

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: March 01, 2012
Judgment Pronounced on: March 06, 2012

+ RFA(OS) 52/2007

SPICES TRADING CORPORATION LTD. ..Appellant
Represented by: Mr.Rohit Puri, Advocate

versus

EXCEL CARDAMOM CO. ...Respondent
Represented by: Mr.L.K.Singh, Advocate

AND

RFA(OS) 60/2010

EXCEL CARDAMOM CO. ...Appellant
Represented by: Mr.L.K.Singh, Advocate

versus

SPICES TRADING CORPORATION LTD. ..Respondent
Represented by: Mr.Rohit Puri, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Spices Trading Corporation Ltd., a Government of India Undertaking, had an understanding with State Trading Corporation of India, another Government of India Undertaking, to sell cloves, which were imported by State Trading Corporation of India, as a canalizing agency, and in respect of the cloves sold was to receive commission @₹2/- per kg from the buyer. Excel Cardamom Company learnt of the

aforesaid and caused a communication to be sent to Spices Trading Corporation Ltd. requiring terms and conditions under which it was willing to sell cloves to Excel Cardamom Company. After discussions, during which parties negotiated the terms for the sale and probably finalizing the same, on January 06, 1989, vide Ex.P-2, Spices Trading Corporation Ltd. sent a letter to Excel Cardamom Company, which contains the commercial terms at which it offered to sell cloves to Excel Cardamom Company. The letter reads as under:-

- “1. Please refer to your telegram and letter dated 3-1-1989 regarding sale of Cloves. We offer to sell the Cloves of app. 82 Metric Tons purchased from State Trading Corporation of India in as it is where it is basis. The price for the cloves will be the rate at which State Trading Corporation will sell to Spices Trading Corporation Ltd. plus a commission of ₹2/- per kg.
2. The Sales Tax, Octroi and other local levies will be charged extra or applicable Sales Tax forms.
3. The Clearing, forwarding, Trasnport, Insurance, demurrage, wharfage and other expenses will be paid by you.
4. The goods should be taken delivery from wagons/containers/trucks as and when they arrive without incurring any demurrage/wharfage charges.
5. An amount of ₹10/- lakhs (₹ Ten lakhs only) shall be deposited with the Corporation as security deposit immediately.
6. Payment for the goods should be made in advance, the schedule of which is as follows:-

a) Immediately on acceptance of this letter an amount of ₹20 lakhs (Rupees Twenty lakhs only).

b) And thereafter the balance amounts shall be paid on every week at ₹20 lakhs approximately (Rupees Twenty lakhs only) for each installment till the entire goods are lifted by you or within Forty days from the date of this letter.

7. And failure on your part to make advance payments for the goods or failure to take delivery of the goods or to supply necessary Sales Tax declaration forms will amount to default and your security deposit will be forfeited.

8. The Spices Trading Corporation will not be responsible for delivery of goods if State Trading Corporation does not supply the goods to us or any Government action in respect of the above goods.

9. If you are agreeable to the above terms, please sign and return the duplicate copy of this letter accepting the offer.

10. The security deposit will be adjusted in the last consignment subject to para No.7 above."

2. The letter dated January 06, 1989 was accepted by Excel Cardamom Company by making an endorsement, signifying acceptance thereon, on the same day i.e. January 06, 1989 and thus a concluded contract came into existence, as per which Spices Trading Corporation Ltd. had to supply approximately 82 MT cloves to Excel Cardamom Company at a price fixed by State Trading Corporation and additionally ₹2 /- per kg, being the commission payable to Spices Trading Corporation Ltd. Vide Clause No.5, Excel Cardamom Company

was to deposit ₹10 lakhs as a security deposit immediately and vide Clause-6(a) of the letter, Excel Cardamom Company was to make advance payment in sum of ₹20 lakhs, and as regards the balance payment, the same had to be made as per Clause-6(b) of the letter, which clause also deals with the supply of cloves by Spices Trading Corporation Ltd. The said clause limits the period during which the contract had to be completed i.e. 40 days. As per Clause-7, failure by Excel Cardamom Company to make advance payment or failure to take delivery of the goods, made liable the security deposit to be forfeited. Vide Clause-10, the security deposit had to be adjusted upon the last consignment being delivered.

