

Dsj Communication Ltd. Vs. Uoi and Ors

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Court : Delhi

Decided On : Nov-24-2014

Judge : G. Rohini

Appellant : Dsj Communication Ltd.

Respondent : Uoi and Ors

Advocate for Def. : Mr. Arun Bhardwaj, Mr. Arun

Advocate for Pet/Ap. : Mr. Rajshekhar Rao, Mr. Vikas Pathak

Judgement :

\$~19 * IN THE HIGH COURT OF DELHI AT NEW DELHI + LPA No.757/2014 & CMs No.19262/2014 (for stay), 19261/2014 (for condonation of 102 days delay in filing the appeal) & 19351/2014 (for condonation of 11 days delay in re-filing the appeal) DSJ COMMUNICATION LTD. Appellant Through: Mr. Rajshekhar Rao & Mr. Vikas Pathak, Advs. versus UOI & ORS Respondents Through: Mr. Arun Bhardwaj, Adv. for R-1 to R-4. Mr. Arun, Adv. for R-5. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW %

ORDER

2411.2014 CM No.19263/2014 (for exemption) 1. Allowed, subject to just exceptions.

2. The application is disposed of. LPA No.757/2014 3. This intra-court appeal impugns the judgment dated 30th July, 2014 of the learned Single Judge of dismissal of W.P.(C) No.934/2010 preferred by the appellant. Though the appeal is accompanied with applications for condonation of 102 days delay in filing and 11 days delay in re-filing thereof and though we do not find any sufficient cause for condonation of delay to have been disclosed but the counsel for the respondents no.1 to 4 and the counsel for the respondent no.5 having appeared on advance notice, we have without regard to the said fact also heard the appeal on merits, to consider the admissibility thereof.

4. The writ petition from which this appeal arises was filed impugning the order dated 21st January, 2010 of the Directorate General of Foreign Trade (DGFT) rejecting the request of the appellant for extension of period for fulfilling its export obligation and for inclusion of an alternate export product for the purpose.

5. The appellant was issued an Export Promotion Capital Goods Licence dated 25th January, 1995 with a condition to export Video Software within a period of five years. The appellant did not fulfil the said export obligation and was proceeded against therefor and fiscal penalty of Rs.66,93,238/- in addition to payment of customs duty along with interest was imposed by the Adjudicating Authority on the appellant. However, the Appellate Authority (Additional DGFT), vide order dated 8th June, 2006 allowed the appeal preferred by the appellant and remanded the matter for de novo consideration. The Additional DGFT vide the same order also granted extension in export obligation period for 18 months from the date of endorsement of the Licensing Authority, without composition fee and also permitted the appellant to fulfil the said export obligation by exporting goods other than Video Software. In accordance with the said order, an endorsement dated 13th September, 2007 was made to the licence, extending the period for fulfilling the export obligation for 18 months therefrom.

6. The appellant still did not fulfil the export obligation and applied for further extension and which was rejected and challenging which rejection, the writ petition from which this appeal arises was filed.

7. The learned Single Judge, vide a detailed, well reasoned judgment has dismissed the writ petition inter alia observing that a period of fourteen and half years had elapsed since the appellant imported the capital goods and the appellant having failed to fulfil its export obligation subject to which it was permitted to import goods without payment of the requisite duty, there was no error in the rejection by the DGFT of the application of the appellant seeking further extension.

8. The counsel for the appellant, before us, has raised only two arguments. Firstly, it is contended that though the order dated 8 th June, 2006 (supra) permitted the appellant to fulfil the export obligation by exporting alternate product manufactured by the appellant or its group companies in terms of the provisions contained in para 5.4(i) of the Foreign Trade Policy but while making endorsement on the licence in terms of the said order, endorsement to the said effect was not made and which resulted in the appellant being not able to fulfil the export obligation by exporting alternate product.

9. The said argument is clearly misconceived. A bare perusal of the amendment endorsement dated 13th September, 2007 shows an endorsement to the following effect having been made:

THE EXPORT OBLIGATION OF THIS LICENCE IS EXTENDED FOR 18 MONTHS FROM THE DATE OF ENDORSEMENT I.E. 13.09.2007 AS PER

ORDER

GIVEN IN

ORDER

-IN-APPEAL BY DGFT, NEW DELHI. It is thus clear that the extension was as per the order dated 8 th June, 2006 and thus the order dated 8th June, 2006 is to be read in the said endorsement. The argument that the endorsement was not for export of alternate product is clearly contrary to record and has been rightly rejected by the learned Single Judge also. It is also not as if the appellant attempted to export any alternate product and could not do so owing to any defect in the said endorsement.

