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Vs. Sarat Chatterjee and Company (Vsp) Pvt. Ltd. and ors.Defenda

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Court : Kolkata

Decided On : Jul-16-2014

Judge : I. P. Mukerji

Respondent : Sarat Chatterjee and Company (Vsp) Pvt. Ltd. and ors.Defenda

Judgement :

ORDER

SHEET G.A.No.898 of 2013 C.S.No.77 of 2013 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE Dankuni Steels LTD.Versus Sarat Chatterjee & Company (VSP) PVT.LTD.& ORS.Plaintiff/Petitioner Defendants/Respondents BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date : 16th July, 2014.

For Plaintiff: Mr.S.K.Kapoor & Mr.Ranjan Deb, Sr.Adversus with Mr.Ravi Kapoor, Ms.Noella Banerjee & Mr.Dipak Dey, Adversus For Defendant no.2 : Mr.Ahin Chowdhury, Mr.Surajit Nath Mitra & Mr.Ratnanko Banerjee, Sr.Adversus with Mr.D.N.Sharma, Ms.S.Mukhopadhaya & Mr.S.N.Pandey, Adversus 10,000 MT of metallurgical coke are involved.

There are rival claims over these goods by Dankuni Steels Ltd., the plaintiff and the fourth defendant, Concast Steels LTD.on one hand and LMJ International Ltd., the second defendant on the other hand.

A large quantity of metallurgical coke arrived by two vessels MV Filia Joy and MV Glovis Master on different dates.

The fiRs.lot of materials came by MV Filia Joy which arrived at the port on 25th March, 2012.

It carried 29,380.551 MT of these goods.

The other vessel MV Glovis Master carried 26,250 MT and docked on 15th October, 2012 discharging its cargo by 26th October, 2012.

According to the plaintiff supported by the fourth defendant, the dispute is with regard to 10,000 MT out of the goods carried by the vessel MV Filia Joy.

There is no dispute according to them with regard to the cargo carried by the second vessel.

The plaintiff wants its delivery.

Except for 1383.841 MT, the balance of the cargo of 29380.551 MT of Filia Joy were cleared by the fourth defendant or the plaintiff upon payment of customs duties etc.through the firm of clearing and forwarding agents being the fiRs.defendant.

This means that the 10,000 MT were cleared by the plaintiff or the fourth defendant and the quantity is in their possession.

The prayers made in the fiRs.application indicate that the fiRs.defendant is not parting with the goods of the second vessel.

There is a dispute according to this defendant with regard to the 10,000 MT, raised by the second defendant, LMJ.

According to the second defendant, the 10,000 MT of coke out of the coke brought by the vessel MV Filia Joy were not taken delivery of by the plaintiff or the fourth defendant at all.

The same quantity of goods, from those brought by the vessel MV GLOVIS MASTER was taken delivery of by them.

Therefore, 10,000 MT are still available out of the cargo in MV Filia Joy.

They are entitled to the same.

Since the said defendant has laid a claim over the said 10,000 MT of cargo of Filia Joy and in view of the above dispute, the fiRs.defendant is not releasing the consignment brought by MV Glovis Master to the fourth defendant or the plaintiff.

According to the second defendant, they are still in possession of two bills of entry being 1 and 2, each representing 5,000 MT of the said cargo.

I have perused the bills of entry as shown to me by Mr.Mitra, learned Senior Advocate, appearing for them.

It is absolutely plain that the name of the second defendant is endorsed thereon.

However, the case of the plaintiff as supported by the fourth defendant, is that the second defendant, sold these goods on a high seas sale to the third defendant Balaji Coke.

The third defendant, Balaji, in turn, sold these goods to Concast Steel & Power Ltd., the fourth defendant.

The plaintiff is the buyer or the nominee of Concast.

Now, according to Mr.Mitra, the buyer of LMJ.Balaji did not make any payment to them.

That is why, his client was holding on to the bills of lading.

Even if Balaji had, in turn transferred the goods to Concast which had again transferred them to the plaintiff, possession of the goods could not have been delivered to Concast or the plaintiff because the second defendant was holding the bills of lading.

He cited Carona Sahli Co.PVT.LTD.vs State of Maharashtra reported in AIR1966 Supreme Court 1153 reported in AIR1966together with a Division Bench decision of our Court in Great India Co.PVT.LTD.versus Nowrangrai Ramniwas reported in AIR1983 Calcutta 237.

He submitted that international sale of goods was by documents.

The holder of the bill of lading had title to the goods and could be deemed to be in possession thereof in normal circumstances.

Since his client was holding the bill of entry, they were deemed to be entitled to the goods.

He also showed the affidavit of the fiRs.defendant which in my opinion, has become very crucial for the purpose of determination of this case on a prima facie basis.

It is affirmed by one, Sona Chand Baid, in July 2013.

Subparagraphs (b).(d).(e).(f) and (g) of the said affidavit are most important.

They are inserted hereunder :(b) The Respondent no.2 imported 10000 MT of MET coke which were carried by the vessel M.V.Filia Joy under two several Bills of Lading being Nos.1 & 2, both dated 4th March 2012.

The Concast Group imported 19,380 MT of MET coke by the said vessel under Bills of Lading Nos.3, 4, 5 & 6.

The defendant respondent was applied by the Respondent no.2 and the Concast Group for arranging delivery of their respective cargoes.

(d) Subsequently, the agent of the petitioner/Concast Group the answering respondent consumption of the filed ex-bond entire M.V.Bills Filia of Entry Joy cargo for and home the petitioner/Concast Group took delivery of 19,380 MT on Bill of Lading No.3,4,5 & 6.

