In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

CO No. 815 of 2021

Airports Authority of India
Vs.
J.P. Aviation Services Private Limited and another

For the petitioner	:	Mr. Probal Mukherjee, Mr. Suhrid Sur
For the opposite party No.1	:	Mr. S. N. Mookherjee, Mr. Meghajit Mukherjee, Mr. Shatadru Chakraborty, Mr. Ramendu Agarwal
Hearing concluded on	:	21.06.2021
Judgment on	:	23.06.2021

Sabyasachi Bhattacharyya, J:-

1. The present application under Article 227 of the Constitution of India has been filed against an appellate court's order rejecting an application filed by the petitioner for stay of operation of the ad interim injunction order passed by the trial court restraining the defendant no. 1/petitioner and other defendants from invoking or encashing a bank guarantee issued by the UCO Bank, Dumdum Nagerbazar Branch (proforma opposite party no. 2) at the behest of the petitioner as also pursuing with the claim of occupational charges, against which the miscellaneous appeal itself had been filed.

2. The plaint case of the plaintiff/opposite party no. 1 is that the plaintiff used to provide ground handling service for certain Airlines in connection with the business of cargo handling, airport ground service and/or logistics related to airport activities run by the defendant no. 1/petitioner. The service was subsequently discontinued on the basis of a decision taken by the petitioner-Authority, pursuant to which the plaintiff/opposite party no. 1 removed its equipment from the airport and stopped providing any service from May 1, 2020.

3. As per agreement, a bank guarantee had been furnished by the opposite party no. 1 as security. Upon all dues being cleared, the opposite party no. 1 asked the petitioner to release the bank guarantee. Instead of doing so, it is alleged in the plaint, the petitioner issued a demand notice on March 1, 2021 for Rs. 54,41,395/- towards occupational charge for the period between May 2, 2015 and February 8, 2021. Unless the payment was made within ten days, the petitioner stated in the notice that it would adjust the same from the bank guarantee.

4. The plaintiff has contended that, on September 9, 2020, a 'no dues certificate' was issued by the petitioner with regard to royalty for the period up to February 29, 2020. It has further been contended that there was no licence agreement as such between the parties.

5. Learned senior counsel appearing for the petitioner, by placing reliance on the said document, contends that the certificate dated September 9, 2020 was strictly confined to outstanding dues against royalty. It was further mentioned in the notice, he points out, that any interest/arrear/other bills raised subsequently for the period stated thereinabove shall be treated as outstanding and shall be payable by the party.

6. It is contended that the bank guarantee furnished by the opposite party no.1 and issued by the proforma opposite party no.2 cover such other bills and arrears as well and, hence, can very well be invoked by the petitioner. Learned senior counsel further submits that the bank guarantee itself refers to licence fees and royalty and other charges due from the licencee, which clearly indicates that the scope of the bank guarantee was wider than the 'no dues certificate' issued in respect of royalty alone.

7. Learned senior counsel for the petitioner places reliance on the judgment reported at *(2016) 10 SCC 46 [Gujarat Maritime Board vs. Larsen and Toubro Infrastructure Development Projects Limited & Anr.]* in support of the proposition that injunctions regarding invocation of bank guarantee is granted only in exceptional cases. There is no extraordinary circumstance in the present case to justify such injunction. It is submitted that the bank guarantee was irrevocable and unconditional and its invocation could not have been interdicted by the court on frivolous allegations made in the plaint.

8. It is, thus, contended by the petitioner that the appellate court refused to exercise jurisdiction vested in it by law in rejecting the prayer for stay of operation of the injunction order, made by the petitioner, despite the injunction having been granted in gross violation of law.

9. Learned senior counsel appearing on behalf of the opposite party no.1 places reliance on the demand notice issued by the petitioner, annexed at page-101 of the revisional application, which indicates that the claim of the petitioner was in lieu of outstanding dues for occupying an office room as per the electric meter record which had been forwarded for necessary payment. Such claim, counsel submits, was made with the *mala fide* intention of defeating the request of the opposite party no.1 to the petitioner to release the bank guarantee amount since all dues had been cleared from the end of the opposite party no.1.

10. Next placing reliance on the language of the bank guarantee itself, learned senior counsel argues that the bank guarantee could be invoked only for breach of any of the covenants and conditions contained in the purported licence agreement, which never saw the light of day. Hence, it is argued that the burden lies on the petitioner to show that the present claim of the petitioner lay within the four corners of the alleged agreement between the parties. Having failed to do so, it does not lie in the mouth of the petitioner to argue that the appellate court acted without jurisdiction in refusing stay.

