

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision:21.1.2020

Civil Revision No.1171 of 2018 (O & M)

Malayan Banking Berhad(Maybank), Malaysia ...Petitioner

Versus

H.R.Power Projects Pvt.Limited and another ...Respondents

Civil Revision No.1174 of 2018 (O & M)

Malayan Banking Berhad(Maybank), Malaysia ...Petitioner

Versus

H.R.Power Projects Pvt.Limited and another ...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Devmani Bansal, Advocate
for the petitioner

Mr.Narender M.Sharma, Advocate
Mr.Vikram Anand, Advocate
Mr.Anindita Saha, Advocate
for respondent No.1

Mr.Nitin Grover, Advocate
for respondent No.2

RAJIV NARAIN RAINA, J. (ORAL):

**CM-1287-CII-2020 in CR-1171-2018
CM-1291-CII-2020 in CR-1174-2018**

Applications are allowed as prayed for.

1. Annexures R-1 to R-19 in CR-1171-2018 and Annexures P-11 to P-17 in CR-1174-2018 are taken on record.

CR-1171-2018
CR-1174-2018

1. This order disposes of above said two revision petitions filed under Article 227 of the Constitution for setting aside the common order dated 24.11.2017 (Annex P10) passed by the learned Additional District Judge, Chandigarh, whereby the order dated 16.8.2016, granting interim injunction under Order 32 Rule 1 and 2 CPC, by the Civil Judge (Jr.Divn.) Chandigarh, was upheld.

2. Having regard to the history of the litigation starting with a suit instituted in the civil courts at Bathinda by H.R.Power Projects against Canara Bank etc in which Maybank was not impleaded as defendant; the plaint was returned on an objection sustained by the trial judge on plea of want of territorial jurisdiction for filing in the district courts at Chandigarh where it is pending adjudication. These revisions arise from those proceedings challenging the temporary injunction issued. The disputes which have arisen between the parties surrounding an unconditional Letter of Credit include two banks, namely, the Canara Bank and the Malayan Banking Berhad (Maybank)-petitioner Bank, M/s Synergic Industrial Materials and Services Pvt. Limited (SIMS), the Malaysian supplier of Copper Rods to H.R.Power Projects.

3. After perusing the original plaint filed in Bathinda pending now in Chandigarh, the application under Order 16 Rule 17, CPC for amendment of plaint and the pending amended plaint introducing para 16-A in which, prima facie, the averments made in the application under Order 39 Rules 1 and 2, CPC alleging fraud appear to Maybank to be beyond the pleadings in the suit filed by the applicant H.R.Power Projects in Bathinda. H.R.Power

application under Order 6 Rule 17, CPC for amending the plaint for the second time, which is still pending decision and, therefore, those averments/pleas have not yet become a part of the pleadings.

4. Further, having regard to the narrow jurisdiction exercised by the civil court in matters of encashment of bank guarantees and Letters of Credit [in this case an irrevocable Letter of Credit] and the legal principles which guide courts to be slow in the matters of grant of temporary injunction, this Court is of the considered view that both the trial Court and the lower appellate Court have failed in the impugned orders to understand the intricacies of the case and the commercial arrangements between the four parties, the two Banks, the supplier and buyers.

5. Accordingly, this Court is of the view upon a consideration of all the aspects forthcoming from hearing Mr. Devmani Bansal and Mr. Goyal at great length and the broad consensus emerging due to want of cogent reasoning in the orders that the matters are fit to be remanded to the learned District Judge, Chandigarh for either deciding the applications under Order 39 Rules 1 & 2 himself or by marking them to the Court of Additional District Judge/Commercial Court, to return proper findings on the limited aspect of grant or denial of injunction.

6. To achieve this end, in order to make unobstructed way for the remand, it has become necessary that both the orders dated 24.11.2017 and 16.8.2016 passed by the Courts below have to be set aside without expressing any final opinion on the rights of the parties since this Court is only concerned with virtual absence of intelligible reasons in those orders for this Court to judicially review and to understand what really had weighed in the mind of the Court other than repeated incantations of fraud.

The judicial review jurisdiction of the High Court becomes easy and pleasurable when: “We must know what a decision means before the duty becomes ours to say whether it is right or wrong”, reads an oft-cited statement of Cardozo J.

7. The learned Commercial Court will make an earnest endeavour to decide the applications afresh within a period of three months from the date of receipt of a certified copy of this order on its Board, when the parties are in attendance.

8. Meanwhile, it is directed that the status quo obtaining as a result of the passing of the impugned order in appeal shall continue to operate till the commercial court decides the case. And this direction will continue for a further period of one month after pronouncement of orders, for parties to avail their remedies against the decision.

9. The parties shall file their respective detailed synopses for the assistance of the Court explaining their respective cases and the commercial arrangements entered by the parties in a way which is simple to the understanding of the commercial court for it to pass a fresh reasoned order in accordance with law on all the contentious issues, other than permitting oral submissions of the counsel. The respective parties will also give an advance list of their judgments to the commercial court together with photocopies duly highlighting the relevant passages for the convenience of the court with a gist of what they believe to be the binding ratio of those cases. This material should be retained on record for future reference and review. This court expects those judgments to be noticed and dealt with however briefly, as are applicable to the *prima facie* facts and germane to the issues, since the stage of evidence has not arrived and the prayers are of

an ad interim and temporary nature till the subject matter suit/s are finally decided.

10. It may also be kept in mind by the commercial court that it will address and decide the application of H.R.Power Projects under Order 6 Rule 17, CPC in the first instance before proceeding any further.

11. The parties to appear before the trial Court on 12.2.2020.

12. Both the petitions are disposed of in the above terms.

January 21, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes
Yes/No