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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) No.7320/2014

M/S SHIV SHAKTI TRADING CO. ..... Petitioner

Through: Mr. Anuj Soni, Adv.

Versus

PUNJAB NATIONAL BANK & ANR ..... Respondents

Through: Mr. Rajat Sharma and Mr. Mohd. Nadeem, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **20.01.2016**

1. The petition seeks a mandamus to the respondent no.1 Punjab National Bank (Bank) to "debit their suspense account and re-remit the amount to the tune of US$38772.92 to the Export Development Bank of Iran as proceeds of the import bill or in an alternative direct the respondent no.1 Bank to refund the amount of US$ 38772.92 back to the petitioner".

2. Notice of the petition was issued and counter affidavit has been filed by the respondent no.1 Bank to which rejoinder has been filed by the petitioner. Though Union of India (UOI) is impleaded as respondent no.2 but neither does anyone appear for UOI nor has UOI filed any affidavit, perhaps because no relief is claimed against them in the writ petition.

3. The counsel for the petitioner has argued that the petitioner had deposited rupee equivalent of the aforesaid amount with the respondent no.1 Bank towards purchase price of goods imported by the petitioner from an entity in Iran and the documents of which goods were being negotiated

through the respondent no.1 Bank. It is stated that the respondent no.1 Bank purported to remit the said amount to the seller in US$ when as per the instructions in the documents which were being negotiated, the amount had to be remitted in Euros (EUR) or Emirati Dirham (AED) and owing whereto the payment did not reach the Iranian seller and the respondent no.1 Bank is retaining the said amounts since the year 2008. It is argued that since the fault /error was of the respondent no.1 Bank itself in sending the payment in US$ instead of in EUR or AED, the petitioner cannot be made to suffer for it.

4. I have enquired from the counsel for the petitioner, whether the imported goods have been delivered/received by the petitioner.

5. The answer is in the affirmative.

6. I have further enquired that if the petitioner has received and consumed the goods and the aforesaid monies were towards the purchase price thereof, what is the cause of action for the petitioner to file this petition *inter alia* claiming refund of purchase price.

7. The counsel for the petitioner states that the foreign seller is compelling the petitioner to pay the said amount and owing to the negligence of the respondent no.1 Bank, the business of the petitioner has suffered. It is pointed out that in the petition, the relief of compensation from the respondent no.1 Bank has also been claimed.

8. However the counsel for the petitioner upon being asked is unable to show a single document wherein the foreign seller may have made demand for the price of goods on the petitioner.

9. The banking channel through which the documents of title in the goods were negotiated having been settled between the petitioner and its foreign seller and the petitioner in accordance therewith having deposited the monies towards purchase price of goods with the respondent no.1 Bank, if at all the foreign seller has not received the purchase price inspite of the goods being delivered to the petitioner, the foreign seller of the said goods is to claim the said amount from its banker and not from the petitioner. No merit is found in the plea of the petitioner of the foreign seller demanding the price from the petitioner.

9. The counsel for the respondent no.1 Bank also points out that the money was transmitted in US$ as per the instructions of the petitioner itself as is evident from the document filed with the counter affidavit and not on account of any mistake on the part of the respondent no.1 Bank. It is further stated that the money aforesaid is now lying with the Office of Foreign Assets Control (OFAC) which is the trustee of US Treasury which was screening the inflow of the payments into Iran while the economic sanctions imposed by the US Government on Iran were in force and which were recently lifted. It is informed that the OFAC had also expressed a doubt that the subject payment was for funding unlawful activities in Iran. It is thus stated that the money today is not in the pocket of the respondent no.1 Bank either for the respondent no.1 Bank to either remit the monies to the foreign seller or to refund the same to the petitioner.

10. The counsel for the petitioner in this regard draws attention to a letter dated 27th April, 2010 of the respondent no.1 Bank to the petitioner and

contends that the respondent no.1 Bank therein had agreed to refund the money to the petitioner.

11. I am, on a reading of the said letter, unable to find anything of the like.

12. Rather, it appears that the present petition is in abuse of the process of the Court. The petitioner wants to have the goods purchased by him as well as refund of the price paid by it therefor.

13. There is no merit in the petition.

Dismissed.

I refrain from imposing any costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 20, 2016
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