

O.A.No.682 of 2020
in
C.S.(Comm.Div.) No.362 of 2020

C.V.KARTHIKEYAN,J.

This application has been filed seeking interim injunction restraining the defendant from making use of the machineries and equipments belonging to the plaintiff, the details of which had been given to the annexure of the Judges Summons.

2.In the affidavit filed in support of the said application, it had been stated that the plaintiff had entered into a Civil and Structural Steel Construction contract with the defendant on 15.11.2019. The contract was with respect to ACC Sindri Expansion Project in the State of Jharkhand. The value of the contract was Rs.6,39,37,895/-. The period of contract was from 15.11.2019 till 27.07.2020, with a grace period of 15 days. The contract also provided for liquidated damages to be paid, if there was a delay in performance of the contract. This was at the rate of 0.5% per week of delay, subject to a maximum of 5% of the total contract value.

3.The plaintiff had offered, in accordance with the terms and conditions, a bank guarantee for a sum of Rs.80,00,000/-. It had been stated that the guarantee was payable on demand only if a breach had been committed by the plaintiff. There had been exchanges of electronic mails between the parties. At any rate, the plaintiff lays much stress on the electronic mail dated 31.03.2020 by which the defendant had issued a Force Majeure Notification, in view of the Covid-19 pandemic which set in at that particular point of time and in view of the lock down.

4.Thereafter, differences arose between the plaintiff and the defendant. The machineries which had been stated in the annexure to the Judges Summons, about 25 in number, belonging to the plaintiff, where in the work site under the control of the defendant. The defendant claims that they have over paid the plaintiff, though the plaintiff had performed only about 3.64% of the work, but had received payments over and above the payments which was to be paid for such percentage of work. This naturally has led to disputes between the plaintiff and the defendant. The plaintiff has filed the present application calling upon the defendant not to use the machineries. In effect the object of the application is to seek an order to permit the plaintiff to remove the machineries.

5.I am conscious, that this is not the relief sought. However, that is the thrust of the arguments advanced by the learned counsel for the plaintiff. The learned counsel for the defendant stated with much force that the machineries are to be kept hold by the defendant owing to the fact that the defendant has a counter claim as against the plaintiff. The parties are therefore at a deadlock. In the middle of all this, the value of machineries will only keep depreciating. The value decreases. Even in the affidavit filed, the value of the machineries have been stated to be 50,00,000/-, as on date to filing of the application. It must have reduced more considerably by now.

6.I do not find any logic in permitting retention of the machineries with the defendant, particularly, when they are not going to be put to any constructive use. The machineries would only be reduced to scrap and since the value also keeps depreciating, even if the defendant has a counter claim for much larger amount holding on to the machineries would serve no practical purpose. The plaintiff can however put the machineries to use, since they are in the business of making use of the machineries. To enter into any further contract with any other third party, they should possess the machineries.

7.It must also be incidentally pointed out that there were three other items of machines which the plaintiff had taken on rent from third parties, which were also locked up in the premises of the defendant under the control of the defendant. However, interim orders were passed in O.A.No.681 of 2020 in C.S.No.359 of 2020, permitting the plaintiff to remove those three items, since the plaintiff was answerable to third parties over such machineries. The defendant had also accepted to abide with the said order.

8.I am consciously not entering into any discussions over the rival claims made by the learned counsel for the plaintiff and the learned counsel for the defendant, over the actual monies due and payable by either party. These are issues which can be determined only during the trial when the witnesses for the plaintiff and the defendant graze the witness box and adduce evidence to the facts directly to their knowledge. Those statements should also be tested during cross-examination.

9.As on date, the defendant has not filed their written statement.

However, the learned counsel for the defendant stated that preparations for filing the written statement along with counter claim are ready and that it will be filed shortly. The learned counsel therefore stated that since the defendant also has a claim against the plaintiff, it is an intention of the defendant to set off the value of the machineries now available with them, towards the claim made in the counter claim.

10.It is trite to point out that any counter claim is in the form of a plaint against the plaintiff. Independently, the defendant can always seek for furnishing security to ensure, if at all a case is made towards the counter claim at the time of final judgment for realization of such claim. But holding on to the machineries for the past year and for time immemorial in the future will serve no purpose. Whenever the defendant presents the written statement along with a counter claim and the pleadings are settled with the plaintiff also filing a written statement to the counter claim, then either party can seek for provision of necessary security. As on date there is no quantified amount mentioned by the defendant. Therefore, it would only be appropriate that the machineries now lying under the control of the defendant, which machineries the defendant cannot put to any use and also

has no intention to put to any use are permitted to be taken back by plaintiff.

11.It would also be in the interest of the parties that they sit down and examine the reality of the situation as prudent businessmen to find out a solution. Even if that is not possible, the defendant can file necessary application seeking security which the plaintiff can contest on merits. Issues can be settled between the parties. That option is always open to the defendant. Retaining the machineries is not a proper option.

12.In view of these facts, once again deliberately not examining the various averments made in the pleadings and leaving those averments to be adjudicated during the course of trial, a direction is issued to the defendant to permit the plaintiff to remove the machineries now lying at the factory premises of the defendant at Jharkhand. The defendant can never hold on to the machineries which would be of no use to either one of the two parties if it becomes waste and becomes scrap material.

13. Viewed from that narrow angle, the following direction is issued:

i). The defendant may permit the plaintiff or anybody representing the plaintiff to remove the machineries lying at their factory premises at Jharkhand, under proper authorization and undertaking. The said exercise may be completed within a period of four weeks from today. Accordingly, the Original Application is disposed of. No order as to costs.

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