

Devshar Fashion Pvt. Ltd. Vs. Diamond Shipping Co. Ltd. and ors.

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Court : Kolkata

Decided On : Aug-22-2014

Judge : I. P. Mukerji

Appellant : Devshar Fashion Pvt. Ltd.

Respondent : Diamond Shipping Co. Ltd. and ors.

Judgement :

GA No.2445 of 2014 CS No.184 of 2014 IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction ORIGINAL SIDE DEVSHAR FASHION
PVT.LTD.Versus DIAMOND SHIPPING Co.LTD.& ORS.BEFORE: The Hon'ble
JUSTICE I.P.MUKERJ.Date : 22nd August, 2014.

Appearance: Mr.Amritam Mondal, Advocate Mr.Kisen Agarwal, Advocate
Mr.Kausik Chatterjee, Advocate Mr.Ashok Bhowmick, Advocate Mr.S.K.Das,
Advocate Ms.Sharmila Basu, Advocate The Court: This is an application filed by
the fiRs.defendant for review or modification of my order dated 10th July, 2014.

By the said order, the fiRs.defendant was directed to deposit a sum of
Rs.14,51,753/- in this court by 31st July, 2014.

Otherwise the second defendant would be able to execute the order.

The second defendant was directed to release the bill of lading in favour of the
plaintiff immediately.

Mr.Das, learned Advocate for the fifth defendant, submits that acting for the fiRs.and second defendants, his client released the goods, without the bill of lading in compliance with the above order.

Now, the fiRs.defendant says that the sum of Rs.14,51,753 has already been paid by them to the second defendant.

He shows me an entry from the banks statement of account which shows that Rs.15 lakhs were paid on 12th March, 2014 to the second defendant.

Now, what appears from the submissions made before this court is that there was a running and continuous account between the fiRs.defendant and the second defendant.

When Rs.15 lakhs were paid by the fiRs.defendant, it was adjusted by the second defendant against their dues of Rs.5 crores as alleged.

The effect of the order dated 10th July, 2014 is that upon creation of security in this court by way of deposit of the said sum, the plaintiff would be entitled to obtain delivery of the goods upon release of the bill of lading or without the bill of lading.

In this case the goods were released without the bill of lading.

There is no dispute that the fiRs.defendant has received this amount from the consignor.

The dispute is whether the fiRs.defendant is liable to pay this amount of Rs.14,51,753 to the second defendant.

The fiRs.defendant is contending that it has already made payment of this amount.

In such a case, the Court will not go into such disputes between agents and subagents.

If the goods have been released without the bill of lading, the amount has to be secured, because the goods could only be delivered upon payment of full freight.

This dispute between the fiRs.and the second defendant can only be resolved at the trial of the suit.

In my opinion, there is no infirmity in the order dated 10th July, 2014.

I modify the said order to the effect that time is granted upto 15th September, 2014 to the fiRs.defendant to deposit the said sum.

The Registrar, Original Side, will keep the said sum in a term deposit with the State Bank of India, High Court Special Branch, Kolkata, earning the highest rate of interest.

The application is disposed of.

Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(I.P.MUKERJI, J.) G/

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