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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3397-2016 [O&M]
Date of Decision : May 16th, 2016

Torque Cars Pvt. Ltd [TCPL] Chandigarh
.... Petitioner

Versus

Punjab and Sind Bank and another
.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present Mr. Akshya Bhan, Senior Advocate,
with Mr. Alok Mittal, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Senior Advocate,
with Mr. Manish Jain, Advocate,
for the Caveator-respondent No.2.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 29.04.2016 [Annexure P/6] passed by Additional District Judge, Amritsar whereby order dated 23.03.2015 passed by Civil Judge [Senior Division] was reversed.

2. Learned counsel for the petitioner while assailing the findings of the the Court of first Appeal recorded in impugned order dated 29.4.2016 [Annexure P/6], submitted that the petitioner filed a suit for permanent injunction restraining Punjab National Bank [defendant No.1] from invoking

Bank Guarantee dated 23.1.2012 for Rs.6.00 Crores and extension letters dated 16.2.2013, 25.4.2013, 18.7.2013, 22.10.2013, 21.1.2014 and 9.7.2014 valid upto 22.1.2015 and also restraining the respondent-bank from remitting the said amount of Rs.5,66,00,246/- in favour of defendant No.2 by invoking the said bank guarantee in any manner. An application was also filed by the petitioner for ad interim injunction under Order XXXIX Rules 1 and 2 CPC which was allowed by Civil Judge [Senior Division], Amritsar vide order dated 23.3.2015 and the said order was set-aside by Additional District Judge, Amritsar without any reason.

3. Learned senior counsel for the petitioner further submitted that the first Appellate Court failed to appreciate that there was no termination of agreement. The bank guarantee was given just to prove a sense of security to the person in whose favour the same has been furnished. The bank guarantee is always to be encashed subject to two exceptions, i.e., fraud in connection with the bank guarantee or where the encashment could cause irretrievable harm or injury. The petitioner has been able to make out a case of fraud because respondent No.2 itself sent cars to the petitioner three days prior to the termination of agreement, then there was no cause for termination of the agreement. More so, the agreement has been terminated as per Article 24 Clause [5] without issuance of notice. The fact that respondent No.2 had delivered cars to the petitioner on 24.11.2014 i.e., three days prior to the said termination and no such circumstance was forthcoming so as to warrant such action on the part of respondent No.2 clearly proves the *mala fides* on the part of respondent No.2. The petitioner has been able to make out a case that he was going to suffer irretrievable harm, injury and damage, but the Court of first Appeal

ignored this fact. So, the impugned order be set-aside.

4. Learned senior counsel for the respondent-2/Caveator [Vokswagen Group Sales India Private Limited] took the plea that the Court of first Appeal has considered all the aspects and dealt with the matter because the bank guarantee was issued in favour of respondent No.2 which was unequivocal and the payment was to be made on the asking of respondent No.2. The bank guarantee was clear that the payment was to be released in favour of the Caveator without any further conditions and the Court of first Appeal has already dealt with the matter and there is no illegality in the order under challenge. More so, the petitioner has filed Civil Suit for permanent injunction for restraining Punjab & Sind Bank [defendant No.1] from invoking the bank guarantee and extension letters and also restraining defendant No.1 from remitting the amount of Rs.5,66,00,246/- in favour of defendant No.2/Caveator. There was no such prayer by the plaintiff-petitioner for termination of basic agreement on the ground of fraud and without challenging the same, there was no justifiable ground for even making prayer for *ad interim* injunction. More so, as per the agreement, in case of any dispute between the parties, the jurisdiction is of Bombay Courts and not the Courts at Amritsar. The present petition deserves to be dismissed being without any merit.

