

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FMA 385 of 2020
with
IA No.: CAN 1 of 2018 (Old No.: CAN 1916 of 2018)

AI Champdany Industries Limited & Anr.
versus
Union of India & Ors.

For the Appellants : *Mr. Joydip Kar, Sr. Adv.,*
Mr. Sabyasachi Chaudhury,
Mr. Siddhartha Banerjee,
Mr. Abhijit Guha Roy,
Mr. Deborshi Das,
Mr. Shounak Mukhopadhyay.

For the Union of India : *Mr. Indrajeet Dasgupta,*
Mr. Dibashis Basu,
Ms. Rima Biswas,
Mr. Arun Bandyopadhyay.

For the Respondent No.2 : *Mr. Saikat Chatterjee,*
Mr. Rahul Karmakar,
Mr. Surya Prasad Chattopadhyay.

For the Respondent No.4 : *Mr. Suddhasatva Banerjee,*
Mr. Cedric Fernandez,
Mr. Rajdeep Mantha.

Hearing is concluded on : *1st February, 2023.*

Judgment On : 23rd February, 2023.

Tapabrata Chakraborty, J.

1. The present appeal has been preferred by AI Champdany Industries Limited (hereinafter referred to as the Company) and its functionary challenging an order dated 31st January, 2018 passed in a writ petition being W.P. 2319 (W) of 2016 refusing to interfere with the orders dated 8th July, 2015 and 19th /20th November, 2015 passed by the Under Secretary to the Government of India, Ministry of Textiles pursuant to the order dated 6th May, 2015 passed in a writ petition being W.P. 5365 (W) of 2010.

2. The appellants preferred the writ petition being W.P. 2319 (W) of 2016 stating *inter alia* that the respondent no.1 (hereinafter referred to as UOI) with effect from 8th February, 1989 introduced the External Market Assistance Scheme (hereinafter referred to as 'the EMA scheme') with the basic object of boosting exports of jute goods from India. Under the EMA Scheme, market assistance is provided at a specified rate on export of specified jute products. The EMA scheme since its inception has got extension and has undergone modification from time to time and was valid till 31st March, 2007. By a notification dated 25th September, 1998, food grade jute products (FGJP) were brought under the purview of the EMA scheme and it was, *inter alia*, specified that the exporters in order to claim the EMA scheme would have to submit pre-shipment certificates to the respondent no.2 (hereinafter referred to as NJB) along

with diverse documents specified therein. Such pre-shipment certificates would have to be signed by duly constituted authority of respondent no.3 (hereinafter referred to as IJIRA) and/or their licensee being the respondent no. 4 (hereinafter referred to as SGS) for the said purpose. On the basis of such EMA scheme the Company submitted its claim with the NJB and the goods which were manufactured and exported by the Company were inspected either by the SGS or by IJIRA and after such inspection of the products, payment was also received by the Company in respect of such claim but all on a sudden *vide* letter dated 12th December, 2007 issued by the Central Government to NJB it was *inter alia* indicated that FGJP certificates issued by SGS do not conform to the procedure laid down in the EMA Scheme, therefore, the claim made on the basis of the certificate issued by SGS would not be entertained. Challenging the said notification, the appellants earlier preferred a writ petition being W.P. 5365 (W) of 2010. Upon contested hearing the said writ petition was disposed of by a judgment and order dated 6th May, 2015 observing *inter alia* that the notification/order dated 12th December, 2007 has been arbitrarily, erroneously, whimsically, given with retrospective effect by the authority without any valid reason. By the said order the Secretary, Ministry of Textiles and his delegate were directed to consider the writ petitioners/appellants' claim, in accordance with law and in the light of the observations made in the judgment. As directed, an opportunity of hearing was granted and an order was passed on 8th July, 2015 rejecting the appellants' claim. Pointing out the

infirmities in the said order, the appellants submitted a representation dated 30th July, 2015 to review the earlier decision but such prayer was denied by an order dated 19th/20th November, 2015.

3. The said writ petition was disposed of by an order dated 31st January, 2018 observing *inter alia* that ‘*in the situation, while the suit is pending for adjudication upon evidence of the parties, any observation or decision about the impugned report, as revisited, may cause prejudice to either of the parties. Therefore, refraining myself from entering into merits and keeping liberty of the parties in tact and keeping all points pertaining to the report of EMA claims dated 8th July, 2015, as was assailed in the writ petition, open for raising in the civil suit (supra), if so requires, the writ petition being held not maintainable, is disposed of without going into merits*’.