3. It is not in dispute between the parties that Excel Cardamom Company tendered the security deposit by means of a banker cheque on January 06, 1989 in sum of ₹10 lakhs i.e. complied with Clause-5 of Ex.P-2 i.e. deposited, towards security deposit, ₹10 lakhs with Spices Trading Corporation Ltd.

4. With respect to further payments made and deliveries effected, we may note that in the pleadings of Spices Trading Corporation Ltd. there are false assertions made with respect to the claim of Excel Cardamom Company of having made payments on 2nd and 4th February 1989, but in view of the evidence led and especially the admission made by Devraj Gowda DW-1, the only witness of Spices Trading Corporation Ltd., the admitted position is that on January 11, 1989, Excel Cardamom Company deposited ₹20 lakhs as advance payment and in respect thereof received 235 bags of cloves from Spices Trading Corporation Ltd. on February 01, 1989, weighing 10831.5 kg, having value ₹14,83,915.50. It is apparent that

with respect to the sum of ₹20,00,000/- received as advance payment on January 11, 1989, cloves worth ₹14,83,915.50 were delivered on February 01, 1989, and Spices Trading Corporation Ltd. was retaining ₹5,16,084.50 as an advance payment. Excel Cardamom Company paid further sum of ₹2,50,000/-, towards advance, on February 02, 1989, and ₹35,000/- towards advance on February 04, 1989, and in this manner by February 04, 1989 the advance lying to its credit with Spices Trading Corporation Ltd. was ₹8,01,084.50. On February 06, 1989 Spices Trading Corporation Ltd. delivered 120 bags of cloves to Excel Cardamom Company weighing 5516.3 kg having value ₹7,55,733.10. Thus, by February 06, 1989, Spices Trading Corporation Ltd. was having ₹45,351.40 as advance with it. On February 25, 1989, Excel Cardamom Company deposited further sum of ₹5,00,000/- with Spices Trading Corporation Ltd. and in this manner, on said date, the advance lying to its credit with Spices Trading Corporation Ltd. was ₹5,45,351.40.

5. A dispute arose. Spices Trading Corporation Ltd. took a stand that under Clause-6(b) of Ex.P-2 the liability of Excel Cardamom Company was to make weekly advance payments in sum of ₹20 lakhs, without a concomitant liability of Spices Trading Corporation Ltd. to supply cloves of approximate value each week. Spices Trading Corporation Ltd. took a stand that its obligation was to deliver the entire contracted quantity of cloves within 40 days. Per contra, Excel Cardamom Company took the position that its liability to pay ₹20 lakhs per week was conditional upon Spices Trading Corporation Ltd. performing its reciprocal obligation to deliver cloves in equivalent value each week.

6. At that time, as noted herein above, Spices Trading Corporation Ltd. was having, apart from ₹10 lakhs deposited towards security deposit, a sum of ₹5,45,351.40 with it. Parties negotiated and on April 25, 1989 Excel Cardamom Company wrote a letter Ex.PW-2/D-2 which reads as under:-

“Sirs,

Sub: Purchase of 82 MTs of Cloves from you.

With reference to the contract dated 6.1.89 and the subsequent extension letter dated 27.2.89 for the purchase of 82 MTs of Cloves from you, I agree to accept as full and final settlement of the above contract, if you give the cloves at ₹137/- per kg for the amount of ₹5,45,351.40 deposited with you.

Further in confirmation of your letter dated 23.3.89 I have no other claims whatsoever from SPICES TRADING CORPORATION LIMITED nor SPICES TRADING CORPORATION LIMITED has any claims on this account. I have given all the S.T. 35 forms, Sale pattis and ‘F’ forms pending from me to your corporation.”