11. Learned senior counsel appearing for the opposite party no.1 cites *Hindustan Construction Co. Ltd. vs. State of Bihar and others [(1999) 8 SCC 436]* to argue that, in the event the claim was beyond the scope of the bank guarantee, it could not be deemed to be unconditional or irrevocable.

12. The claim, in the present case, being outside the scope of the bank guarantee and in view of the 'no dues' certificate issued by the petitioner itself, it is argued that the trial court was justified in injuncting the petitioner from invoking the said bank guarantee.

13. Upon hearing learned counsel for both sides, it is evident that there is *prima facie* doubt as to whether the claim made by the petitioner by its demand notice dated March 1, 2021 was covered by the agreement between the contending parties at all. First, the petitioner admits during arguments that no written licence agreement was executed and the arrangement between the parties was verbal. Secondly, the petitioner has failed to substantiate by corroborative material as to what were the actual terms and conditions of the agreement.

14. Whether the present demand of the petitioner regarding occupation charges for the period referred to therein is at all covered by the ambit of the bank guarantee is in question.

15. That apart, the claim of the petitioner pertains to a period starting from May 2, 2015 to February 8, 2021. A considerable portion of the claim was for a period much prior to execution of the bank guarantee, which was issued on March 27, 2019. Moreover, the opposite party no.1 has already vacated the possession as per the plaint case in March, 2020, but the claim of occupation charges includes a period even thereafter. Hence, on the face of it, it is doubtful whether the bank guarantee has any nexus with the present claim of the petitioner, particularly in view of the 'no dues certificate' issued by the petitioner regarding royalty.

16. A plain reading of the bank guarantee in its entirety indicates that the dues and charges mentioned therein were primarily related to the licence agreement which was to be entered into between the parties. No such written agreement being on record, it would be difficult to pin-point the further liability of the opposite party no. 1 to pay occupation charges and the veracity of such claim in order to justify invocation of the bank guarantee.

17. In view of the licence agreement itself having been challenged and there being a large question mark as to whether the alleged non-payment of occupation charges was related to the agreement between the parties, the initial onus lay on the petitioner to prove that the bank guarantee had any nexus with the present claim of the petitioner.

18. However, as considered by both the courts below, one of the factors which weighed with both the courts was that the bank guarantee was yet due to expire for some time.

19. Since the invocation of the bank guarantee and its scope is pivotal to the subject-matter of the dispute to be adjudicated in the suit itself, it would be premature for this court to brush aside entirely the petitioner's alleged right to invoke the bank guarantee for the demand-in-question.

20. As apparent from the bank guarantee, the same was valid till March 26, 2021 and the petitioner has a right to encash the same up to June 24, 2021, which is tomorrow. Thus, it would only be fair if the opposite party no.1 is directed to extend/renew the bank guarantee or furnish a fresh bank guarantee for the same amount at least for a further period of 90 days.

21. Looking at the matter from another perspective, just as injunctions relating to invocation of the bank guarantee are granted in exceptional cases, the same logic applies to grant of stay of operation of an injunction order at the ad interim stage of an appeal against such order, since such a stay order would tantamount to finally allowing the appeal without hearing the parties on merits. No such exceptional case has been made out by the petitioner for the stay of the injunction order at the initial stage of the appeal.

22. Keeping in view the above discussions, CO No. 815 of 2021 is disposed of by affirming the order of the appellate court impugned in the present application under Article 227 of the Constitution of India, with a direction upon the opposite party no.1 to extend/renew the bank guarantee dated March 27, 2019 for an equivalent amount for a further period of 90 days, on or before June 24, 2021. In the event it is not possible due to paucity of time for the opposite party no.1 to do so, the opposite party no.1 shall peremptorily furnish a fresh bank guarantee on the same terms and conditions and for a similar amount as that dated March 27, 2019, peremptorily within a week from date, for a further period of 90 days. In default, the petitioner will be at liberty to renew its prayer for stay of operation of the injunction order. If such an application is made on the default of the opposite party no.1 to comply with the above directions, the appellate court will hear the same afresh, without being prejudiced in any manner by the observations made herein and in the impugned order, on its own merits and in accordance with law.

23. It will be open to the appellate court as well as the trial court, as per their discretion, to pass further directions for extension/renewal of the bank guarantee, upon hearing both sides, if situation so demands.

24. The Additional District Judge, Fifth Court at Barasat, District: North 24 Parganas is requested to dispose of Miscellaneous Appeal No. 41 of 2021 pending before it as expeditiously as possible, along with all connected applications, positively within two months from the date of communication of this order to the appellate court, without granting any unnecessary adjournment to either party. Both the parties as well as the courts below shall act on the communication of the learned advocates-on-record for the parties and/or server copy of this order, without insisting upon prior production of a certified copy thereof.

25. There will be no order as to costs.

26. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)