AD-02
Ct No.16
21.01.2025
TN

FMAT 259 of 2024
IA No: CAN 2 of 2024

ADM Agro Industries Kota & Akola Pvt. Ltd.
Vs.
Aone Agro Products Pvt. Ltd. and another

Mr. Sakya Sen, Ld. Sr. Adv.,
Mr. Niladri Bhattacharjee,
Mr. Soham Bandyopadhyay,
Ms. Mayuri Ghosh,
Mr. Aditya Chaturvedi,
Mr. Pratik Acharya,
Ms. Poulami Chattopadhyay
Mr. Kanishka
....for the appellant

Mr. Jishnu Chowdhury, Ld. Sr. Adv.,
Mr. Dipak Dey,
Mr. Abhidipta Tarafdar
....for the respondent no.1

1. The present appeal arises at the behest of a defendant in a suit for declaration and consequential reliefs. By the impugned order, the learned Trial Judge granted temporary injunction restraining the defendants from giving any effect or further effect or acting in terms of or in furtherance of two debit notes, both dated December 26, 2022 and bearing nos. DBOOT/57 and DBOOT/58 respectively, in any manner whatsoever.

2. Learned senior counsel appearing for the appellant argues that the impugned order is vitiated due to lack of jurisdiction of the Civil Court to pass such an order. It is argued that the suit as framed pertains to a commercial dispute as contemplated in

Section 2(1)(c), Clauses (xviii), (i) and (ii) of the Commercial Courts Act, 2015.

3. In addition, it is submitted that the impugned order grants an injunction which violates the spirit of Section 41(b) of the Special Relief Act, 1963.

4. Learned senior counsel further argues on merits that in view of two consignment notes having admittedly been issued between the parties, the same formed the plinth of the contract between the parties which was subsequently given effect to by virtue of the debit notes-in-question. Although the defendant/appellant also relies on two purported contracts, it is submitted that the said contracts were entered into in furtherance of the original consignment notes and that the consignment notes themselves formed a concluded contract, in view of consensus *ad idem* having been arrived at between the parties at that juncture itself.

5. Learned senior counsel for the appellant cites *ANZ Grindlays Bank Ltd. (now known as Standard Chartered Grindlays Bank Ltd.) vs. Union of India and others*, reported at *(2005) 12 SCC 738*, where the Supreme Court observed *inter alia* that the dictionary meaning of the word “dispute” is: to contend any argument; argue for or against something asserted or maintained. A conflict or controversy which comes within the purview of the term “dispute”, it was held,

means a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other.

6. Thus, it is contended that although the plaintiff/respondents have sought a declaration that there is no existence of the two contracts dated August 16, 2022 and September 29, 2022, which were later entered into between the parties pursuant to the consignment note, the defence of the present appellant is that the said agreements do exist. Since the said agreements and debit notes pertaining to the sale of goods which come within the purview of specified value as contemplated in the Commercial Courts Act, the dispute is a commercial dispute. Since the debit notes, cumulatively, put the valuation of the transaction to around Rs.2.5 crore, it is not the City Civil Court, sitting in jurisdiction as an ordinary civil court, but the Commercial Division of this court, which has jurisdiction.

7. Learned senior counsel appearing for the appellant next cites an unreported judgment of the Supreme Court in the matter of *Asma Lateef & Anr. Vs. Shabbir Ahmad & Ors.* where the Supreme Court observed that the question of jurisdiction would assume importance even at the stage when a court considers the grant of interim relief. Where interim relief is claimed in a suit before a civil court and the

party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on the basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a *prima facie* satisfaction that the suit is maintainable or that it is not barred by law.

8. Thus, even while granting injunction, the learned Trial Judge, it is argued, ought to have considered the question of jurisdiction.

9. While controverting the arguments of the appellant, learned senior counsel appearing for the plaintiffs/respondents argues that the dispute involved in the suit, as framed, has to be gathered from the plaint and not from any further pleadings in defence. If the plaint is looked at comprehensively, it is argued, it would clearly indicate that the very existence of the two commercial agreements which are relied on by the defendant/appellant has been questioned in the suit.

10. It is argued that if the very existence of the agreements are questioned, the suit does not come within the purview of a commercial dispute as envisaged in Section 2(1)(c)(xviii) of the Commercial Courts Act, since the said provision only contemplates disputes *arising out of* agreements for

sale of goods. Where the very existence of the agreements-in-question has been challenged, there arises no question of any dispute "arising out of" such agreements.

