

\$~13

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

Date of decision: 23.09.2019

+ **FAO(OS) (COMM) 126/2019, CM APPL. 34144/2019,
35603/2019, 35604/2019**

PARAS IMPORTS PVT LTD & ORS

..... Appellants

Through: Mr. Randhir Jain and Mr. Dhananjai
Jain, Advocates.

versus

M/S RUNWAY LOGISTICS PVT LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J. (Oral):

1. The present appeal under Order 43 Rule 1 (r) CPC 1908, read with, Section 13 of Delhi High Court Commercial Courts Act, is directed against the order dated 24th January 2019, passed by the learned Single Judge in CS (COMM.) 37/2019, whereby, the court while issuing summons, on an application of the Respondent under Order 39 Rules 1 & 2 CPC, 1908 granted *ex-parte* ad interim injunction in favour of the Plaintiff, restraining the Defendants (Appellants, herein) from alienating, encumbering or parting with possession of the goods that are the subject matter of the imported consignment of which the Appellants have taken delivery, without making

payment to the seller.

2. By the time the appeal was listed for hearing, the injunction application came to be finally decided and the ex- parte ad-interim order was confirmed to operate during the pendency of the suit. Thus, at the outset, an objection was taken by the Respondent's counsel that since *ad-interim* order, impugned in the appeal has merged into the order dated 16th April 2019, whereby the application of the Respondent- Plaintiff under Order 39 Rules 1 & 2 along with the application of the Appellants under Order 39 Rule 4, CPC has been finally decided, the appeal is not maintainable in the present form. Mr. Jain, learned counsel for the Appellant, clarified that, notwithstanding the fact that the memorandum of appeal pertains to the order dated 24th January 2019, the grounds urged therein are relevant and are sufficiently applicable to the final order dated 16th April 2019. He submitted that the said order is also impugned *vis-a-vis* the dismissal of the Appellants' application under Order 7 Rule 11 CPC, whereby the Court has declined Appellant's prayer to reject the plaint.

3. The facts of the case have been noted extensively in the impugned order and we would not like to burden the record by reproducing the same. Thus, shorn of unnecessary details, only essential facts that are necessary for disposal of the present appeal are being noted hereinafter.

4. The Respondent-Plaintiff has filed the suit bearing number CS (COMM.) 37/2019, against the Appellants- Defendant No. 1 and its Directors- Defendant Nos. 2 and 3, *inter alia*, seeking relief of mandatory injunction

and money decree. The case of the Respondent-Plaintiff is that it is engaged in the business of Freight Forwarding and International Logistics in India. It *inter alia* handles consignments that are imported from China to India on behalf of its clients, which includes providing of services for getting the goods released from shipping line/Customs and for delivery to the desired destinations. For last two years, Respondent has been providing freight services and handling the consignments for the Appellants. In the month of July and September 2018, Respondent handled several consignments as enumerated in para 8.1 and 8.2 of the plaint, worth USD 313,910/- (approximately equivalent to Rs. 2,19,73,700/-). In respect of the said consignments, Shanghai Evertrans International Forwarder Co. Ltd. and Shenzhen Lucky Logistics Ltd., were the Chinese forwarders, who acted on behalf of Respondent and took delivery of the goods from the Chinese seller viz. Shenzhen GBC- Glory Business Corporation Ltd. and Tianjin Free Trade Service Co. Ltd. / Hebei Satune Toys Company Ltd. At the time of delivery of the aforesaid goods, Appellant No. 1 and its Directors wrongly informed the Respondent that it had made all the payments for the consignment to the aforementioned sellers. They also falsely represented that the original Bills of Lading had been received by them from the seller, and the same would be handed over to the Respondent as and when requested. However, subsequently, sellers informed the Respondent that the Appellants had not made any payment for the said consignment and had wrongfully got it released.

5. Appellant No. 2 - Director of Appellant No. 1, *vide* email dated 8th December 2018, assured the sellers that they would make the payment

towards the goods, delivery whereof had been taken by them. Respondent has also placed on record various communications exchanged between the Appellants and the sellers, wherein Appellants have been called upon and reminded to make the payment. As a result of the above dispute, Chinese forwarders have, in turn, put Respondents' shipments on hold, till such time the issue between the Appellant and Chinese sellers is resolved.

6. When the suit first came up for hearing, the learned Single Judge vide order dated 24th January 2019, granted an ex-parte injunction in favour of the Respondent-Plaintiff, while making some observations with respect to the contentions raised by Respondent's counsel in the context of Bills of Lading Act, 1856. Be that as it may, after the service of the summons in the suit and pursuant to the Appellants filing their written statement and the application under Order 7 Rule 11 along with an application under Order 39 Rule 4 of the CPC, the Court proceeded to dispose of all the above noted applications *vide* order dated 16th April 2019. The learned Single Judge confirmed the ex-parte injunction, and dismissed Appellants' application for vacation of injunction and also dismissed the prayer for rejection of the plaint.

7. The rejection of the Plaint was sought on the ground that the same does not disclose a cause of action. This plea was premised upon maintainability of the suit in the context of nature of reliefs sought therein. Mr. Jain contends that the Respondent being merely a freight forwarder, having no title over the goods that have been delivered to the Appellant, could not maintain a suit for the relief of mandatory injunction. Even if it is assumed

that the Appellants have taken the delivery of goods, without making payment in respect thereof to the sellers, Respondent has no right to file the present suit. It is only the seller who can sue the Appellants and certainly not the Respondent.