7. Accepting the above proposal, on the same day i.e. April 25, 1989, Spices Trading Corporation Ltd. delivered 88 bags of cloves, weighing 3980.66 kg having value ₹5,45,350.42, which Excel Cardamom Company received, and in this way, the advance payment in sum of ₹5,45,351.40 received by Spices Trading Corporation Ltd. was squared off.

8. Now, if the parties were honest and if indeed neither had an evil mind, the settlement proposal as per Ex.PW-2/D-2 was clear. The contract was closed, upon Spices Trading Corporation Ltd. supplying cloves worth ₹5,45,351.40 and neither party having a claim against each other, requiring

Spices Trading Corporation Ltd. to return the security deposit in sum of ₹10 lakhs.

9. But the fact that a suit was filed by Excel Cardamom Company shows that firstly, Spices Trading Corporation Ltd. acted dishonest; and then in making its claim in the suit, even Excel Cardamom Company has made dishonest pleadings.

10. We may note at this stage that the settlement proposal Ex.PW-2/D-2 dated April 25, 1989, was preceded by an exchange of correspondence where the position taken by Excel Cardamom Company was that due to Spices Trading Corporation Ltd. making late deliveries, it had run foul with a further contract, it had with one M/s.Jagdish Parshad Mridul Kumar to whom it could have sold cloves @Rs.155/- per kg after re-packaging the cloves which were being purchased by it at ₹137/- per kg and had thus lost ₹18/- per kg and since the contract between the parties was in respect of 82 MT i.e. 82,000 kg, out of which 16,347.8 kg cloves have been supplied i.e. a quantity weighing 65,652.2 kg had yet to be delivered, loss caused to it was ₹11,81,739.60.

11. Excel Cardamom Company filed a suit stating that the letter dated April 25, 1989 Ex.PW-2/D-2 was obtained under duress and thus sought to wriggle out of the settlement. It claimed, besides refund of security deposit in sum of ₹10 lakhs, damages in sum of ₹14,76,000/-, and surprisingly enhanced even the quantum of damages and along with pre-suit interest claimed at 18% per annum it also claimed damages for business reputation in sum of ₹51,000/-; decree claimed for was in sum of ₹30,22,000/-.

12. Not that a false statement, solemnly verified, by any person is to be condoned, but it is more aggravating, when a

responsible authority and especially when it is an instrumentality of the State makes a false statement on a solemn verification. In the written statement filed by Spices Trading Corporation Ltd. it denied having received any further payment beyond ₹20 lakhs received, except payment in sum of ₹5 lakhs which was admitted to have been received. Spices Trading Corporation Ltd. contested the suit by denying liability to pay any damage and relied upon the letter dated April 25, 1989, written by Excel Cardamom Company and stated that the same contained full and final settlement terms. It justified forfeiting ₹10 lakhs received as earnest money on two counts. Firstly, that Excel Cardamom Company was in default in not depositing ₹20 lakhs each week and for which it denied its liability to supply cloves of approximately equal value each week. Secondly, on the strength of the letter dated April 25, 1989.

13. On the pleadings of the parties, on July 08, 1997, twelve issues were settled as under:-

“1. Whether this Hon’ble Court does not have territorial jurisdiction to try the suit?

2. Whether the suit has been filed by a duly authorized person?

3. Whether the defendants failed to deliver the cloves as per the terms of the Agreement dated 6th January 1989?

4. Whether the defendants were entitled to anything more than a commission of ₹2.00 per kg on the cloves sold?

5. Whether there was any default on the part of the plaintiff in making payment as per the agreement?

6. Whether there was any default on the part of the defendants in making the supplies as per the schedule indicated in agreement dated 6th January 1989?

