01.10.2020
Supp.3

ssd

FMA 909 of 2020
(MAT 620 of 2020)
with
CAN 1 of 2020
(Via Video Conference)

Shyama Prasad Mukherjee Port Kolkata @
Kolkata Port Trust and anr.
Vs.
Rajgaria Timber Private Limited and ors.

Mr. Joy Saha
Mr. Amit Nag
Mr. Swarajit Dey
Ms. Ranjabati Ray
…for the appellants.

Mr. Joydeep Kar
Mr. Shaunak Ghosh
Ms. Saheli Sen
Mr. Rajib Mullick
…for the respondent/petitioners.

Mr. Vipul Kundalia
…for the respondent nos.3 to 8.

The appeal arises out of an order of September 21, 2020 passed on a petition under Section 226 of the Constitution.

The writ petitioner-respondents caused certain logs to be imported. According to the writ petitioners, such logs came in by or about March 19, 2020 and the writ petitioners were obliged to remove the goods from the Port premises within 30 days of their arrival.

The writ petitioners claim that in view of the lockdown following the pandemic, the material could not be removed from the Port premises. It is the further case of the writ petitioners that pursuant to a circular issued by the Ministry of Shipping, the writ petitioners were entitled to a waiver of rent for the period during which the material remained at the Port premises beyond the initially contemplated 30 days. The writ petitioners say that though the Port extended the time to remove the goods till May 3, 2020, exaggerated demands were made which were contrary to the relevant circular.

According to the writ petitioners, from or about June 3, 2020 the writ petitioners were able to remove the material from the Port premises; but were resisted by the Port authorities on the ground that their full charges had to be paid first.

By the order impugned, the writ petitioners have been directed to put in a sum of Rs.25 lakh and remove 50 per cent of the goods. Directions for filing affidavits have been issued and the matter has almost ripened for final hearing. It is an entirely different matter, however, as to whether any final hearing may be possible at this stage or within any reasonable time.

The Port says that its dues are in excess of Rs.75 lakh. At any rate, it is the submission of the Port that the last bills raised on the writ petitioners indicated that a sum in excess of Rs.45 lakh was due on account of ground-rent and the like.

There is no doubt that the goods must be taken away from the Port premises so that the Port's land is unblocked. Equally, the writ petitioners cannot be allowed to remove the goods unconditionally and the Port be left to chase the writ petitioners for the Port's dues. There is a statutory lien which may be exercised by the Port and, to the extent that the Port's dues remain unpaid, the goods are liable to be detained. However, a balance has to be struck, particularly considering that the initial situation was brought about for reasons beyond the control of the writ petitioners. The Port may also not have been liable for the delay; but the lockdown made the delay inevitable.

In such a scenario, it would be just and proper if the writ petitioners are directed to immediately deposit Rs.50 lakh, completely without prejudice to their rights and contentions in the writ petition, and remove the entirety of the material within a period of 30 days from today. The deposit of the sum of Rs.50 lakh will be made in any nationalised bank and the same will be free from any lien or encumbrance. The fixed deposit receipt will be made over to Advocate for the Port who will hold the same as receiver without remuneration without any right to encash the same without the previous leave of the writ court.

At the time of final adjudication, the writ court will go into the question as to whether the writ petitioners were entitled to a complete or partial waiver of ground-rent and what would be the exact quantum of the Port's claim. In the event the writ court concludes that the Port's claim of Rs.45 lakh was exaggerated, the Port will be required to pay interest at the rate of 10% per annum on the balance quantum of the deposit from the date of such bills being raised till the balance quantum of the deposit is taken back by the writ petitioners. The Port's further charges will come out first from the deposit made. In the event the Port's charges are ultimately discovered to be in excess of the quantum of deposit, the writ petitioners will be liable to make good the same. For such purpose, an unconditional letter of undertaking should be issued by the first writ petitioner duly signed by the principal person in control thereof and made over to Advocate for the Port within a week from today. However, the removal of the goods will not wait till such undertaking is made over, though the removal can only be initiated upon the deposit of Rs.50 lakh being made and the fixed deposit receipt being handed over to Advocate of the Port.

In view of the above arrangement, it is made clear that all are points left open for consideration and decision at the final hearing of the writ petition. This order is also without prejudice to the rights and contentions of the Port. The Port may also apply for upto 75 per cent of the deposit to be appropriated by it, subject to the final order on the writ petition.

FMA 909 of 2020 and the interim application therein are disposed of.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sanjib Banerjee, J.)

(Aniruddha Roy, J.)