11. Insofar as sub-clause (i) of Clause (c) of Section 2(1) of the Commercial Courts Act is concerned, it is argued that ordinary transactions of merchants, traders etc. such as those relating to mercantile documents are a prerequisite of the dispute coming within the said provision. It is argued that in the present case, even the debit notes-in-question arise out of the purported contracts, the very existence of which has been challenged.

12. Since the existence of mercantile documents is a *sine qua non* for a dispute to come within Section 2(1)(c)(i) of the Commercial Courts Act, it is contended that there being no agreement in existence, the said provision also does not come into play.

13. In support of such contention, learned senior counsel cites *Venkatesh Vincom Private Limited vs. Spice of Joy, Multicuisine Restaurant cum Bar and Others,* reported at *2022 SCC OnLine Cal 3010,* where a Division Bench of this court held *inter alia* that there is no condition laid down in the definition of 'commercial dispute' that the mercantile document must be executed at the beginning or before the transaction having effected; rather the document

defined in Section 2(1)(f) of the Act includes any matter expressed or described upon any substance by means of letters, figures or marks or electronic means, etc. for the purpose of recording the matter. Thus, it is reiterated that the existence of a document is necessary for the purpose of the dispute coming within Section 2(1)(c)(i), whereas in the present case the very existence of the contracts has been assailed.

14. Insofar as sub-clause (ii) is concerned, it is argued that the present transaction does not pertain to export or import of merchandise. Whereas the defendant no.1 might have imported the goods, the present suit relates to the absence of any agreement between the plaintiff and the defendant, which is not in the nature of import or export of such goods.

15. Learned senior counsel appearing for the plaintiffs/respondents next cites *Kailash Devi Khanna and Others vs. DD Global Capital Ltd. and Others,* reported at *2019 SCC OnLine Del 9954,* where a learned Single Judge of the Delhi High Court observed that all suits for recovery of monies cannot fall under Clause (i) of Section 2(1)(c) of the Commercial Courts Act. Suffice it to state, it was held, that the suit is not based on any transaction relating to mercantile documents.

16. Learned senior counsel next relies on a Division Bench judgment of the Karnataka High Court

reported at *I.L.R. 1991 KAR 254* (*Messrs. Paramount Industries vs. C.M. Malliga)*. In the said judgment, the Division Bench of the Karnataka High Court held that Section 41(b) of the Specific Relief Act applies to a case wherein the relief sought is only to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought. It will not apply to a suit wherein a relief of declaration and other consequential reliefs including possession etc. are sought. If the relief sought for in the suit lies within the jurisdiction of the civil court, it is open to it to pass an appropriate interim order to aid the final relief which is sought in the suit. If passing of such a decree or interim order results in disabling the defendant in the suit from instituting or prosecuting any proceeding in a court not subordinate to the court in which the suit is filed, it cannot be held that it is hit by Section 41(b) of the Specific Relief Act.

17. Lastly, learned senior counsel for the respondents cites the judgment of a learned Single Judge of this court reported at *AIR 1925 Cal 233 (Ram Sadan Biswas vs. Mathura Mohan Hazra and others)*. It was held in the said judgment that it is well-settled that temporary injunctions are governed not by the Act (Specific Relief Act) but by the provisions of the Code of Civil Procedure, Order XXXIX Rule 1, and a

temporary injunction may be granted by a subordinate court against a party even in respect of proceedings in a superior court. So far as perpetual injunctions are concerned, they are regulated by the Act and an injunction cannot be issued by a court to stay proceedings in a suit not subordinate to that from which the injunction is issued.

18. Upon hearing learned counsel for the parties, we arrive at the following conclusions:

19. Insofar as the argument of the appellant that the injunction granted by the impugned order hits Section 41(b) of the Specific Relief Act is concerned, we are unable to agree with such proposition. The injunction has been passed in respect of enforcement of two purported debit notes. The said documents' veracity has been challenged in the suit and, as such, the temporary injunction granted is in aid of the final relief. *Per se,* a restraint order in respect of the debit notes does not translate directly to an order restraining the defendants from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought. As held by the Division Bench of the Karnataka High Court, even if incidentally such grant of temporary injunction has the secondary effect of retraining a person from relying on such document in a suit, the said fact *ipso facto* does not tantamount to

the injunction order being violative of Section 41(b) of the Specific Relief Act.

20. However, with utmost respect to the high erudition of the learned Single Judge rendering the judgment in *Ram Sadan Biswas* (supra), we are unable to agree with such proposition. The relief of temporary injunction, contrary to what was held in the said judgment, does not flow from Order XXXIX Rules 1 and 2 of the Code of Civil Procedure at all. The origin and source of grant of injunction lies in equity. After crystallization of such equitable principles by codification in the Indian context, Sections 36 and 37 of the Specific Relief Act clearly provide for such grant.

