



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Reserved on: 17th August, 2023**
Pronounced on: 22nd September, 2023

+ **FAO(OS) (COMM) 163/2023**
&
CM APPLs. 40116/2023, 42083/2023

COGOPORT PRIVATE LIMITEDAppellant
 Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Vivek Jain, Mr. Mrinal Bharti, Mr. Waseem Pangarkar, Mr. Abhishek Gupta, Ms. Nadiya Sarguroh, Ms. Swapnil Srivastava, Mr. Mahesh Ahire, Ms. Sanajana Srivastava, Mr. Jayesh Srivastava, Mr. Vikram Dalal, Ms. Shreya Sethi & Ms. Riya Kumar, Advocates.

versus

STRIDES PHARMA SCIENCE LIMITED & ORS..... Respondents
 Through: Mr. T.K. Ganju, Sr. Advocate with Mr. Sukrit R. Kapoor, Mr. Aviral Tripathi & Mr. Samarth Kapoor, Advocates for R-1.
 Mr. Utkarsh Joshi, Advocate for R-2.
 Mr. Kartickey Mathur, Mr. Saransh Gupta & Mr. Shanker Kashyap, Advocates for R-3.
 Mr. Uday Kumar, Advocate for R-4.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G M E N T

NEENA BANSAL KRISHNA, J

1. An appeal under Section 13(1A) of the Commercial Courts Act, 2015 has been filed against the Order dated 28.07.2023 allowing the I.A.11644/2023 of the plaintiff directing the appellant/defendant No.3 to forthwith release all original documents/ Bill of Lading pertaining to the Consignment of the respondent No.1/plaintiff to him and has also restrained the appellant from obstructing the release of Consignment in question.
2. The **facts in brief** are that the plaintiff Stride Pharma Science Limited (*hereinafter referred to as "respondent No. 1"*) is a Pharmaceutical Company which engaged the services of respondent No.2/defendant No.1 on 31.03.2023 to deliver its consignment of life saving medicines on urgent basis to its clients L.N.K. International Inc. New York. In furtherance thereto respondent No.2/ defendant No.1 issued House Bill of Lading (HBOL) dated 31.03.2023. Respondent No.2 in order to honour the contract, forwarded the consignment to respondent No.3/defendant No.2, a Forwarding Agent, who in turn further forwarded the consignment to the appellant/defendant No.3.
3. The complete payments relating to delivery of freight were made by the respondent No.1 to respondent No.2. The Consignment reached final destination i.e. New York on 12.06.2023, but was illegally withheld by City Freight Logistics Inc. (Delivery Partner No.1 in New York) and AJ Worldwide Logistics (Delivery Partner No.2 in New York) on specific instructions of the appellant and respondent No.4.



4. The consignment being life saving drugs were perishable in nature and had a limited shelf life and if not stored properly could lose its value/ quality completely. The total value of the consignment was USD 642,609 (i.e. about INR 5,50,09,665/- at INR 81.95 per USD).The Consignee's Broker i.e. HL Brokerage vide multiple emails inquired regarding Arrival Notice of consignments from Delivery Partner No.1 in New York, who informed on 12.04.2023 that it would share the Arrival Notice along with the Invoice on separate email as soon as they receive the surrender Bill of Lading from the Port of Origin. Further, vide email dated 08.06.2023, the Consignee's Broker followed up with Delivery Partner No.1 in New York to which it received a response that they had received specific instruction to hold the consignments from the original Consignor i.e. defendant No.4.

5. To clear the confusion, respondent No.1 vide email dated 10.06.2023 informed Consignee's broker and Delivery Partner No.1, New York that there was no hold up for the shipment from the original Transporting Agent i.e. respondent No.2 as the payments were already made by respondent No. 1/ plaintiff and the consignment must be released immediately upon arrival. However, when the consignment reached New York on 12.06.2023, it was not released despite full advance payment being made by respondent No.3 (Forwarding Agent of respondent No. 2) to the appellant. Respondent No.2 vide email dated 13.06.2023 sought immediate release of consignment as payments were already made by it to the appellant.

6. Respondent No.1 on the same day, asked for specific reasons from delivery Partner No.1, New York for withholding of the consignments and was informed via email dated 14.06.2023 that there were instructions to



withhold the consignment by the appellant due to non-payment of freight charges.