4. Mr. Kar, learned advocate, assisted by Mr. Chaudhury, learned advocate appearing for the appellants submits that the learned Judge erred in law in refusing the appellants’ prayer on the ground of availability of alternative efficacious remedy by reason of filing of prior suit, failing to appreciate that the subject matter of the writ petition was the orders dated 8th July, 2015 and 19th/20th November, 2015 rejecting the appellants’ claim and that the said orders are not and could not be the subject matter of the civil suit, which was filed in the year 2010.

5. He contends that the learned Judge failed to appreciate that when the order passed in purported compliance of the order of the Hon’ble High Court is a reproduction of the grounds from a notification

which has already been quashed, the same amounts to procedural irregularity. The learned Judge disposed of the matter abruptly without dealing with the contentions as urged by the appellants on merits.

6. Mr. Kar argues that notwithstanding the pendency of the suit in 2010, the order dated 6th May, 2015 was passed observing that the notification dated 12th December, 2007 was arbitrary and illegal and in view thereof, the orders dated 8th July, 2015 and 19th/20th November, 2015 impugned in the second writ petition did not and could not have any connection with the pending suit.

7. According to him, the suit being CS No.293 of 2010 was filed without prejudice to the pending writ petition being WP No.5365 (W) of 2010. The appellants were constrained to prefer the suit during the pendency of the writ petition to prevent their claim from being barred by limitation and the fact of pendency of the writ petition was averred in paragraph 33 of the plaint. The cause of action of the instant writ petition cannot be said to be the same or even continuing, as because the order which was assailed in the earlier writ petition, was quashed by this Court, and after revisiting the issue a fresh cause of action arose when the part claim of the appellants was considered favourably, denying the rest for no fault on their part. The order dated 8th July, 2015 was not even born at the stage of the first writ petition. In support of his arguments, Mr. Chaudhury has placed reliance upon the judgments delivered in the cases of *S.J.S. Business Enterprises (P) Ltd. –vs- State of Bihar and Others*, reported in (2004) 7 SCC 166 and *National Insurance*

Company Limited & Ors. –vs- Sujit Kumar Banerjee, reported in 2016 0 Supreme(Cal) 353 and *Bengal Waterproof Limited –vs- Bombay Waterproof Manufacturing Company and Another*, reported in (1997) 1 SCC 99.

8. Mr. Kar contends that the certification issue was never remanded by the order dated 6th May, 2015. A perusal of the said order would reveal that the Hon'ble Court arrived at a categorical finding that the notification dated 12th December, 2007 had been issued arbitrarily and as the conditions of the EMA scheme stood satisfied, the certificates issued ought to have been accepted. The only issue thus remanded was to ascertain as to whether the quantum of dues payable to the appellants was Rs.10,97,86,570/-. The relief thus claimed through the second writ petition was a consequential relief of a monetary claim which was illegally turned down by the impugned order dated 8th July, 2015. A writ petition involving such consequential relief of monetary claim is maintainable *moreso* when the amount has been withheld on the sole ground of certification though such issue has already been finally decided. The order dated 6th May, 2015 has reached its finality since no appeal has been preferred against the same by the respondents.

9. *Per contra*, Mr. Dasgupta, learned advocate appearing for UOI submits that the writ petition was preferred *inter alia* praying for issuance of necessary direction upon the respondents '*to forthwith release the pending claim of EMA of the petitioners in terms of annexure "P11" hereto*'. The said annexure would reveal that the claim was of Rs.10,97,86,570/-. The same amount has also been claimed by the

appellants in the Civil Suit No.293 of 2010. In view thereof, the learned Single Judge rightly observed that the second writ petition is barred since alternative remedy has already been availed by the appellants by filing a civil suit on similar cause of action. A prayer for issuance of a writ of mandamus directing the appropriate authority to refund money is not ordinarily maintainable, moreso when a suit is pending before the competent civil forum seeking a decree for recovery of the self-same amount. In support of such contention reliance has been placed upon a judgment delivered in the case of *Suganmal -vs- State of Madhya Pradesh*, reported in *AIR 1965 SC 1740*.

10. Drawing our attention to the documents annexed at pages 97 and 105 of the stay application, Mr. Dasgupta submits that the Company last received payment on 24th June, 2005 and the outstanding amount of Rs.10,97,86,570/- pertains to a period from April, 2002 till March, 2007 and as such the appellants' claim is also barred by limitation. The suit has been filed by the appellants more than three years thereafter.