21. Section 36 stipulates that preventive relief is granted at the discretion of the court by injunction, *temporary* or perpetual. Again, Section 37 deals with temporary and perpetual injunctions. Sub-section (1) refers to temporary injunctions whereas sub-section (2) of Section 37 speaks about perpetual injunctions. Thus, the source of power to grant temporary injunctions flows from Section 37 of the Specific Relief Act. Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure provide merely the procedure governing such grants and the circumstances in which such grant is permitted.

22. As such, the distinction between a temporary injunction being governed by the Code and a perpetual injunction by the Specific Relief Act is an artificial distinction, not sanctioned by the scheme of things in Indian jurisprudence.

23. Be that as it may, in view of our earlier observations, we are of the opinion that the injunction granted in the present case is in aid of the final relief sought in the suit and is not in contravention of Section 41 (b) of the Specific Relief Act *per se.*

24. The next question which arises is as to jurisdiction.

25. A very relevant question has been raised as to whether the suit is covered by Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015.

26. It would be diametrically contrary to the scheme and object and reasons of the enactment of the Commercial Courts Act in the event a restrictive interpretation is lent to the provisions thereof. In the statement of objects and reasons of the 2015 Act, it is specifically provided that the proposal to provide for speedy disposal of high value commercial disputes was the trigger for such enactment. Again, the statement of objects and reasons of the amendment Act of 2018 to the said Act provides that the global economic environment has since become increasingly competitive and to attract business at international level, India needs to further improve its

ranking in the world bank 'Doing Business Report' which, *inter alia*, considers the dispute resolution environment in the country as one of the parameters for doing business. In such context, the statement of objects and reasons further records that the tremendous economic development has ushered in enormous commercial activities in the country and early resolution of commercial disputes has been given a positive thrust in the said objects and reasons. In such context, if we, as Indian Courts, give an extremely restrictive view to the same, it would be contrary to the legislative intent behind enacting the said statute.

27. Seen from such perspective, Section 2(1)(c) speaks about disputes "arising out of" and Clause (xviii) stipulates agreements for sale of goods or provisions of services. In such context, a dispute arising out of an agreement for sale also encompasses a dispute as to the veracity, authenticity or, stretched a bit further, the very existence of such agreement as well.

28. As rightly argued by learned senior counsel for the appellant, it may very well be that a plaint relies on a particular commercial agreement whereas the defence taken in the written statement is that such agreement does not exist. In such case, it would be absurd to say that although at the inception the

commercial court had jurisdiction, it loses the same in view of the defence taken.

29. Learned senior counsel for the respondents has argued that the question as to jurisdiction under the Commercial Courts Act has to be decided on the frame of the suit for which the court has to look only to the plaint pleadings. However, the issue of jurisdiction, which hits at the maintainability of an injunction application and the *prima facie* case aspect of the matter, is wider than the limited scope of a demurrer application under Order VII Rule 11 of the Code of Civil Procedure. Whereas in the latter, the court only has to look at the plaint pleadings while deciding an issue of jurisdiction, the "dispute", for the purpose of deciding the issue of jurisdiction, even *prima facie*, has to be considered as a whole.

30. A "dispute", by its very definition, can only arise, akin to an "issue" as contemplated in the Code of Civil Procedure, when one party asserts something and the other denies the same. Thus, if we consider the broader perspective of the expression "commercial dispute", the entire dispute, including the contentions of the rival parties, has to be taken into consideration to ascertain the nature of the dispute. Thus, in the present case, although the plaintiff asserts that there was no existence of the two contracts-in-question, the defendant very much relies

on such documents, which is evident from the plaint itself and furnishes the very cause of action of the suit. Unless the defendant relied on such contracts, and made a claim thereon, there would not arise any occasion for the rights of the plaintiff being infringed and the suit being filed in the first place.

31. Also, from the defendant's application under Order XXXIX Rule 4 of the Code of Civil Procedure and its written objection to the plaintiffs' injunction application, we can gather that the defendant/appellant asserts the existence of such contracts.

32. Thus, in the present context, since agreements for sale of goods pertaining to the specified value as contemplated in the Commercial Courts Act has been challenged in the suit, the dispute definitely comes within the purview of Section 2(1)(c)(xviii) of the said Act.