7. Subsequently, the possession of the goods was transferred from Delivery Partner No.1 to Delivery Partner No.2, New York i.e. AJ Worldwide Logistics. Various emails were exchanged between the parties and eventually Delivery Partner No.2 in New York apprised respondent No.1 that they would need the Bills of Lading which were in the possession of the appellant for releasing the Consignment.

8. Respondent No.1/plaintiff thereafter wrote an email dated 17.06.2023 to respondent No.4 demanding specific performance and damages in lieu of failure to handover the Consignment in accordance with the deadline which not only caused huge financial loss and reputational loss to the respondent No.1 but also diminished the value/quality of the goods. On 20.06.2023, the appellant confirmed that they were withholding the Bills of Lading because of a payment dispute with respondent No.3 and the goods would be released only after the dispute is resolved.

9. The respondent No.1 explained that it is having an ongoing litigation before NCLT, Mumbai with the appellant wherein the appellant is the Operational Creditor and respondent No. 1 is the Corporate Debtor. It was claimed that the appellant is trying to arm-twist respondent No.1 to pay the debts in dispute before the NCLT, in return of release of Consignment. It was claimed that the goods were illegally and unlawfully retained causing severe damage to respondent No.1. Thus the present Suit was filed with a prayer that the appellant and the remaining respondents be directed to pay Rs.7,00,00,000/- along with 18% interest for the losses



suffered by respondent No.1 to reimburse the damages caused along with 10% delay charge i.e. Rs.55,00,000/- and costs.

10. Along with the Suit, an Application I.A.11644/2023 was also filed for interim Mandatory Injunction for directing the appellant and the respondent Nos 2 to 5 to hand over the goods forming part of the Consignment to the consignee i.e. L.N.K International Inc., New York and also to direct them to deposit INR 3,00,00,000/- as security for failure to perform the contractual obligations.

11. The suit was contested by the respondent Nos 2 to 5/ defendants. The **appellant in its Reply to the Application** contended that it had not been paid the charges for the Invoice dated 13.06.2023 in the sum of Rs.44,560.27/-, charges towards detention, storage & destination charges starting from 16.06.2023 in the sum of \$97,138 and estimated future cost per day for storage and detention at \$3200. It was thus, asserted that Rs.83,10,404.71 remained to be paid to the appellant for which reason the goods had been retained.

12. The **learned Single Judge** considered all the contentions of the parties and concluded that the purported exercise of lien by the appellant is expropriatory, completely contrary to law and constitutes an egregious wrong. Not only grave and irreparable prejudice would be caused to respondent No.1/plaintiff if the goods in question are allowed to perish or demurrages are allowed to be incurred at the Port of Discharge; the same will also not serve the avowed purpose of appellant/ defendant No.3 which is to realize its monies in respect of services performed by the appellant for respondent No.3/ defendant No.2 for which it has already initiated Arbitration against the respondent No.3. In the totality of



circumstances, it was held that grant of Mandatory Injunction is clearly warranted and therefore, the appellant was directed to forthwith release to respondent No. 1, all original documents/ Bills of Lading in its possession in respect of the respondent No.1's Consignment and such other documents that were required to get the Consignment released at the Port of Discharge and the appellant was also restrained from obstructing or preventing in any manner release of consignment either directly or through his agents, employees and representatives.

13. Aggrieved by the impugned Order, the present appeal has been preferred.

14. The **main grounds for assailing the impugned Order** are that this Court lacks territorial jurisdiction to entertain the present Suit. Reliance has been placed on Swastik Gases Private Limited vs. Indian Oil Corporation Limited (2013) 9 SCC 32, wherein the Court has refrained from exercising territorial jurisdiction in view of exclusion of its jurisdiction by Agreement. It is submitted that the Invoices raised by respondent No.2 on respondent No.1 expressly excluded the jurisdiction of this Court and nominated Courts in Mumbai for the purpose of adjudication of all disputes. Likewise, Invoices which were raised by the appellant on respondent No.3 also stated the same. The learned Single Judge has ignored the aforementioned judgment and placed reliance upon a older judgment of the Apex Court in ABC Laminart Pvt. Ltd. vs. A.P. Agencies (1989) 2 SCC 163 and three Judge Bench judgment R.S.D.V Finance Co. Ltd. vs. Shree Vallabh Glass Works Ltd. (1993) 2 SCC 130. These judgments were all considered by the Apex Court in the latest case of Swastik Gases Private Limited (supra) despite which the law as



