

OCD-7

ORDER SHEET

APOT/365/2024
WITH
CS-684/2024
IA NO: GA-COM/1/2024

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

SHYAM SEL AND POWER LTD.
VERSUS
DUVARTHIM VISADAHYUM INTERNATIONAL COOPERATION STRATEGIES
S.R.L (P.IVA/C.F. IT08379710729) AND ORS.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date : 20th November, 2024.

Appearance:

Mr. Mainak Bose, Adv.
Mr. Somdutta Bhattacharyya, Adv.
Ms. Arti Bhattacharyya, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Ms. Devanshi Prasad, Adv.
...for the appellant

Mr. Krishna Raj Thaker, Adv.
Mr. Chayan Gupta, Adv.
Mr. Rittick Chowdhury, Adv.
Mr. Rajesh Upadhyay, Adv.
Mr. Akshay Jain Sukhani, Adv.
...for respondent/plaintiff

Md. Farhaduddin, Adv.
Mr. Siddhartha Roy, Adv.
...for respondent nos. 2 & 4

Mr. Kumarjit Banerjee, Adv.
Ms. Sanchari Chakraborty, Adv.
Mr. Abhishek Chauhan, Adv.
...for respondent nos. 10 & 11

The Court: This appeal is at the instance of the defendant no.6.

Mr. Mainak Bose, learned counsel appearing on behalf of the defendant no.6, has submitted that the defendant no.6 is aggrieved by the order as it refuses to vacate the interim order. It is submitted that there is no privity of contract between the plaintiff and the defendant no.6 and without adjudicating on the said issue, a drastic ad interim order was passed injunctioning the defendant no.6 from operating its bank account to the extent of Rs.18 crores.

Mr. Krishna Raj Thaker, learned counsel appearing on behalf of the plaintiff, submits that in the plaint it has been categorically stated that there is a privity of contract between the plaintiff, defendant no.1 and the defendant no.6 with regard to the supply of specific category of carbon ferro manganese under three several contracts. The defendant no.1 has received the entire consideration amount but the goods have not been supplied by the defendant no.6 and the defendant no.1 in breach of an assurance held out by both the defendants in several meetings.

There is no appeal preferred against the ad interim order of injunction. At this stage, we are required to consider whether on the basis of the averments made in the plaint, an order of injunction could have been granted to the plaintiff. It is an admitted position that the present appellant did not file any application for vacating of the ad interim order on the returnable date. The ad interim order was passed on 10th May, 2024 and is still subsisting. The said ad interim order is also not under challenge. It appears that oral prayer was made for vacating the ad interim order that was refused on the ground that the appellant had neither filed show-cause nor had filed any application for

variation of the interim order granted in favour of the plaintiff. The learned Judge felt that in deciding the said matter, affidavits are required to be exchanged.

Prima facie, it seems that the plaintiff has not disclosed any document to show in writing that the defendant no.6 has assured to supply the required materials to the plaintiff through the defendant no.1. However, there is a pleading of such assurance held out by the defendant nos.1 and 6 jointly and severally. In absence of any documents covering the contract period, it needs to be assessed whether the defendant no.6 could be restrained to operate the bank account to the extent of Rs.18 crores. Mere verbal assurance without anything else may not be sufficient to pass a drastic order in the nature of injunction and attachment unless it is supported by nature of dealings, transactions and conduct. By reason of the order of injunction, the defendant no.6 is unable to operate the bank account. The plaintiff is unable to show exchange of correspondence between the plaintiff and the defendant no.6 by which the defendant no.6 can be held to be responsible for non-supply by the defendant no.1. If the defendant no.1 has received the money, it does not automatically follow that the defendant no.6 would be obliged to supply the materials to the plaintiff through the defendant no.1. However, it is alleged that joint inspection had taken place at the warehouse of the defendant No.6 in performance of the contract. Unless a strong *prima facie* case is made out by which it can be said with some amount of certainty at the interlocutory stage

that the defendant no.6 is also bound by a contract as the defendant No.1 it may be unfair to restrict the defendant no.6 from operating the bank account.

Curiously, the defendant no.6 has not filed any affidavit nor any application stating on oath that such arrangement was not existing. The learned Single Judge has proceeded on the basis of the averments in the plaint and the injunction application and continued with the interim order passed on 10th May, 2024. We do not find any reason to interfere with the order at this stage. However, having regard to the nature of the ad interim order, we would request the learned Single Judge to decide as to whether the ad interim order should be continued on the date fixed as against the defendant No.6 upon consideration of the pleadings to be filed by the parties in the meantime.

The appellant shall file the affidavit-in-opposition on or before 22nd November, 2024. Reply thereto, if any, shall be filed on or about 27th November, 2024.

The said direction as to pleadings is peremptory. In the event affidavits are not filed, the learned Single Judge shall proceed with the matter and decide the interlocutory application as per the convenience of the learned Single Judge without allowing any further pleadings. The continuation of the interim order shall be entirely at the discretion of the learned single judge.

We however make it clear that in deciding the interlocutory application on merits, the learned Single Judge shall not be influenced by any observation made in this order.

The appeal and the application and disposed of.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)

bp/R.Bhar