Pearl Intercontinental Ltd. and Vs. State Bank of Indore

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Court : DRAT Delhi

Decided On : Oct-29-2001

Judge : A Srivastava

Appellant : Pearl Intercontinental Ltd. and

Respondent : State Bank of Indore

Judgement :

1. This appeal is against the order dated 15.5.2001 passed by the learned Presiding Officer of the Debts Recovery Tribunal-I in O.A. No.368/97--State Bank of lndore v. Pearl Intercontinental Ltd. and Ors.

2. The impugned order has been passed on an application moved by the appellants for amendment of their Written Statement. The application has been rejected by the learned Presiding Officer of the Tribunal below on the ground that the appellants by seeking amendments in the Written Statement were taking a complete somersault and wanted to say that they had availed the facility but not to the fullest extent. He also observed that lodging claim with the ECGC was totally irrelevant on that stage and that since the Written Statement had been filed in January, 1998, he was convinced that the defendants were only interested in prolonging the litigation.

4. Heard learned Counsels for the parties. Copy of the amendment application on which the impugned order has been passed is at pages 9 to 11 of the Paper Book. The amendments sought in the Written Statement are as follows : "C. The

applicant Bank did not permit the respondent No. 1 to operate the existing sanctioned limits. The applicant Bank was requested by letter dated 15th May, 1995 to release Rs. 30 lakhs which was available with the Bank within the existing limit to pay towards demurrages on the imported goods which were lying on the part. A similar request was made by the respondent to the applicant Bank vide its letter dated 17th May, 1995. In the said letter another request of Rs. 18 lakhs was made to the Bank for payment to the local transporters. But due to the inaction and negligence the demurrage charges increased to Rs. 120.31 lakhs which was duly informed by the respondent to the applicant vide letter dated 12th June, 1995. The respondent No. 1 in view of the arbitrary and wrongful actions of the applicant Bank suffered losses since the applicant Bank did not permit operation of existing limits.

D. Since the wrongful actions of applicants prevents the respondent No. 1 from operating and doing its business, the said applicant cannot take advantage of their own wrongs and claim any money from the respondents, whatsoever. There is no debts due from the respondents to the applicant.

E. The bill discounting facility was insured by the ECGC policy which is an insurance policy by Export Credit Guarantee Corporation which makes payment to the Bank in case the foreign bills that are discounted are not paid and also the overdue packing credit liability is to be claimed under the same insurance policies. Even though the insurance premium was recovered by debiting the account of the respondent from time-to-time, by the Bank in respect of the ECGC policy, the Bank has failed and neglected to collect the same from ECGC. No amount whatsoever is recoverable from the respondents and as such no debt is due from the respondents in respect of the bill discounting facility. Alternatively, if the applicant Bank has received the said compensation then it cannot claim the same again from the respondents.

F. The applicants were also insured under WTPSG scheme and they had recovered the premium for the respondent company and as such the applicant is liable to recover the alleged amount due from the said insurance and no amount issue from the respondents".

5. In the Written Statement filed by the appellants, admittedly the appellants had denied the liability altogether saying that the limit as granted by the respondent Bank had not been utilized by the appellant No. 1. In the sought-for amendment they want to say that the respondent Bank did not permit the appellant No. 1 to operate the sanctioned limits though they requested the respondent Bank on 15.5.95 and on 17.5.95 to release the funds. The contention in the sought-for amendment is that due to the inaction and negligence on the part of the respondent Bank the appellant No. 1 had to suffer increased charges of demurrage of Rs. 120,31 lakhs. Therefore, it may appear that the appellants want to say something further than what has been stated in the Written Statement. Further, by the amendments sought, the appellants are taking up a case that due to certain defaults and negligence on the part of the respondent Bank, the respondent Bank was not entitled to make claim as has been made in the Original Application for recovery made by it. Certain adjustments are also being sought relating to ECGC claim.

6. It is a settled law that a party to a litigation may seek amendment to the pleadings at any stage of the trial. The riders are that the amendment should not change the nature of the suit and the amendment in the plaint is not barred by time. So far as amendment to Written Statement is concerned, even contradictory pleas in the alternative can be taken. The merits of such pleas would, of course, be considered while deciding the case finally.

7. In the case before me, it is to be found that the Written Statement was filed in January, 1998 and the amendment application under consideration was moved in June, ,1999, almost one-and-half years after the filing of the Written Statement, but it is also not disputed that when the amendment application was moved, the case was still at the trial stage. Delay in moving the amendment application is, of course, there but in the interest of justice the defendants may be permitted to take all the pleas, which they want to take in order to meet the respondent Bank's case for recovery.

8. Considering all the aspects of the matter, the interest of justice would demand that the appellants should be given an opportunity to take all the pleas, which they

want to take, to defend the Original Application filed by the respondent Bank. For the delay made by the appellants in moving such amendment application the respondent Bank will be compensated with costs.

9. Accordingly the appeal is allowed. The impugned order dated 15.5.2001 is hereby set aside and the amendment application moved by the appellants is allowed on payment of Rs. 10,000/- as costs to the respondent Bank to be paid within 45 days from the date of this order.

The respondent Bank may file replication, if any, to the amendments within two weeks from today with advance copy to the appellants. The parties shall appear before the Tribunal below on 16.11.2001.

In case costs are not paid within the time given under this order, the appeal shall stand dismissed and consequently the amendment application shall also stand dismissed as per the impugned order.

Copy of this order be given Dasti to the learned Counsels for the parties and be sent to the concerned Tribunal forthwith.