(e) After taking delivery of the cargo shipped under Bill of Lading No.3,4,5 & 6, the petitioner sought to take delivery of the M.V.Filia Joy cargo shipped under Bill of Lading Nos.1 & 2.

The answering respondent declined to give delivery of the cargo to the petitioner till it produced a delivery order for the same from the Respondent no.2.

The petitioner requested that it had duly acquired the said goods under a high seas sale agent and also paid the price of the goods.

(f) Around this time, the Concast Group imported another consignment of MET Coke by the vessel M.V.Glovis Master and appointed the petitioner as its clearing agent for the same.

The answering respondent duly filed the warehouse Bills of Entry and discharged the entire cargo from M.V.Glovis Master and stored the same at its R.S.Plant.

The R.S.Plant has a single entry/exit gate.

The cargo discharged from M.V.Glovis Master was stacked in front of the M.V.Filia Joy cargo.

(g) As stated hereinbefore the petitioner is one of the major and eminent customer of the answering respondent.

Thus there was a real possibility of losing substantial business if it did not succumb to the unjustified demand of the petitioner.

The petitioner had paid the customs duty for the entire consignment of 19,380 MT discharged from M/S.Filia Joy and the duty for the M.V.Glovis Master consignment was yet to be paid.

In these circumstances and due to undue influence of the petitioner/Concast Group and its owner, Mr.Sanjay Sureka and fearing economic duress the answering respondent permitted the petitioner to take delivery of a further quantity of 10000 MT under duty paid Bill of Entry filed by it from the M.V.Filia Joy cargo.

However, the goods which were demanded by the petitioner where M.V.Glovis Master cargo as it was lying in the hip of M.V.Filia Joy cargo and the M.V.Filia Joy cargo could not be accessed from the entry/exit gate without fiRs.cleaning the M.V.Glovis Master cargo. The averments in the last part of the affidavit are not wholly intelligible.

The summary of the statement of the deponent of this affidavit is that these 10,000 MT of goods were delivered to Concast without the bills of lading.

It is said in this affidavit that the fiRs.defendant gets a lot of business from Concast and that they were requested to release the goods on the basis of a request letter, which they did.

Furthermore, it appears that this quantity of 10,000 MT of goods may have been delivered from the cargo of MV Glovis Master.

On the other hand, Mr.Kapoor followed by Mr.Deb, learned Senior Advocates appearing for the plaintiff, demonstrated before this Court very ably how LMJ had sold the cargo to Balaji and the circumstances under which Concast got possession of the goods as the buyer thereof.

They submitted that 10,000 MT had already been given delivery of by the fiRs.defendant from the cargo brought by the fiRs.vessel, MV Filia Joy.

They maintained that there was no dispute with regard to the cargo brought by the second vessel, MV Glovis Master.

Since their clients were the buyer and in possession of the goods, their possession ought not to be disturbed.

It was further submitted that LMJ had not realized their price upon sale of the goods to Balaji and were trying to exercise lien over the goods belonging to Concast and Dankuni, the plaintiff.

Mr.Deb took me through the documents issued by the clearing and forwarding agent and the transporters to show how 10,000 MT of goods carried by MV Filia Joy were taken delivery of by his clients upon payment of Customs duty etc.When

one peruses the reliefs claimed in the plaint, one sees that it is inter alia for specific delivery of a quantity of metallurgical coke.

If there was no dispute whatsoever with regard to the claim in respect of the said quantity of coal, even at the interim stage this court would not have hesitated to pass an order of specific delivery of the quantity to the party entitled thereto, even if this might have effectively decreed the suit.

But here the Court is faced with affidavits on oath making contradictory assertions.

If one goes by the documents appended to the affidavit-in-reply as relied on by Mr. Deb, one forms the impression that these 10,000 mt.

tonnes of coal were taken delivery of by his clients and hence there should be no orders restraining taking delivery of the quantities of metallurgical coke brought by the second vessel MV Glovis Master.

But there is the affidavit of the fiRs. defendant which may suggest that the subject goods as covered by the bill of entry were not taken delivery of but the same quantity of goods was taken delivery of from the quantity which was brought by the second vessel, without the bills of lading.

Therefore, the second defendant holding the original bill of lading cannot be said to be without a claim on the said goods, if the statement of the second defendant is proved to be true.

If the second defendant held the bill of lading and the goods were taken delivery of by the fourth defendant or the plaintiff, conclusively, the court would not have interfered, because the dispute would then be between the parties and the carrier.

The bills of lading are endorsed in favour of and held by the second defendant, LMJ.

There is a dispute regarding the custody of 10,000 M.T. The plaintiff claims all the goods in MV Glovis Master.

In these circumstances, I am of the opinion that for final resolution of the disputes the suit should be expedited.

Written statements are to be filed by 14th August 2014 or the date specified in the summons, whichever is later.

Cross order of discovery by 31st August 2014 or two weeks from the last date of filing the written statement specified in the summons.

Inspection forthwith.

Liberty is granted to the plaintiff to take delivery of 10,000 MT from the fiRs.defendant, but upon securing the agreed value thereof that is Rs.21 crores by a bank guarantee in favour of and to the satisfaction of the Registrar, Original Side and usual charges.

Liberty is given to the second defendant to apply for increasing the value of the bank guarantee, if there is delay in disposal of the suit.

After setting apart the above 10,000 MT of metallurgical coke brought by MV Filia Joy or MV Glovis Master or both as available with the fiRs.defendant, the rest of the total materials [as stated above].brought by MV Glovis Master, may be handed over to the fourth defendant or plaintiff, as there is no dispute regarding them.

This application is disposed of by the above order.

Certified copy of this order, if applied for, be supplied to the parties upon compliance with requisite formalities.

(I.P.MUKERJI, J.) K.

Banerjee & R.

Bose A.Rs.[C.R.].

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