10. The only other argument urged by the counsel for the appellant is that though as per the order dated 8th June, 2006 the case was remanded to the Adjudicating Authority for de novo consideration but the Adjudicating Authority did not give a fresh notice to the appellant and treated the proceedings as remanded proceedings.

11. Though the aforesaid question strictly speaking does not fall for consideration, the challenge in the writ petition from which this appeal arises being to the refusal of extension but even otherwise is fallacious. In fact, we have enquired from the counsel for the appellant that even if that be so, what prejudice thereby has been caused to the appellant; what else could the appellant have said even if had been served with a fresh notice.

12. We have further enquired whether the appellant had made any attempts to export an alternate product and had been refused permission therefor.

13. The counsel for the appellant has fairly agreed that neither any prejudice has been caused to the appellant nor did the appellant make any attempt to export any alternate product.

14. In the circumstances, the said second contention also is to be rejected.

15. No other argument has been raised.

16. There is no merit in the appeal. Dismissed. We refrain from imposing any costs. CHIEF JUSTICE RAJIV SAHAI ENDLAW, J NOVEMBER24 2014 gsr.. \$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI LPA No.748/2014 & CM No.18802/2014 (for condonation of 12 days delay in re-filing the appeal) SMT. GURDIAL KAUR BHATIA & ORS Appellants Through: Mr. Samrat Nigam & Mr. Amit Punj, Advs. Versus GOVT. OF NCT OF DELHI & ORS Respondents Through: Mr. Sanjeev Sabharwal, Adv. for GNCTD. Mr. R.V. Sinha, Adv. for R-2. Ms. Saroj Bidawat, Adv. for R-2&4. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 24.11.2014 CM No.18801/2014 (for exemption) 1. Allowed, subject to just exceptions.

2. The application is disposed of. LPA No.748/2014 3. This intra-court appeal impugns the order dated 5th September, 2014 of the learned Single Judge of dismissal of Review Petition No.583/2013 filed by the appellants seeking review of the order dated 7 th December, 2010 of dismissal of W.P.(C) No.4054/1997 filed by the appellants. The appeal also impugns the order dated 7th December, 2010. The appeal is accompanied with CM No18802/2014 for condonation of 12 days delay in re-filing the appeal.

4. No appeal lies against an order of dismissal of a review petition (Order XLVII Rule 7 of CPC). The counsel for the appellants upon faced therewith states that the appeal also impugns the order dated 7 th December, 2010 of dismissal of the writ petition. However the appeal filed in September-October, 2014 against the order dated 7th December, 2010 is palpably barred by time and no application for condonation of long delay of nearly four years in filing the appeal has been filed. Of course, the appellants had earlier filed LPA No.237/2011 impugning the order dated 7th December, 2010 and the said LPA was disposed of vide order dated 23 rd September, 2013 giving liberty to the appellant to seek review of the order dated 7th December, 2010 and after which review was sought. However, neither has the copy of the order dated 23rd December, 2013 of this Court been filed nor is the copy thereof available with the counsel for the appellants. Even otherwise, merely because the review was filed with liberty granted in the earlier appeal, is by itself not a ground enough to entertain a time barred appeal without even any application for condonation of delay. The appeal is thus liable to be dismissed on this ground alone.

5. We have however still considered the appeal on merits as well.

6. The learned Single Judge vide order dated 7th December, 2010 dismissed the writ petition on two grounds; firstly, of the same being barred by laches, acquiescence and waiver inasmuch as the challenge in the writ petition filed in the year 1997 was to the order dated 11th June, 1971 of the Land and Development Office (L&DO); and, secondly, on the ground of the General Power of Attorney on

the basis of which the writ petition was filed having several blanks therein and being incomplete and incapable of being acted upon.