7. Whether letter dated 25th April 1989 was got written/signed from the plaintiff forcibly?

8. If answer to issue No.7 is in the negative whether the plaintiff had agreed for forfeiture of the security deposit?

9. Whether the plaintiff is entitled to refund of security deposit?

10. Whether the plaintiff is entitled for damages as claimed?

11. Whether the plaintiff is entitled for interest?

12. Relief.”

14. Holding that the Delhi High Court had territorial jurisdiction to entertain the plaint and that the suit had been filed by a duly authorized person, which findings have not been challenged by Spices Trading Corporation Ltd., the learned Single Judge thereafter decided issues No.3 to 6 together, and the discussion is to be found in paragraphs 27 to 43 of the impugned decision. Needless to state the discussion evidences, that at the core of the issue was: Whether the terms of the agreement, which were to be found in the letter dated January 6, 1989, Ex.P-2, provided for a schedule of delivery of the goods by Spices Trading Corporation Ltd. to Excel Cardamom Company or the terms of the agreement were that Excel Cardamom Company would make advance weekly payments in sum of ₹20 lakhs without any liability of

Spices Trading Corporation Ltd. to deliver, each week, cloves of approximate value.

15. We have noted herein above in para 1 the contents of the letter dated January 06, 1989, Ex.P-2, which has been interpreted by the learned Single Judge as not requiring Spices Trading Corporation Ltd. to deliver cloves in value equivalent to ₹20 lakhs per week to Excel Cardamom Company, whose liability has been determined, of requiring to deposit each week, as advance, ₹20 lakhs with Spices Trading Corporation Ltd.

16. The letter Ex.P-2 sets out the terms at which Spices Trading Corporation Ltd. agreed to deliver approximately 82 MT cloves to Excel Cardamom Company, and with respect to the terms of the payment, vide clause 5, required Excel Cardamom Company to deposit ₹10 lakhs immediately as security deposit and vide clause 6(a) to pay ₹20 lakhs immediately on acceptance of the letter. Vide clause 6(b), further payments were to be made every week in sum of ₹20 lakhs approximately for each installment till the entire goods were lifted within 40 days from the date of the letter.

17. Clause 6(b) reads: '*and thereafter the balance amounts shall be paid on every week at ₹20 lakhs approximately (₹20 lakhs only) for each installment till the entire goods are lifted by you or within Forty days from the date of this letter*'.

18. In para 37, the learned Singled Judge has recorded that a perusal of 'Ex.P-2' shows that the same does not provide a schedule for the delivery of the goods as such. The learned Single Judge has held that clause 6 of the agreement provides a schedule for payment and not a schedule for delivery of the goods i.e. cloves.

19. We note that the learned Single Judge has stated a conclusion, which he has drawn from a perusal of clause-6(b), but has not recorded the reasons for arriving at the conclusion.

20. A perusal of clause-6(b) would reveal that it is worded as a passive sentence and not as an active sentence. The clause uses the word '*for*' in the middle of the clause, which we find is a single sentence clause. Now, the word '*for*', as we all know, is a preposition and it is well known that a preposition connects a lexical word, which is a noun or a pronoun, to another lexical word of similar character in a sentence; the connection being by relating the two to each other. The Webster New World Dictionary, 3rd College Edition, lists the meaning of the word '*for*', amongst others, to mean: '*in proportion to*', '*corresponding to*', '*to the amount of*' and '*equal to*'. Now, in clause 6(b), the word '*20 lakhs*' and the word '*goods*' are nouns, and thus the preposition: '*for*', connects the two and co-relates them.

21. A perusal of clause-6(b) would reveal a syntax error, for the reason, the word '*on*', in the first part of the sentence '*shall be paid on every week*', is surplus. The said part of the sentence should read '*shall be paid every week*'.

22. We thus, break the clause, into its constituent elements as under:-

“and thereafter the balance amount shall be
paid on every week at ₹20 lakhs
approximately (Rupees Twenty lakhs only)
for
each installment till the entire goods are lifted
by you or within 40 days from the date of this
letter.”

23. Having split the sentence into its three constituent elements as above, we find that the first constituent element

refers to payment in sum of ₹20 lakhs being paid every week. The second constituent element i.e. the word '*for*', would link the third constituent element of the sentence with the first i.e. the payment of ₹20 lakhs to be paid every week and as per the first constituent element of the sentence, would be linked to the goods, i.e. equal to or corresponding to or in proportion to each installment, till the goods are lifted; and the installment would clearly be referring to the lots i.e. the installments in which the goods would be delivered, and needless to state the total quantity had to be delivered in lots i.e. installments within 40 days.

