

IN THE HIGH COURT AT CALCUTTA

(Ordinary Original Civil Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 3 of 2022

In

CS 406 of 2013

MSC Mediterranean Shipping Company S.A. & Anr.

Vs.

State Trading Corporation of India Limited & Ors.

Mr. Prantik Garai

Mr. Ayan Dutta

Ms. Somali Bhattacharjee

...For the plaintiff.

Mr. Debraj Bhattacharjee

Mr. Ritesh Kumar Ganguly

...For the defendant No. 5.

Heard on : 13.12.2022

Judgment on : 20.12.2022

Krishna Rao, J.:

The plaintiff has filed the instant application for dismissal of the instant suit for non-prosecution.

Plaintiff had filed the suit against the defendants praying for decree of Rs. 88,23,61,847.57/- against the defendants no. 1 to 5 and other reliefs. After initiation of the instant suit, the plaintiff had filed an interlocutory application being GA No 3457 of 2013. The interlocutory application was disposed of on 23rd December, 2013 by passing the following order :

“In that view of the matter I think it would be just and proper if the plaintiff/petitioner substantially secures the claim of Balmer Lawrie & Co. Ltd. They ought to do so by depositing a sum of Rs. 25 lacs with their Advocates-on-record M/s. Victor Moses & Co. This firm shall invest the said sum in a term deposit of one year, to be renewed from year to year, with SBI Calcutta High Court Branch. The deposit will be treated as security for Balmer Lawrie & Co. Limited. I order accordingly.

The said firm of Solicitors will intimate to the Advocate-on-record of Balmer Lawrie & Co. about the creation of the fixed deposit and will also from time to time furnish them with statement of accounts.

The Customs authority will be at liberty to draw a sample of the goods and get it tested within fifteen days, from date, even before creation of the security.

If the Customs are of the view that the goods are of no value they will handover the containers with the goods to the plaintiff/petitioner after conclusion of the period for testing the goods. The plaintiff may take back the containers. If their views are otherwise they will have to take steps for sale of these goods within a further period of 45 days peremptorily. In default the plaintiff/ petitioner will be at liberty to empty the containers of their goods at any place notified by the Customs and take back the containers.

This order will not preclude the Customs from taking any action against the importer.

It is made clear failure to obtain home clearance of the goods will not be taken to be an allegation against the container owner.

The security is furnished without prejudice to the rights and contention of the plaintiff in the suit.

As affidavits are not invited the allegations contained in the petition are deemed not to be admitted.

This application is disposed of by the above order.”

In terms of the order passed by this Court, the petitioner has deposited an amount of Rs. 25,00,000/- by way of fixed deposit in the name of the Advocate-on-Record of the petitioner. In compliance of the interim order passed by this Court, the plaintiff had removed the goods from the Container Freight Station of the defendant no. 5. More than eight years have been passed but the respondents have not initiated any legal proceeding against the plaintiff and no claim is lodged against the plaintiff.

The plaintiff vide communication dt. 13th May 2022 informed the Advocate-on-record of the plaintiff that the plaintiff is not inclined to proceed with the instant suit any further and instructed the Learned Advocate on Record of the plaintiff to take appropriate steps to withdraw the instant suit.

Learned Counsel for the defendant no. 5 submits that taking the benefit of the interim order passed by this Court the plaintiff has removed the goods from the Container. He further submits that this Court passed interim order by securing an amount of Rs. 25,00,000/- as security and if the plaintiff is allowed to withdraw the suit, the claim of the defendant no.5 will be frustrated. Learned Counsel for the defendant no. 5 submits that the plaintiff has not lodged writ of summons till date and thus the defendant no.5 could not get an opportunity to lodge their claim.

Heard the Learned Counsel for the respective parties and the materials available on record. This Court finds that on the submissions made by the counsel for the defendant no. 5, this Court had directed the plaintiff to secure an amount of Rs. 25,00,000/- in a fixed deposit in the

name of the Advocate-on-record of the plaintiff and accordingly the plaintiff had complied with the same but since then till date even on completion of more than eight years the defendant no. 5 had not lodged any claim or initiated any proceeding for recovery of the said claim.

The defendant no. 5 without raising any claim either by counter claim in the suit or by filing any separate proceeding, the defendant no. 5 can not object for withdrawal of the suit as claimed by the plaintiff. Even in the instant application, the defendant no. 5 has not prayed for filing any opposition.

In view of the above, this Court allowed the prayer (a) of the plaintiff in the instant application.

Accordingly, **CS No. 406 of 2013** is **dismissed** as withdrawn and the interim order dated 23rd December, 2013 is hereby vacated.

G.A. 3 of 2022 is thus **disposed of**.

(Krishna Rao, J.)