propounded, has been overlooked. It is asserted that the learned Single Judge incorrectly relied upon House Bills of Lading (HBOL) issued by respondent No.4 to the appellant to justify the jurisdiction of Delhi Courts. No disputes have arisen under said HBOLs and respondent No. 1 is not a party to it. It is also pointed out that these HBOLs have been partially executed in Chennai and not Delhi. Thus, no cause of action has thus arisen in Delhi. The said HBOLs also contained an Arbitration Clause which in any case precludes the jurisdiction of the civil court. Pertinently respondent No. 1 had also filed an application under Section 20 Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) seeking leave to sue the appellant within the territorial jurisdiction of this Court essentially admitting that this Court has no territorial jurisdiction. The appellant had also filed an application under Order VII Rule 10 CPC that the plaint be returned to be presented before the Courts in Mumbai.

15. The appellant has relied upon *Shree Subhlaxmi Fabrics (P) Ltd. vs. Chand Mal Baradia* (2005) 10 SCC 704, wherein it was observed that the question of territorial jurisdiction goes to the root of the matter and no injunction can be granted unless the issue of territorial jurisdiction is decided. In view of the pending application of the appellant taking objection to the territorial jurisdiction, it was grossly inappropriate for the learned Single Judge to have straight away pass an Order granting interim Mandatory Injunction.

16. The appellant has further agitated that the respondent No.1 lacked the necessary *locus standi* in view of non-joinder of necessary parties. It was asserted that the Contract for supply of goods dated 23.07.2020 was entered into between LNK International Inc., New York and Strides



Pharma Global Pte Limited, Singapore. Therefore, Respondent No.1/ plaintiff has no privity to the Contract for supply of goods dated 23.07.2020 and is neither the owner nor the seller of the goods in question as it does not have any authorization from Strides Pharma Global Pte Limited, Singapore to initiate the present Suit. Respondent No.1 thus, cannot claim any right under the above mentioned Contract and it cannot claim to suffer from any legal injury even if the cargo remains undelivered or is delivered belatedly. Reliance has been placed on British India Steam Navigation Co. Ltd. vs. Shanumughavilas Cashew Industries and Ors. (1990) 3 SCC 481, wherein it was observed that the ownership of the goods along with the right to sue is transferred and vested in the consignee named in the Bill of Lading and the title to the cargo passes to the consignee pursuant to the Bill of Lading. The appellant has further submitted that there was no privity of contract between the appellant and respondent No.1 and thus, there was no cause of action against the appellant.

17. The next objection taken is that grant of Mandatory Injunction was not warranted in the present circumstances as it amounts to granting the final relief in the Suit. It is trite law that final reliefs cannot be granted at an interim stage until an extraordinary prima facie case is demonstrated. Furthermore, respondent No.1 has sought contradictory reliefs in as much as on one hand, it has sought Mandatory Injunction for handing over of the subject cargo while on the other hand, it has claimed damages for the value of such cargo. The appellant has further contended that the extraordinary circumstances for grant of interim Mandatory Injunction have not been established by respondent No.1 for which reliance has been



placed on Dorab Cawasji Warden vs. Coomi Sorab Warden & Ors. (1990) 2 SCC 117. The appellant has further claimed that the impugned Order is erroneous in as much as it has failed to appreciate that the appellant had a right of lien on the goods. The appellant had relied upon the unpaid Invoice dated 13.06.2023 which entitled it to a right of lien and detention as contemplated in Section 170 of the Indian Contract Act, 1872 as well as Clause IV of the Standard terms of the Freight Forwarders Association Ltd. which was adopted and was binding on the Contract between respondent No. 3 and the appellant/defendant No. 3. A reference to Section 22 of Multi modal Transportation of Goods Act was also made. Reliance has been placed on Shipping Corporation of India Ltd. vs. C.L. Jain Woollen Mills & Ors. (2015) 5 SCC 345 for the same. It is, therefore, submitted that the impugned Order suffers from illegality and is liable to be set aside.