8. Learned counsel also strongly contended that the Bills of Lading are non-negotiable and as drawn, reflect the Chinese Supplier as the Consignor and the Appellant as the Consignee. Respondent, as freight forwarder, was thus required to supply the goods without any further condition or obligation to the consignee i.e. the Appellant. As per the contract between the parties, there was no stipulation for the Appellants to submit the Bill of Lading at the time of accepting delivery of the goods from the Respondent. For these reasons, learned counsel for the Appellants contend that, the learned Single Judge ought to have vacated the *ex-parte* injunction order and should have also rejected the plaint.

9. All the aforesaid contentions raised in the appeal have been noticed and dealt with by the learned Single Judge. The undisputed fact that has emerged is that Appellants have taken the delivery of the goods and the payment in respect thereof has not made to the Chinese seller. The impugned order records that on a pointed query to the learned counsel for the Appellants, there was no categorical or unequivocal stand of the Appellants forthcoming concerning the payment of the goods. There is also no categorical averment on this issue in the written statement. The learned Single Judge, analyzed the terms of the Bill of Lading filed on record and drew a distinction between the terms of a non-negotiable Bill of Lading in comparison to those

that are negotiable. Learned Single Judge observed that the Bills of Lading, issued by Shenzhen Lucky Logistics Ltd., show the obligation of the Respondent as a Sub-Contractor was to deliver the goods to the Appellants, only against the surrender of duly endorsed Bill of Lading. The aforesaid obligation is, however, not found on some of the Bills of Lading. Noting this fact, learned Single Judge observed that this question would require further examination and deliberation. The learned Single Judge has also referred to several case laws dealing with the rights of a 'bailee' under Section 148 of the Indian Contract Act, and has held that the Plaintiff can also assert such a right and press for the reliefs sought in the suit. The learned Single Judge also took note of the communications exchanged between the Appellant and the Foreign suppliers to show that the Foreign suppliers as well as Chinese Freight Forwarders were demanding the payment of the value of the consignment from them, and the Appellant also repeatedly assured of such payment, which was prima facie, to establish a cause of action for seeking the relief of mandatory injunction.

10. In our considered view, the inter se rights between the parties cannot be determined at the threshold, and such contentions are subject matter of trial and there is nothing wrong in the inference drawn by the learned Single Judge. For the reasons noted above, we are of the view that the suit as framed does disclose a cause of action. It is pertinent to note that there is a clear distinction between a case where the plaint itself does not disclose any cause of action, and a case in which after the parties have produced oral and documentary evidence, the Court comes to a conclusion that there was no cause of action for the suit. The provisions of Order 7 Rule 11, CPC can be

invoked only in a situation where the plaint does not disclose a cause of action. The averments made in the plaint and the documents filed with it have to be taken as true while conducting scrutiny under Order 7 Rule 11 CPC. The cause of action, as held by the Supreme Court in ***A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem, AIR 1989 SC 1239***, is a bundle of material facts alleged by the Plaintiff to make out his right to sue and claim relief from the Defendants. On the basis of the pleadings in the Plaint, we have no hesitation to hold that if the plaint is read as a whole, it does disclose Plaintiff's right to sue the Defendants. As a result of the above discussion, we hold that the plea of the Appellants that the plaint should have been rejected under Order 7 Rule 11(a) of the Code of Civil Procedure is untenable. The allegations raised by the Appellants are in the nature of defence to the claims of the Respondent/Plaintiff which would require further scrutiny and examination by way of trial, and the same cannot non-suit the Respondent at the initial stage and the suit would have to be decided on merits.

11. Accordingly, the challenge to order of the learned Single Judge rejecting the application is rejected.

12. Now, coming to the next question regarding the relief of injunction. The learned Single Judge has confirmed the ex-parte injunction granted on 24th January 2019 and, resultantly, Appellants have been restrained from parting with the possession of the goods that are subject matter of the consignments, delivery whereof has been taken by the Appellants. The fact that the Appellants have taken delivery of the goods and not paid for the

same is what persuaded the learned Single Judge to confirm the injunction order. The learned Single Judge has recorded the contention of the Appellants in the following words:-

"31. The admitted position is that the goods which defendants have taken delivery of have not been paid for and- the Chinese forwarders and the Chinese suppliers are making a claim for price thereof against the defendants and alternatively against the plaintiff. It is further the admitted case of the defendants in their written statement that delivery of the subject goods, on the defendants was insisted on by the Chinese suppliers even though at present there is no demand therefor in India and for this reason only the Chinese supplier had agreed to deferred payment by the defendants of the' said goods. Once this is the position, I see no reason why the ex parte interim order should be vacated."

13. The object of interlocutory injunction is to protect the Plaintiff against injury by violation of his right. The Court has to see where the balance of convenience lies, by weighing Plaintiff's need for protection against the corresponding need of the Defendant to be protected against injury resulting from his having been prevented from exercising his legal rights. In the present case, the Appellants have taken the delivery of the goods without the original Bill of Lading. The Appellants contend that Chinese supplier insisted on delivery, and seek to portray that the goods have been foisted upon them. In this backdrop, Learned Single Judge has exercised his discretion in favour of the Plaintiff after being satisfied that it has a prima facie case in his favour. The relief of mandatory injunction as prayed for is in the nature of a direction to the Appellants to produce the original bill of lading or, in the alternate, return all the goods. If the injunction is vacated, the suit of the Respondent would become infructuous, as even if Plaintiff

were to succeed in the suit after trial, the goods would no longer be available. Thus, refusal of injunction would certainly and adversely affect the interest of the Plaintiff and considering the facts of the case in proper prospective, we find that the approach of the learned Single Judge was appropriate and, accordingly, the appeal assailing the order of confirmation of injunction and the dismissal of the application seeking vacation thereof is rejected.

14. For the foregoing reason, there is no merit in the appeal. The same is dismissed with no order as to costs.

SANJEEV NARULA, J

VIPIN SANGHI, J

SEPTEMBER 23, 2019

ss