

GAHC010175892022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/98/2022

M/S BIJAY KUMAR AGARWAL AND SONS (HUF)
REPRESENTED BY ITS KARTA SRI BIJAY KUMAR AGARWAL, AGED ABOUT
63 YEARS, SON OF LATE MOHANLAL AGARWAL, CARRYING ON THE
BUSINESS OF SANITARY-WARES, PIPES AND PIPE FITTINGS UNDER THE
NAME AND STYLE OF M/S. SANI STEELS CORPORATION, HAVING ITS
PRINCIPAL PLACE OF BUSINESS AT SECOND FLOOR, P.R. COMPLEX, A.T.
ROAD, GUWAHATI- 781001, DISTRICT- KAMRUP(M), ASSAM.

VERSUS

M/S A T M CARGO MOVERS
HAVING ITS ADMINISTRATIVE OFFICE AT 620, VISHAL TOWER, DISTRICT
CENTRE, JANAK PURI, NEW DELHI- 110058 AND OFFICE IN DIFFERENT
PARTS OF THE COUNTRY INCLUDING ONE SUCH BRANCH OFFICE AT
HOUSE NO. 24, 2ND FLOOR, P.P. ROAD, REHABARI, P.O.- GUWAHATI-
781008, DISTRICT- KAMRUP(M), ASSAM.

Advocate for the Petitioner : MR. O P BHATI

Advocate for the Respondent : MR. K D CHETRI

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

04.12.2023

Heard the learned counsel Mr. O.P. Bhati appearing for the petitioner. Also heard Mr. K.D. Chetri, learned counsel appearing for the respondent.

2. This is an application under Section 115 of the Code of Civil Procedure challenging the order dated 07.07.2022 passed by the learned Additional District Judge FTC No.3, Kamrup(M), Guwahati in Misc. Appeal No.58/2021 upholding the order dated 16.07.2021 passed in Misc.(J) Case No.130/2021 arising out of the Title Suit No.150/2021.

3. M/s. Bijay Kumar Agarwal & Sons (HUF), runs a business of sanitary-wares, pipes and pipe fittings under the name and style of M/s. Sani Steels Corporation. The said firm used to buy different goods from different entities situated outside Assam. The said items were brought to Guwahati by M/s. A.T.M. Cargo Movers (R) having its office at New Delhi.

4. On one occasion, M/s. Sani Steels Corporation purchased some goods from M/s. Jindal India Limited situated in the State of West Bengal. The consignment was brought to Assam by M/s. A.T.M. Cargo Movers (R).

5. This time, the consignment was not delivered to M/s. Sani Steels Corporation, on the ground that M/s. Sani Steels Corporation is yet to pay the said transport company [(M/s. A.T.M. Cargo Movers (R))] an amount of ₹9,48,085/-.

6. It is an admitted fact that for bringing goods from West Bengal to

Assam, M/s. Sani Steels Corporation is to pay the transportation charge of ₹70,000/-. But still then, M/s. A.T.M. Cargo Movers (R) did not deliver the goods to M/s. Sani Steels Corporation because they demanded the arrear outstanding payment of ₹9,48,085/-.

7. For the failure of M/s. A.T.M. Cargo Movers (R) to deliver the goods consignment to M/s. Sani Steels Corporation, they (M/s. Sani Steels Corporation) filed a suit against the M/s. A.T.M. Cargo Movers (R) seeking a decree declaring that the consignment which, the said transport company has detained is illegal. M/s. Sani Steels Corporation also prayed for a mandatory injunction for recovery of the consignment from their possession on payment of ₹70,000/- only.

8. M/s. A.T.M. Cargo Movers (R) contested the said case by filing a counter claim for recovery of ₹9,48,085/- from M/s. Sani Steels Corporation. They admitted that for the current consignment, they are entitled to receive only ₹70,000/-.

9. M/s. Sani Steels Corporation moved a prayer under Order 39 Rule 1 and 2 of the Code of Civil Procedure seeking direction of the court for recovery of the consignment from the possession of M/s. A.T.M. Cargo Movers (R). The trial court refused the prayer. M/s. Sani Steels Corporation filed an appeal and the appellate court also supported the trial court's order and the appeal was dismissed.

10. I have considered the submissions of the learned counsels of both sides.

11. It is an admitted fact that M/s. A.T.M. Cargo Movers (R) is entitled to receive ₹70,000/- from M/s. Sani Steels Corporation for the current consignment. For recovery of past transportation charges, they have filed a

counter claim against the petitioner.

12. I am of the considered opinion that the learned appellate court as well as the trial court have erroneously oriented themselves while rejecting the prayer for injunction in order to recover the goods which were purchased by M/s. Sani Steels Corporation from West Bengal and transported by M/s. A.T.M. Cargo Movers (R) to Guwahati. This consignment was withheld by transport company i.e., M/s. A.T.M. Cargo Movers (R). For arrear amount of transportation charges, the transport company has already filed the counter claim against the present petitioner. For the current consignment, the transport company i.e., M/s. A.T.M. Cargo Movers (R) is entitled to ₹70,000/- only.

13. Therefore, the impugned appellate court's order dated 07.07.2022 passed by the learned Additional District Judge FTC No.3, Kamrup(M), Guwahati in Misc. Appeal No.58/2021 upholding the order dated 16.07.2021 passed in Misc.(J) Case No.130/2021 arising out of the Title Suit No.150/2021 is set side.

14. M/s. A.T.M. Cargo Movers (R) is directed to hand over the consignment, which they have brought from West Bengal to Guwahati and meant to be delivered to M/s. Sani Steels Corporation. The consignment shall be handed over to them (M/s. Sani Steels Corporation) on taking the amount of ₹70,000/-.

With the aforesaid direction, the Civil Revision Petition is disposed of.

JUDGE

Comparing Assistant