

APO No.76 of 2020
GA No. 1 of 2020
GA No. 2 of 2020
In
CS No.74 of 2020

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IMPERIAL TUBES PRIVATE LIMITED
Versus
GAURISHANKAR BIHANI

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 8th September, 2020.

(Through Video Conference)

Appearance:

Mr. Joy Saha, Sr. Adv.
Mr. Rajarshi Dutta, Adv.
Mr. V.V.V. Sastry, Adv.
Mr. Tridib Bose, Adv.

Mr. Anirban Ray, Adv.
Mr. Soumabho Ghose, Adv.
Mr. Soumalya Ganguly, Adv.

The Court : This appeal appears to be by a dishonest company seeking to delay the inevitable. The tell-tale signs of impecuniosity of the appellant are apparent.

The parties had transacted since about 2014 and there is no doubt that the initial payments were made by the appellant upon the plaintiff raising bills therefor. The claim in the suit pertains to the supplies of coils made by the plaintiff in May, 2017. It appears that there is a balance confirmation of the accounts in a statement executed by the

appellant on April 1, 2018. The claim is for a much larger sum, upon adding interest to the principal amount of about Rs.45.79 lakh.

According to the appellant, no case was made out in the commercial cause for the issuance of an injunction restraining the appellant from dealing with or disposing of its fixed assets. Indeed, the appellant endeavours to demonstrate that the very basis of the claim is disputed since the appellant instituted a prior suit in the City Civil Court questioning the veracity of the balance confirmation statement of April 1, 2018. The appellant also asserts that the present suit has been filed at a belated stage and long after notices were issued preparatory to insolvency proceedings against the appellant company being instituted before the National Company Law Tribunal. Indeed, the appellant refers to a reply of January 1, 2019 to the initial notice of insolvency wherein the appellant has purported to dispute the quality of the goods supplied. The appellant also relies on earlier letters of June, 2017 or thereabouts to suggest that immediate quality complaints were made, but the plaintiff did not pay any heed thereto. It must, however, be recorded that the purported letters of complaint issued in June, 2017 by the appellant company may not have been received by the plaintiff and the plaintiff has denied the very existence of such documents.

It also appears from the order impugned that the City Civil Court suit filed by the plaintiff to question the veracity of the balance confirmation of the accounts appearing in the statement of April 1, 2018 was filed without appropriate court fees being tendered. It is an old trick by which a matter is made sub judice without the applicant in Court taking any financial burden. Though it is sought to be asserted now that the appropriate court fees had been paid, merely because the previous suit was instituted would not stand in the way of an appropriate injunction being granted in this subsequent comprehensive action.

Several judgments were cited before the Single Bench. The decisions have all been referred to in the impugned order. In short, the Single Bench found that there was no credible defence to the near unimpeachable claim of the plaintiff in the suit. In such circumstances, the Single Bench exercised the discretion available to it to issue a limited injunction. Ordinarily, respectable commercial concerns do not sell off their fixed assets and are not much perturbed by an injunction restraining them from selling off their fixed assets.

Considering the nature of the claim against the appellant and the quality of its defence, the order impugned dated August 17, 2020 cannot be faulted. However, it will be open to the appellant herein to offer cash security of Rs.50 lakh before the Trial Court in the event the appellant is desirous of the injunction being lifted.

APO No.76 of 2020 along with all applications therein stand disposed of.

There will be no order as to costs.

After the order is pronounced, Advocate for the appellant seeks directions for the expeditious disposal of the suit. Since Advocate for the appellant waives service of the writ of summons, such submission is recorded. It will be open to the appellant to file the written statement within ten days from date, whereupon the appellant will have liberty to seek the expeditious listing of the matter for trial.

It is recorded that the parties have submitted that every attempt would be made to have the trial on the virtual mode, if possible.

(SANJIB BANERJEE, J.)

(MOUSHUMI BHATTACHARYA, J.)