24. It is true that the word '*installment*' is normally used to a payment of money, to be paid at regular intervals of time over a specified period; as akin to a credit system by which debts for articles purchased have to be paid, but it also means '*any of several parts*', as in a serial story appearing at intervals, and thus could also mean: the lots in which goods have to be delivered at intervals over a period of time.

25. It is in this variety of meanings, which the word '*installment*' has, that it has to be given a meaning to in the instant case.

26. Closing our discussion, with a dictionary in hand, and its understanding in our head, and guided by the rule that every word in a sentence has to be given a meaning and the rule against redundancy has to be avoided, we interpret clause 6(b) to mean that the obligation of Excel Cardamom Company Ltd. to pay ₹20 lakhs approximately each week was linked to the reciprocal obligation of Spices Trading Corporation Ltd. to offer, for being lifted by Excel Cardamom Company Ltd., cloves having a weight equivalent in value to ₹20 lakhs approximately and not

that Excel Cardamom Company was to pay weekly installment in sum of ₹20 lakhs approximately irrespective of Spices Trading Corporation Ltd. offering, to be lifted by Excel Cardamom Company, cloves having approximately equal value.

27. We thus overrule the view taken by the learned Single Judge with respect to issues No.3 to 6 and hold that Spices Trading Corporation Ltd. was in default in supplying cloves as indicated in the agreement and not that Excel Cardamom Company was in default.

28. On issue No.7 i.e. the letter dated April 25, 1989, Ex.PW-2/D-2, finding returned by the learned Single Judge is that the letter was written voluntarily. Brij Bhushan, PW-2, the witness of Excel Cardamom Company had deposed that officers of Spices Trading Corporation Ltd. had obtained a blank letter-head of Spices Trading Corporation Ltd. upon which the letter was typed and his signatures obtained under duress. The learned Single Judge has noted the prior correspondence to conclude that the letter was written voluntarily and that the telegram Ex.D-5 relied upon by Excel Cardamom Company, in which it was wired that signatures of Brij Bhushan were obtained under duress on Ex.PW-2/D-2 was sent after three days, and keeping in view that by said time Spices Trading Corporation Ltd. had acted under the said letter, it was obviously a case of an attempt to create false evidence.

29. We concur with the view taken by the learned Single Judge and adopt the reasoning of the learned Single Judge in paragraph 49 of the impugned decision.

30. With respect to issue No.8, the learned Single Judge has taken a view that the issue of security deposit was in the mind of the parties, evidenced from the prior communications, and this

not being reflected in Ex.PW-2/D-2, which was a voluntary document, the learned Single Judge has concluded by holding that Excel Cardamom Company consented to the security deposit being forfeited and with respect to issue No.9 held that as per law only actual loss could be appropriated and since Devraj Gowda, DW-1, the witness of Spices Trading Corporation Ltd. admitted that it would have made a profit of ₹1,64,000/- if the contract was successfully fulfilled, taking note of the fact that part profit had been reaped with respect to the cloves supplied and money received, held that the loss caused to Spices Trading Corporation Ltd. was in sum of ₹1,23,343.08 and has thus concluded, that with respect to the security deposit, Excel Cardamom Company would be entitled to a decree in sum of ₹8,76,656.92.

31. With respect to issue No.10 i.e. of Excel Cardamom Company suffering damages, the learned Single Judge has noted that the counsel gave up said claim. That apart, the learned Single Judge has held that in view of his findings pertaining to issues No.3 to 6, Excel Cardamom Company being the defaulting party, would not be entitled to any damages. Granting interest @9% per annum, and thus concluding issue No.11, relief granted as per issue No.12, is a decree in sum of ₹8,76,656.92 together with interest @9% per annum reckoned with effect from June 01, 1989 till realization.