18. The **respondent No. 1 has submitted** that the discretion vests in the learned Single Judge to grant interim Mandatory Injunction in extraordinary situation which has been duly considered and the discretion so exercised cannot be termed as arbitrary. In so far as the aspect of territorial jurisdiction is concerned, it was observed that none of the defendants had contested or objected to the territorial jurisdiction of this Court. In any event by way of immense precaution respondent no.1 had filed an application under Section 20(b) of CPC seeking relief of this Court. Moreover, the application under Order VII Rule 10 of CPC filed by the appellant had been duly noted in the impugned Order. However, the Original Bills of Lading (OBOL) issued by respondent No.4 to the appellant is in illegal and unlawful possession of the appellant herein.



These OBOLs confer jurisdiction on this Court in accordance with its Clause 22. The present disputes have arisen due to the unlawful withholding of the Bills of Lading by the appellant which it had collected from the respondent No.4 in Delhi as confirmed in email dated 04.05.2023. Furthermore, the appellant had illegally changed the name of the Consignor and the Consignee on the OBOLs and had concealed its existence till respondent No.4 produced the same before the learned Single Judge. It is submitted that misplaced reliance has been placed on the Exclusion Clause and the judgments relied upon by the appellant are totally distinguishable on facts.

19. The respondents in regard to the locus of the respondent No.1 to file the present suit has stated that admittedly the consignment was entrusted by respondent No.1 to respondent No.2 who in turn engaged the services of respondent No.3, who further engaged the services of the appellant. It is obvious from the chain of events that the respondent No.1 had a locus to maintain and file the present Suit.

20. It was further stated that the right of lien had been wrongly exercised by the appellant on the subject consignment as the appellant is not a Multimodal Transport Operator and cannot derive the benefit of Section 22 of the Multimodal Transportation of Goods Act, 1993.

21. Essentially, the goods have been retained as the appellant claims that respondent no. 3 has defaulted in payments. Further, the appellant while suggesting that respondent No.3 is bound by Standard Trading Conditions as approved by Federation of Freight Forwarding Association in India, but respondent No.3 in its Written Submissions dated 17.07.2003 had denied being a member of Freight Forwarding Association of



India. Reliance was placed on Newsprint Sales Corporation vs. The Daily Pratap and Ors. CS(OS) No.2630-A/1992 decided on 01.09.2006, wherein this Court had held that where a dispute is between a member and non-member of an Association, the issue that is to be decided is “*whether at the time of entering into the contract the member of the Association had duly notified the non-member that it shall be subject to Standard Conditions/ Rules of the Association*”. The appellant has completely failed to demonstrate that it had notified respondent No.3 of the applicability of the Standard Trading Conditions.

22. Moreover, the appellant itself has categorically argued that it has no privity of contract with respondent No.1. In view thereof, the appellant cannot in any sense exercise any lien against respondent No.1. In the end it is submitted that the respondent No.1 had satisfied the conditions for grant of ad-interim Mandatory Injunction and the present appeal is liable to be dismissed.

23. **Submissions heard.**

24. The first ground of challenge was that the plaintiff/respondent No.1 had no locus to file the present suit. However, as observed by the learned Single Judge, the controversy was not in regard to any terms and conditions of the concerned Bills of Lading, but of the appellant refusing to hand over the requisite documents for release of the goods which had reached Port of Discharge. The respondent No.1 was the Consigner of the goods and had title over them until the delivery was made to LNK International (Consignee) as per Clause 2.12 of the Agreement *inter se* the said parties. However, the appellant/defendant no. 3 having no privity of contract with respondent No. 1 was not able to show any ground on which



it could have refused to hand over the Bill of Lading. The respondent No. 1 thus, had the locus to file the Suit.

25. In view of the aforesaid reasoning, it is observed that since the appellant has shown to have exercised a lien over the goods owned by respondent No.1 without any statutory basis, it cannot be said that respondent No. 1 in the absence of privity of contract between it and the appellant, could not have filed the present Suit.

26. The appellant had also challenged the territorial jurisdiction of this Court to entertain the Suit. Essentially, the dispute was between respondent No. 1 and the appellant who had chosen to retain the requisite documents which prevented the release of the goods to the appellant; however, there exists no contract between the two. Pertinently, the appellant has its office in Delhi i.e. within the territorial jurisdiction of this Court.

