THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.M.A.No. 912 of 2015

JUDGMENT: *(Per Hon'ble Sri Justice Sanjay Kumar)*

This appeal under Order XLIII Rules 1 and 2 C.P.C arises out of the order dated 10.06.2015 passed by the learned XXVII Additional Chief Judge, City Civil Courts, Secunderabad, in I.A.No. 218 of 2015 in O.S.No.36 of 2015.

The appellant is the second defendant in the suit. The subject I.A was filed by the first respondent/plaintiff under Order XXXIX Rules 1 and 2 C.P.C for grant of an interim injunction restraining the second respondent/first defendant Bank from releasing the amount due under two Bank Guarantees dated 08.07.2014 in favour of the appellant/second defendant. By the order under appeal, the trial Court made absolute the earlier interim injunction granted by it on 31.03.2015. Hence, this appeal.

Heard Sri Pramod Naik, learned counsel representing Sri D. Narendar Naik, learned counsel for the appellant/second defendant, and Sri B. Vijaysen Reddy, learned counsel for the first respondent/plaintiff.

In the light of the order proposed to be passed by this Court and given its stand before the trial Court, there is no necessity to put the second respondent/first defendant Bank on notice.

Perusal of the two Bank Guarantees which are subject matter of this litigation reflects that they expired on 11.02.2015. Both the Bank Guarantees were addressed to the Office of the Chief Engineer (Civil Designs), Karnataka Power Corporation Ltd., Bangalore. Both Bank Guarantees contain the following clause:

> "We the Bank, do hereby undertake to pay the amount due and payable under this guarantee without any demur, merely on receipt of a written demand from the said Corporation stating that the amount claimed is due by reason of any breach committed by the Bidder of the said Condition. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee."

In the light of the law laid down by the Supreme Court in *Hindustan Construction Company Limited v. State of Bihar*[1], both the Bank Guarantees therefore qualify as unconditional Bank Guarantees. However, the trial Court seems to have opined otherwise on a wholly incomprehensible ground. The observation of the trial Court in this regard reads as under:

> "In the circumstances of the case, both the bank guarantees, at terms of the guarantee, it is categorically incorporated that the respondent No.1 bank undertakes to pay the amount due and payable under the guarantee without any demur, merely on receipt of written demand from the said corporation stating that the amount claimed is due by reason of any breach committed by the bidder of the said condition.
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> The bidder is petitioner and the said corporation is the respondent No.2 therefore it is crystal clear that there is a specific condition in the guarantee and it is not unequivocal or unconditional since the conditions are attached to the guarantee."

It is not in dispute that the appellant/second defendant is a joint venture company of Karnataka Power Corporation Limited, Bharat Heavy Electricals Limited and Industrial Finance Corporation of India Limited. Therefore, the observation by the trial Court as to the disparity between

[1] (1999) 8 SC Cases 436

Karnataka Power Corporation Limited and the appellant/second defendant does not hold water.

It is a settled legal position that invocation of a Bank Guarantee should not be injuncted unless fraud or irretrievable injustice is established (*M/s. Adani Agri Fresh Ltd., v. Mahaboob Sharif (2015 SCC Online SC 1302).*

The other aspect of the matter which seems to have weighed with the trial Court was that both the Bank Guarantees expired on 11.02.2015 and they were therefore not subsisting. However, the material placed on record by the appellant/second defendant and the Bank put it beyond doubt that invocation of the Bank Guarantees was on 05.02.2015, i.e., well before their expiry.

That being so, the trial Court seems to have proceeded on a misconception of the factual and legal position and granted an injunction without just cause. Neither did the first respondent/plaintiff allege any fraud nor was there a claim of irretrievable injustice.

Viewed from any angle, we find no justification for grant of an injunction by the trial Court.

The order under appeal is accordingly set aside. The Civil Miscellaneous Appeal is allowed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. In the circumstances, there shall be no order as to costs.

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SANJAY KUMAR, J

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A.V.SESHA SAI, J

Date: 08.11.2016
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