32. Since we have overruled the impugned decision on issues No.3 to 6 and have concurred with the view taken by the learned Single Judge with respect to issue No.7, it needs to be decided by us, whether Ex.PW-2/D-2, which is the settlement between the parties, envisages security deposit to be forfeited i.e. Excel

Cardamom Company consenting to the security deposit being forfeited.

33. We have noted the contents of the letter in para 6 above and would highlight that after setting out the terms of the settlement in the first paragraph of the letter, in the second paragraph of the letter, it is clearly written that neither Excel Cardamom Company shall have any claim against Spices Trading Corporation Ltd. nor Spices Trading Corporation Ltd. would have any claims on this account.

34. What does one mean when one conveys to ones business partner that the accord on a dispute, pertaining to a business dealing, as proposed in the settlement offer document would entail a closure of the dispute with neither party having any claim against the other? It simply means that if the accord results in a satisfaction of the accord, neither party would have any claim against the other and hence neither can claim any damages or can rely upon a default forfeiture clause in the original contract.

35. Thus, the learned Single Judge has wrongly held that the document evidencing the accord between the parties is silent on the subject of security deposit being refunded. Highlighting that the terms of the accord, reduced in writing, in the first paragraph of the settlement letter were given effect to i.e. a satisfaction of the accord was performed by Spices Trading Corporation Ltd. by delivering 88 bags of cloves weighing 3980.66 kg having value ₹5,45,350.42 and thus squared off ₹5,45,351.40 lying in deposit with it as an advance payment, the satisfaction of the accord had to be taken to the next logical step i.e. of neither party having a claim against the other; requiring Spices Trading

Corporation Ltd. to refund ₹10 lakhs to Excel Cardamom Company.

36. In the view which we have taken RFA(OS) No.52/2007 filed by Spices Trading Corporation Ltd. challenging the impugned decree is without any merit with respect to the principal sum decreed by the learned Single Judge for the reason we find that Excel Cardamom Company would be entitled to a further sum.

37. As regards RFA(OS) No.60/2010 filed by Excel Cardamom Company, where claim for damages has been staked, we find nothing payable towards damages for two reasons. Firstly that, as recorded by the learned Single Judge, claim towards damages was waived during arguments in the suit and no application has been filed before the learned Single Judge either to say that the counsel did so without instructions or in the alternative, the same was an incorrect fact recorded. Secondly for the reason, we find that vide Ex.PW-2/D-2 i.e. the letter dated April 25, 1989 Excel Cardamom Company waived the right to claim any damages.

38. But, the said appeal must succeed with respect to ₹1,23,343.08 held payable by the learned Single Judge, by way of damages to Spices Trading Corporation Ltd. and thus RFA(OS) No.60/2010 is allowed partially by modifying the decree passed in favour of Excel Cardamom Company holding that Excel Cardamom Company would be entitled to a decree in sum of ₹10 lakhs against Spices Trading Corporation Ltd. and accordingly the suit filed by Excel Cardamom Company is decreed in sum of ₹10,00,000/- (Rupees Ten Lakhs only) with interest @9% per annum reckoned with effect from April 25, 1989 till realization.

39. For the reason Excel Cardamom Company fought on an issue of damages which it had waived and for the reason even

Spices Trading Corporation Ltd. is guilty of not returning the security deposit and is also guilty of taking false pleas, we hold that neither party is entitled to costs against the other and thus decree that parties shall bear their own costs all throughout.

40. Vide interim order dated August 24, 2007 upon deposit of ₹6 lakhs by Spices Trading Corporation Ltd. and furnishing bank guarantee in sum of ₹10 lakhs operation of the impugned decree was stayed in RFA(OS) No.52/2007. The amount in deposit together with interest accrued thereon is directed to be paid to Excel Cardamom Company and the bank guarantee is directed to be encashed. Since a further sum would still be payable to Excel Cardamom Company because we find that the sum decreed together with interest reckoned with effect from June 01, 1989 would be in excess of the sums realized, Excel Cardamom Company would be free to recover the same by filing an Execution Petition.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 06, 2012
dk