33. Furthermore, sub-clause (i) of Clause (c) of Section 2(1) is also attracted. In the Division Bench judgment of this court in the matter of *Venkatesh Vincom Private Limited* (supra), cited by the respondents themselves, the court rightly held that a document, for the purpose of a commercial dispute, includes any matter expressed or described upon any substance by means of letters, figures or marks or

even electronic means intended to be used for the purpose of recording the matter.

34. Although the context of the said judgment was an interpretation of the term “document” as defined in Section 2(1)(f) of the said Act, the said concept can be imported to the present case as well. In the present suit, the plaintiff has not only challenged the existence of two particular contracts but has also sought specific declaration challenging the two debit notes as well as perpetual injunction in respect of such debit notes. The debit notes, cumulatively, indicate a figure of around Rs.2.5 crore which comes within the specified value and, as such, brings the suit within the purview of a commercial dispute as envisaged in Section 2(1)(c)(i), being related to an “ordinary transaction relating to mercantile documents”.

35. Also, even if the dispute falls within the purview of ordinary transactions *de hors* a particular document, sub-clause (i) of clause (c) is applicable. The said provision stipulates that disputes arising out of ordinary transactions of merchants, traders, etc. “such as” those relating to mercantile documents come within the purview of the Act. The use of the term “such as” clearly shows that the existence of documents is not a *sine qua non* but the stress lies on the expression “transactions”. For example, even if

there was a verbal transaction in due course of the regular business practice of the particular trade, without anything being reduced to written agreements or documents, it would come within the purview of Section 2(1)(c)(i), since the said provision relates to ordinary transactions of traders; the use of the expression "such as" makes the said provision inclusive and not exhaustive.

36. Thus, mercantile documents are used as an example by way of illustration in sub-clause (i) of clause (c) of Section 2 (1) and the main provision relates to ordinary transactions, with or without written documents.

37. However, coming to sub-clause (ii) of clause (c) of Section 2(1), we are unable to agree that the present transaction relates to export or import. In paragraph no.4 of the plaint, the plaintiff has stated that the defendant no.1 was importing crude palm oil. However, the transactions-in-question pertained to agreements (or non-existent agreements) between the plaintiff and the defendant, which is a domestic transaction. Although incidentally the defendant no.1 might have imported crude palm oil, the present transaction is not pertaining to such import but is a domestic transaction.

38. As such, sub-clause (ii) is not attracted.

39. However, the very nature of the plaint pleadings indicate that the suit relates to a commercial dispute coming within the purview of Section 2(1)(c), sub-clauses (i) and (xviii).

40. Even a bare perusal of the plaint shows that the entire gamut of the transactions involved in the dispute is commercial in nature, revolving around the debit notes which have been challenged. In paragraph no.3 of the plaint, the plaintiffs allege that they were not aware of the precise nature of the business of defendant no.1 and never had any form of business relation. However, from enquires made, the plaintiff learnt that the defendant no.1 is an importer of different commodities. More importantly, in paragraph no.4 it is alleged that the plaintiff "in the usual course of business" had a business requirement of crude palm oil of a designated entity. The plaintiff was aware that the defendant no.1 was importing such crude palm oil and contacted defendant no.2. Upon such approaches being made, the plaint further goes on to plead, e-mails were exchanged and confirmation notes were executed agreeing to ship crude palm oil in July 2022 and August 2022.

41. The plaint case is that subsequently such transaction failed to go through and, as such, the contract never fructified.

42. Such paragraphs of the plaint themselves show amply that the entire purview of the dispute revolves around commercial transactions and, as such, there cannot be any manner of doubt that the suit comes within the purview of a "commercial dispute" as envisaged in Section 2 of the Commercial Courts Act.

43. In view of the specified value, as extracted from the debit notes which are under challenge, being to the tune of around Rs.2.5 crore, even on a *prima facie* premise, it cannot but be said that the Commercial Division of this court has jurisdiction to entertain and decide the suit under Section 7 of the Commercial Courts Act, 2015.

44. Since maintainability of a suit hits at the very root of the *prima facie* case, which is a *sine qua non* for grant of injunction, we are of the opinion that even without entering into the merits of the contentions of the parties otherwise, it is palpable that the learned Trial Judge lacked jurisdiction, as an ordinary civil court (as opposed to a commercial court), to entertain the suit and to pass the order of injunction.

45. Hence, the impugned order of injunction ought to be set aside on such count alone.

46. Accordingly, FMAT 259 of 2024 is allowed on contest, thereby setting aside the impugned order bearing Order No. 20 dated June 06, 2024 passed by the

Fifth Bench, City Civil Court at Calcutta in Title Suit No. 85 of 2023.

47. The connected application, bearing CAN 2 of 2024, stands disposed of consequentially.

48. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)