11. According to Mr. Dasgupta, the EMA claims are subject to the guidelines of the Ministry of Textiles and the procedure enumerated in the minutes of the meeting dated 19th September, 1998 which clearly specified that for disbursement of the amount claimed '*certificates will be signed by both by SGS & IJIRA*'. Indisputably, the appellants were not having certification from IJIRA and as such payment was rightly withheld. The discrepancies and the irregularities, as pointed out in

paragraph 10 of the order dated 8th July, 2015 involves disputed questions of facts which can only be decided upon leading evidence.

12. He further argues that it is the specific stand of SGS that the EMA scheme was a scheme to govern only the dealings by and between the jute mills/exporters including the appellants and IJIRA and that SGS had no obligation towards IJIRA or jute mills/exporters under the EMA scheme. In support of such contention he has drawn our attention to the averments made in the affidavit-in-opposition filed by SGS in the writ petition.

13. He contends that the judgment in the case of *Suganmal (supra)* was a judgment delivered by five Hon'ble Judges. In the case of *National Insurance Company Limited & Others (supra)* only a part of paragraph 6 of the judgment delivered in the case of *Suganmal (supra)* was merely quoted but the ratio was not discussed in detail and the same was not distinguished with reasons though the practice for such discussion has now crystallized into a rule of law. In support of such contention reliance has been placed upon judgments delivered in the cases of *Union of India and Another -vs- K.S. Subramaniam*, reported in (1976) 3 SCC 677 and *Harinder Kar and Others -vs- Union of India and Others*, reported in (2009) 13 SCC 90.

14. Mr. Banerjee, learned advocate appearing for SGS submits that SGS had no obligation towards IJIRA or jute mills/exporters under the EMA scheme. It is true that a Memorandum of Understanding (hereinafter referred to as MOU) was entered into by and between SGS

and IJIRA on 16th October, 1998. However, the said MOU did not restrain SGS from carrying out tests if jute mills/exporters directly approached it for obtaining test certificates. There existed a clear distinction between the procedure to be followed in respect of EMA scheme and the consignments which have the contractual obligation between the buyer and the exporter for inspection and certification by SGS.

15. Drawing our attention to a representation dated 31st January, 2005, annexed at page 485 of the stay application, Mr. Karmakar, learned advocate appearing for the respondent no.2 submits that the benefits of EMA scheme were being syphoned off in an unscrupulous manner by the appellants without obtaining proper certification from the appropriate authorities. Upon receipt of such complaint, the matter was enquired into and thereafter the notification dated 12th December, 2007 was issued observing *inter alia* that EMA claims have been disbursed based on certification from SGS only and without following due procedure as prescribed and as such *'there is a necessity to look into these cases from recovery point of view separately'*.

16. According to Mr. Karmakar, the Hon'ble Judge while deciding the first writ petition on 6th May, 2015 did not set aside the notification dated 12th December, 2007 but disposed of the writ petition relegating the matter to the Secretary, Ministry of Textile and his delegate for consideration of the writ petitioners' claim, in accordance with law and

in the light of the observations made in the judgment since in view of the Court, justice would be sub-served if such procedure is adopted.

17. He contends that the cause of action involves a bundle of facts and the averments made in the writ petition coupled with those made in the plaint reflects a single story. The Court by the earlier order dated 6th May, 2015 did not stop the investigation but relegated the matter for further consideration in accordance with law and such remand is not conclusive between the parties and the issues can be reopened at the time of final determination of the dispute. The enquiry initiated was thus not stalled or set aside. The issues agitated in the first writ petition were identical to the questions involved in the suit and the appellants cannot pursue two parallel remedies. Such clinching facts do not warrant exercise of discretionary jurisdiction. In support of such arguments reliance has been placed upon the judgments delivered in the cases of *Jai Singh –vs- Union of India and Others*, reported in (1977) 1 SCC 1, *Satya Pal Anand –vs- State of Madhya Pradesh and Others*, reported in (2016) 10 SCC 767, *Kasturchand –vs- Qazi Syed Saifuddin*, reported in 1983 SCC OnLine Bom 140 and *S.P. Chengalvaraya Naidu (Dead) By Lrs. –vs- Jagannath (Dead) By Lrs. and Others*, reported in (1994) 1 SCC 1.

