

OCD-17

ORDER SHEET

EC/217/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

SUSHIL KUMAR MORE
VS
SHEIKH ASADUR RAHMAN AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 31st August, 2023.

Appearance:

Mr. K.R. Thaker, Adv.

Ms. Nilanjana Adhya, Adv.

Mr. A.K. De, Adv.

...for the award-holder

Mr. Malay Kr. Seal, Adv.

...for Sonali Bank Ltd.

Ms. Radhika Mishra, Adv.

Ms. Arti Bhattacharyya, Adv.

..for Standard Chartered Bank

The Court: The decree-holder/petitioner seeks execution of a decree passed by a learned Single Judge of this Court on 22nd November, 2022. The decree was passed in a suit filed by the petitioner/plaintiff and the Court found that the petitioner had transported Indian non-basmati rice and wheat which were received at Bangladesh by the defendant no.1, who was therefore liable to pay USD 615624 along with interest at 18% from the date of the invoices raised by the petitioner/plaintiff till realisation of the amount. The decree was modified by an order dated 25th November, 2022 which records that the

plaintiff is entitled to get a decree of USD 615264 along with interest at 18% per annum. The date for commencement of payment of interest was also modified to mean that the starting date would be 16th April, 2018.

The petitioner thereafter filed an application for execution of the decree and a co-ordinate Bench passed an order on 13th June, 2023 in terms of prayers (c) and (d) of the Tabular Statement which was for injunction restraining the judgment-debtor nos.1 and 2 from withdrawing any sums or operating the bank accounts mentioned in prayer (a) without leaving aside a sum of USD 1,159,598 in the Banks and also that Axis Bank, Fort Branch, Mumbai; ICICI Bank, Lower Parel, Mumbai; Sonali Bank; AB Bank; Standard Chartered Bank and Mashreq Bank were directed to give particulars of all accounts and deposits maintained by the judgement-debtors with them.

Most of the Banks who form part of prayer (d) of the Tabular Statement are represented and have complied with the order dated 13th June, 2023.

The judgment-debtor no.1 is the buyer and the judgment-debtor no.2 is the buyer's Bank in Bangladesh. The judgment-debtor nos. 3 and 4 were the plaintiff's Banks in Bangladesh who made over the documents for sale of the goods from the plaintiff to the defendant no.1. The judgment-debtor no.4 negotiated the documents on behalf of the plaintiff and presented the documents to the defendant no.3 who was representing the defendant no.1.

The Banks mentioned in prayer (d) of the Tabular Statement have given their respective letters to show that the Banks have kept the amount mentioned in prayer (c) of the Tabular Statement aside in compliance of the

order dated 13th June, 2023. The plaintiff now seeks orders in terms of prayer (b) of the Tabular Statement, which is for directing the judgment-debtor no.2, namely, Islami Bank, Bangladesh to transfer USD 238514 inclusive of interest at 18% upto 31st July, 2023.

On the last occasion when the matter was taken up for hearing, Mr. Sarosij Dasgupta had appeared for the importer and had submitted that the importer had not received a copy of the execution application. This submission appears to be incorrect in view of an affidavit of service which shows that the importer had received the execution application on 11th July, 2023.

Mr. Dasgupta is not present in Court today.

Considering the decree passed by the learned Single Judge of this Court and the subsequent order of another co-ordinate Bench whereby the orders have already been passed in terms of prayers (c) and (d) of the Tabular Statement and considering the fact that there have been no subsequent events including the judgment-debtors challenging the decree, this Court is of the view that there is no impediment in passing an order in terms of prayer (b) of the Tabular Statement.

Further, upon considering the statements made in paragraph 13 of the supplementary affidavit filed on 7th August, 2023 on behalf of the decree-holder that judgment-debtor no.2/its Bank ICICI Bank has sufficient amounts which have been kept aside in terms of the order dated 13th June, 2023, ICICI Bank may be directed to transfer USD 1,159,598 lying in its Dollar Account bearing the number mentioned in paragraph 13 of the affidavit and AB Bank be

directed to transfer a sum of USD 78,916 towards the interest component of the decree from 16th March, 2023 – 31st July, 2023 which was made clear by the subsequent order dated 25th November, 2022 modifying the decree to the extent as stated in the said order.

The other Banks, which have been made part of the prayer (d) of the Tabular Statement, shall be at liberty of discharging the lien on their accounts.

The ICICI Bank and AB Bank shall pay the amount of USD 1,159,598 and USD 78,916 respectively to the account of the plaintiff which is specified below:-

ICICI Bank, S.F Road, Siliguri, India being A/c. No.192905001431
SWIFT CODE: ICICINBBCTS.

EC/217/2023 is accordingly disposed of in terms of the above.

(MOUSHUMI BHATTACHARYA, J.)

sg.