27. As observed by the learned Single Judge, none of the other respondents had questioned the jurisdiction of this Court. The stipulations contained in the *inter-se* invoices between appellant with respondent No. 3 or the Tax Invoices raised by respondent No. 2 on respondent No. 1 could not be construed in any manner to divest the jurisdiction of this Court. Further, the jurisdictional clauses in those Invoices are irrelevant to the controversy between the appellant and respondent No.1.

28. Significantly, the goods received by the appellant from respondent No. 3 (Forwarding Agent) had been further handed over by it to respondent Nos. 4 and 5. The latter issued Bills of Lading at Delhi, which have been retained by the appellant preventing the release of the consignment, according to which Delhi courts had territorial jurisdiction.



29. The appellant had also asserted that it had a right to exercise lien over the goods on account of non-clearance of its dues. The Bill which was asserted to have not been cleared was dated 13.06.2023 in the sum of Rs.44,560.27/-. While the Invoice is dated 13.06.2023, the goods had reached the Port of Discharge on 12.06.2023 i.e. one day prior to the date of Invoice. The learned Single Judge had rightly held that the Invoice being of the subsequent date, could not have been possibly made a basis for retaining the goods belonging to the respondent No. 1. Moreover, we observe that the value of the entire consignment was approximately Rs.5.5 Crores while the appellant had refused to release the requisite documents on the pretext of non-clearance of Rs.44,560.27/- (Rupees Forty four thousand five hundred & sixty and twenty-seven paisa) which on the face of it, is absolutely inequitable.

30. The learned Single Judge had adverted to Section 171 of the Indian Contract Act, 1872 and to the judgments of Board of Trustees of the Port of Bombay and Others Vs. Sriyanesh Knitters Shipping Corporation of India(1999) 7 SCC 359 to conclude that general lien cannot be exercised under Section 171 of the Indian Contact Act, 1872 in the absence of any expressed contract creating lien.

31. Respondent Nos. 2 & 3 and even respondent No. 4 who was engaged by the appellant had also affirmed and contended that the appellant was not entitled to exercise of any Lien or to withhold the consignment of the plaintiff/respondent No. 1 in the manner it had sought to do. Moreover, the appellant has already initiated arbitration proceedings against respondent No. 3 for realising the money in respect of the services rendered by it to the respondent No. 3. When such is the



case, the appellant ought not to have exercised a Lien over the goods of respondent No. 1.

32. It is also significant to observe here that in the Email dated 21.06.2023 addressed by the appellant to the respondent No.1, it had admitted its liability and also stated that it was holding the delivery of the consignment because of the ongoing dispute with the respondent No. 3. Pertinently, there is an ongoing litigation before the NCLT, Mumbai wherein, the appellant is the Operational Creditor while the respondent No. 1 is the Corporate Debtor. The appellant is therefore, leveraging this Consignment vis a vis other litigations and is trying to recover its dues from the respondent No.1 by refusing to release the consignment which otherwise has to be released, especially when the entire money has been already paid by the respondent No.1 to respondent No.2 whom it had engaged for the transfer of goods to the Port of Discharge.

33. The respondent No.1 was thus, able to show the exceptional circumstances for grant of Mandatory Injunction for directing the appellant to hand over the documents to respondent No.1.

34. The relief of injunction is a discretionary relief where aside from proving the strong prima facie case, balance of convenience and irreparable loss, it has also to be shown that grant of injunction is equitable. In the present case, we find that the equities do not work in favour of the appellant, while there exists extraordinary circumstances as explained by the learned Single Judge in the impugned Order, entitling respondent No. 1 to the grant of interim Mandatory Injunction.

35. We concur with the findings of the learned Single Judge that the interim Mandatory Injunction was clearly warranted. The denial of such



interim relief would completely defeat the ends of justice since the Consignment is of perishable nature and the demurrage charges would continue to be incurred by respondent No. 1 on account of the acts of the appellant, despite the entire payment having been made by the respondent No. 1.

36. We find no merit in the present Appeal, which is hereby dismissed along with pending applications.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 22, 2023

Va/Ek