18. He argues that the authorities have acted in strict consonance with the directions issued by the learned Single Judge in the earlier writ petition and considered the appellants' grievances, upon granting an opportunity of hearing and there is no error in such decision making

process warranting interference in exercise of the jurisdiction of judicial review. Considering the materials on record, the Hon'ble Judge arrived at a finding and there is no justification in entering a different finding without any further material before this appellate Court. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Bachan Singh –vs- Union of India and Others*, reported in (2008) 9 SCC 161, *Management of Narendra & Company Private Limited – vs- Workmen of Narendra & Company*, reported in (2016) 3 SCC 340 and *Dr. Utpal Sharma –vs- Akshay Pant and Others*, reported in 2019 (1) CHN 328.

19. Mr. Kar, in reply, submits that the subject matter of the first writ petition was a notification dated 12th December, 2007 whereas the subject matter of the second writ petition are the orders dated 8th July, 2015 and 19th/20th November, 2015. The orders impugned in the second writ petition were not even born at the time of preference of the first writ petition and the civil suit and as such the learned Judge erred in law in arriving at a finding that the cause of action was same and identical.

20. By the order impugned in the present appeal, the writ petition was disposed of observing that '*in the situation, while the suit is pending for adjudication upon evidence of the parties, any observation or decision about the impugned report, as revisited, may cause prejudice to either of the parties. Therefore, refraining myself from entering into merits and keeping liberty of the parties in tact and keeping all points pertaining to*

the report of EMA claims dated 8th July, 2015, as was assailed in the writ petition, open for raising in the civil suit (supra), if so requires, the writ petition being held not maintainable, is disposed of without going into merits'.

21. A perusal of the order impugned reveals that the Court did not go into the merits of the claim, instead disposed of the writ petition as not maintainable since, according to the learned Single Judge, the second writ petition has been preferred on the self-same cause of action which was involved in the suit. Both in the writ petition as well as in the suit, the appellants had claimed disbursement of an amount of Rs.10,97,86,570/-. The notification dated 12th December, 2007 was issued referring to a letter dated 19th November, 2007 issued by the Secretary, NJB and after conducting an enquiry. From the contents of the same it would be explicit that the amount was withheld on the ground of lack of certification and it was also observed that there is a necessity to look into those cases from recovery point of view. The order impugned in the second writ petition would reveal that apart from the issue of certification there were other irregularities.

22. The facts which have a direct bearing on the *lis* give rise to the cause of action. What is to be seen is whether a particular fact is of substance and can be said to be material, integral or essential part of the *lis* between the parties. To determine the cause of action, the facts need to be considered together and not in isolation. A particular fact cannot be taken up and highlighted. Improper certification and other

irregularities are the ultimate reasons towards non-disbursement of Rs.10,97,86,570/-, as claimed in the suit and the writ petition. The said reasons are inextricably connected with the web of facts involved in the *lis*. In view thereof, we are unable to accept the contention of Mr. Kar that the cause of action involved in the writ petition is different from the cause of action involved in the second writ petition and that the claim for disbursement is a consequential relief since the issue of certification has already been decided in favour of the appellants in the earlier writ petition.

23. As per the provisions of Order 2 Rule 2 CPC every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Once the petitioner/plaintiff approach a Court of law for getting any redress basing his case on an existing cause of action, he must include in the suit the whole claim pertaining to that cause of action. On the date the suit was filed, the whole claim on the basis of the existing cause of action was a claim for disbursement of an amount of Rs.10,97,86,570/-. On the date of filing of the second writ petition also the claim pertaining to the cause of action existing on that date was also a claim for an amount of Rs.10,97,86,570/- and that as such we do not find any error with the observation that *‘this parallel proceeding before the writ court upon hearing the point of maintainable is held as barred’*. Both the notification dated 12th December, 2007 as well as the order dated 8th July, 2015 debars the entitlement of the appellants. In the second order apart from certification various other

irregularities have been point out. The reasons towards withholding of the claim may be different but the claim is identical. The orders dated 12th December, 2007, 8th July, 2015 and 19th/20th November, 2015 are incidental to the cause of action and as such the second writ petition has rightly been held to be barred.

24. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. There is no dispute as regards the proposition of law laid down in the judgments cited by the respective parties but the application of such proposition is certainly dependent on the specific facts and circumstances of the respective cases. Judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases.

25. The learned Single Judge, upon dealing with all the judgments cited and considering the arguments advanced, has arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned. The scope of judicial review is very narrow and limited and such jurisdiction should be exercised sparingly and only in appropriate cases where the judicial conscience of the Court dictates. The impugned judgment does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

26. For the reasons discussed above, the appeal and the connected application are dismissed.

27. There shall, however, be no order as to costs.

28. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)