5. Having considered the submissions made by learned counsel for the parties and perusal of the record, this Court is of the opinion that most of the facts are not disputed that the bank guarantee was issued by the petitioner in favour of respondent No.2 thereby directing respondent No.1 to release the payment to respondent No.2 on demand without pre-condition. It was the main condition of the bank guarantee that the bank

would unconditionally pay respondent No.2 the amount claimed upon the first written demand without any further enquiry or intimation from/to the debtor and without any reference/recourse to the Debtor. It was the sole discretion of respondent No.2 to decide when to raise the demand and for what amount. Even clause (1) of the bank guarantee authorizes respondent No.2 to stake his claim regarding encashment of the bank guarantee at the registered/head office or any of their branches located in Mumbai or elsewhere within India. A copy of the bank guarantee, which is placed on file by learned senior counsel for the Caveator no where mentions that the bank guarantee can be encashment by respondent No.2 on such and such condition or there being any right to the plaintiff to revoke the bank guarantee. Learned first Appellate Court has dealt with the matter correctly while placing reliance upon **U.P.State Sugar Corporation Vs. M/s Sumac International Ltd., 1997 AIR [SC] 1644,** wherein Hon`ble Supreme Court had taken the view that in case of irrevocable and unconditional bank guarantee, payable on demand, the bank is bound to honour the guarantee irrespective of any dispute raised by the customer, at whose instance the guarantee was issued.

6. More so, the petitioner has filed the main suit for permanent injunction for restraining the respondent-bank from invoking bank guarantee and releasing payment in favour of respondent No.2, whereas, the petitioner has not claimed termination of basic agreement. Otherwise also, the main dispute is whether the bank guarantee can be got encashed by respondent No.2 without any further condition or there being any dispute between the parties or the bank guarantee is to be released unconditionally. As per conditions of the bank guarantee, the payment was

to be released in favour of respondent No.2 as undertaken by the bank vide clause (8) of the bank guarantee which reads as under:-

> "(8). We, the Bank hereby underake to pay to VWGSIPL and money or moneys so demanded by VWGSIPL notwithstanding any dispute or disputes raised by the Debtor in legal proceedings before any Court or tribunal or any authority, the liability of the Bank under these present being absolute and unequivocal."

7. More so, Hon`ble Supreme Court in **Vinitec Electronics Private Limited Vs. HCL Infosystems Limited, (2008) 1 SCC 544** has held that the law relating to invocation of bank guarantees is by now well settled by a catena of judgments. The bank guarantees which provided that they are payable by the guarantor on demand is considered to be an unconditional bank guarantee. When in the course of commercial dealings, unconditional guarantees have been given or accepted the beneficiary is entitled to realize such a bank guarantee in terms there of irrespective of any pending disputes. Hon`ble Supreme Court in **Adani Agri Fresh Ltd. Vs. Mahaboob Sharif and Ors, 2016 (2) RCR [Civil] 12,** while dealing with the matter regarding injunction of invocation of bank guarantee, directing the bank to honour the same in the following terms:-

> "13. In deciding the present controversy, we will therefore have to adopt the principles laid down by this Court in U.P.Cooperative Federation Ltd. vs. Singh Consultants and Engineers (P) Ltd. (supra), and in Vinitec Electronics Private Ltd. vs. HCL Infosystems Ltd. (supra). Having given our thoughtful consideration to the law laid down by this Court, in respect of grant/refusal of an injunction of an unconditional bank guarantee, and keeping in mind the terms and conditions, more particularly of the contractual conditions extracted and narrated above, we are satisfied that the courts below were not

> justified in injuncting the invocation of the three bank guarantees, executed by the State Bank of Mysore, at the instance of M/s RMSFC. We accordingly hereby direct respondent Nos.2 and 3 – the State Bank of Mysore to honour the same forthwith."

8. With regard to allegation of fraud, Hon`ble Apex Court in paragraph 24 of the judgment in **Vinitec Electronics Private Limited's case [supra]**, held as under:-

> "24. This Court in more than one decisions took the view that fraud, if any, must be of an egregious nature as to vitiate the underlying transaction. We have meticulously examined the pleadings in the present case in which no factual foundation is laid in support of the allegation of fraud. There is not even a proper allegation of any fraud as such and in fact the whole case of the appellant centres around the allegation with regard to the alleged breach of contract by the respondent."

9. However, in the case in hand, the grounds taken in the petition cannot be considered to be a case of fraud at all.

10. All these aspects have been dealt with by the Court of first Appeal and there is no illegality in the order under challenge calling for interference by this Court and the present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 16th, 2016
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