacity it released the entire payment immediately upon receiving the same from Defendant No. 3 - Reserve Bank of India and no payment was withheld by it and so, there is no question of paying any interest upon the delayed payments, as claimed in this suit.

6. The Issues as claimed on the aforesaid pleadings, are as under:-

- (i) Whether the suit maintainable under Section 78 of the Foreign Exchange Regulation Act is not barred? OPP
- (ii) Whether the Plaintiff is entitled to interest on the amount of Rs.65,28,281/- released by the Defendants on 29.1.1997? If so at what rate and for what period?
- (iii) Relief.

7. Shri O.P. Sehgal, partner of the Plaintiff firm had deposed to support the case of the Plaintiff, whereas on behalf of Defendant No. 3 - Reserve Bank of India, there is deposition of its Assistant General Manager –Shri A.M. Menezes. No other evidence was led

the Plaintiff and Defendant No. 3 and 4, who had adverted to the evidence recorded. After having deliberated upon the submissions made and on scrutiny of the evidence on record, the findings returned are as follows:-

Issue No.(i)

9. The bar to maintainability of this suit qua Defendant No. 3 - Reserve Bank of India, is raised by relying upon Section 78 of Foreign Exchange Regulation Act, 1973, which reads as under:-

*No suit,
prosecution or other legal proceedings shall lie
against the Central Government or the Reserve
Bank or any officer of Government or of the
Reserve Bank or any other person exercising any
power or discharging any functions or performing
any duties under this Act, for anything in good
faith done or intended to be done under this Act
or any rule, direction or order made thereunder.”*

10. It is the positive case of Defendant No. 3 - Reserve Bank of India that it had acted in good faith and in strict compliance with the banking arrangement with Bank for Foreign Economic Affairs of USSR (BFEA) and the subsequent Addendum No.1 to the arrangement and there is neither any delay nor negligence on the part of Reserve Bank of India in allowing the payment of the principal amount to the Plaintiff and since, Reserve Bank of India had acted in good faith, therefore this suit is not maintainable.

in question were made prior to June, 1992, and Defendant No. 4 – PNB had lodged Plaintiff's claim with Reserve Bank of India in the year 1993 and thus, according to learned Counsel for the Plaintiff the entitlement to the payment in question was there in the year 1993 itself by virtue of the Agreement between the two countries and no fresh payment instructions were required from the Foreign Bank after signing of the Addendum in October, 1996.

12. Aforesaid stand of the Plaintiff does not hold good in view of the following un-rebutted evidence of Shri A.M. Menezes (DW-3):-

"I say that the procedure for settlement of export outstanding in respect of goods exported to Russia till 31st December, 1992 was provide in Article 6 of the Banking Agreement dated 6.9.1983. It provides that "Claims of Indian exporters who had actually shipped goods/rendered services to Russian entities prior to 31st December, 1992 but had not received payments either under the technical credit granted to the former USSR or the Russian Federation, will have the next priority for disbursement out of repayments of the State Credits granted by the former USSR taking into account the lists provided by the Indian Side (Ministry of Commerce) and confirmed by the Russian Side (Ministry of Foreign Economic Relations of the Russian Federation), through payment instruction from BFEA". In short, the

from BFEA. That Reserve Bank could not entertain the Plaintiff's request for release of payment in the absence of the payment instructions from BFEA."

13. Though there was clearance from the Foreign Bank, to make the payments in question, but in the absence of payment instructions from Bank for Foreign Economic Affairs of USSR (BFEA), Defendant No. 3 - Reserve Bank of India could not have given clearance for release of the payment in question to the Plaintiff through its banker. The evidence on this crucial aspect, as to when the instructions from Bank for Foreign Economic Affairs of USSR were received, is lacking and therefore, lack of good faith cannot be attributed to Defendant No. 1 to 3. Whether the first or the second Addendum would apply will not arise for consideration for the reason that lack of good faith on the part of Defendant No. 1 to 3 is not averred/pleaded by the Plaintiff. In such a situation, the bar of Section 78 of Foreign Exchange Regulation Act, 1973 instantly arises to defeat the claim made in this suit. Accordingly, it is held that this suit qua Defendant No. 1 to 3 is not maintainable in view of bar as contained in Section 78 of Foreign Exchange Regulation Act, 1973. This Issue is accordingly answered.

Issue No.(ii)

14. Now the claim of the Plaintiff to recover the interest from

Defendant No. 4 bank is that it is an intermediary bank and it could have released the payment in question to the Plaintiff only after receiving instructions from Defendant No. 3 - Reserve Bank of India. There is no worthwhile challenge to the aforesaid stand by the Plaintiff. While deciding the first Issue, I have already reached to a conclusion that lack of good faith cannot be attributed to Defendant No. 3 - Reserve Bank of India, who had to provide money to it upon receiving requisite payment instructions and on reaffirmation from the Russian Authorities and because, no money was provided by the Foreign Bank to Defendant No. 4 – Punjab National Bank, therefore, issuance of payment instructions by the Foreign Bank to Defendant No. 4 – bank was meaningless. It is not in dispute that the Defendant No. 3 - Reserve Bank of India had released the payment in respect of the exports made to Defendant No. 4 – PNB in January, 1997 and without any delay, the principal payment of Rs.65,28,281/- was released by Defendant No. 4 – PNB to Plaintiff's banker, i.e., Defendant No. 5 – UCO Bank on 27th January, 1997. Therefore clearly, no delay can be attributed to Defendant No. 4 – Punjab National Bank and so the question of payment of any interest on the so called delayed payment can be saddled upon Defendant No. 4 – Punjab National Bank. Thus, this Issue is answered against the Plaintiff.

payments has to fail. Consequently, this suit is dismissed as not maintainable qua Defendant No.1 to 3 and on merits qua Defendant No. 4 – Bank, while leaving the parties to bear their own costs.

16. The suit of the Plaintiff is disposed of accordingly.

Sunil Gaur, J

March 04, 2011

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