7. The predecessor of the three appellants in or about the year 1968 instituted a suit for specific performance of an Agreement to Sell by the predecessor of the respondent no.3 herein viz. Sh. Charanjit Singh of half of property bearing No.C-24, Vijay Nagar, Delhi constructed over leasehold land. In the said suit, a conditional decree for specific performance was passed on 1st March, 1971 subject to the L&DO (being the lessee of the land underneath the property) granting permission for sale of half of the property. Such permission was applied for and refused as aforesaid on 11th June, 1971. Though an appeal and a second appeal were filed against the decree but the same were dismissed and during the pendency of the appeals, there was no stay. The predecessor of the appellants after the dismissal of the second appeal, in or about the year 1994 filed another application before the L&DO for permission for execution of the sale deed in respect of half of the land underneath the property. The L&DO on 5th May, 1995 reiterated its earlier order dated 11th June, 1971. It was thereafter that on 5th September, 1997 the writ petition challenging the said order of the L&DO was filed.

8. The learned Single Judge held that the appellants were aware of the refusal of the L&DO on 11th June, 1971 and even after the same was reiterated on 5th May, 1995, filed the writ petition challenging the same after nearly two years and the writ petition thus suffered from laches, acquiescence and waiver.

9. The only explanation which the counsel for the appellants is able to offer for the delay from 1971 till 1997 in filing the writ petition is the pendency of the appeals against the decree for specific performance.

10. We are unable to agree. The pendency of the appeals against the decree for specific performance was of no avail. Admittedly, there was no stay of execution of the decree during the pendency of the appeals. Moreover, the refusal of the L&DO to allow sale of the half of the land underneath the property was independent of the pendency of the appeals against the decree. We therefore do not find any error in the reasoning of the learned Single Judge of the writ petition being barred

by laches, acquiescence and waiver.

11. As far as the other ground given by the learned Single Judge, of the Power of Attorney on the basis of which the writ petition was filed being incomplete and ineffective, the contention of the counsel for the appellants is that the appellants had admittedly during the pendency of the writ petition filed another Power of Attorney of the year 2005 and the learned Single Judge has erred in rejecting the said Power of Attorney.

12. We may in this regard notice that the three appellants preferred the writ petition and have been pursuing the proceedings including this appeal through one Sh. Jinender Kumar and the said Power of Attorneys are in favour of Sh. Jinender Kumar. We have enquired from the counsel for the appellants whether the said Sh. Jinender Kumar is a relative of the appellants. The answer is in the negative. We have next enquired as to how the appellants came to entrust the litigation to the said Sh. Jinender Kumar. No answer is forthcoming. Though the counsel denies our further query viz. whether the appellants have assigned their rights in favour of Sh. Jinender Kumar but at the same time is not in a position to categorically make any statement in this respect; he however agrees that if it is so, that itself would be a ground for the appellants being not entitled to any relief.

13. Considering the facts in entirety, we are of the view that no ground for entertaining the appeal is made out. Dismissed. CHIEF JUSTICE RAJIV SAHAI ENDLAW, J NOVEMBER24 2014 gsr.. 7\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + LPA6002009 UNION OF INDIA Through: Appellant Mr. Sanjay Jain, ASG with Mr. Arun Bhardwaj, CGSC & Ms. Noor Anand, Adv. Versus UMA JAIN & ANR. Through: Respondents Mr. Ravinder Sethi, Sr. Adv. with Mr. R.K. Mehta, Adv. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 24.11.2014 1. This intra-court appeal impugns the order dated 9th February, 2009 of the learned Single Judge of this court allowing W.P.(C) No.15550-51/2004 preferred by the two respondents herein. The said writ petition was filed challenging the demand dated 10th February, 2004 of the appellant Land &

Development Office (L&DO), Ministry of Urban Development, Government of India of Rs.53,56,761/- on account of misuse of property of which the respondents claim to be the owners in G-Block, Connaught Circus, New Delhi land underneath which was granted by the L&DO on leasehold basis. The learned Single Judge by the impugned order quashed the said demand finding that the misuse of the property was by the tenants inducted into the said property by the predecessor-in-interest of the respondents on account of which misuse the predecessor-in-interest of the respondents had initiated proceedings including of eviction against the tenants misusing the property and in which proceedings the tenants were finally evicted. The learned Single Judge further found that as per the policy of the L&DO, only 1% of the misuse charges could be levied when misuse was by the tenant of the perpetual lessee / owner of the property and when legal proceedings had been initiated against the said tenant misusing the property. Accordingly, the demand for Rs.53,56,761/- subsequently during the pendency of the writ petition enhanced to Rs.65,59,691/- was set aside and the re-entry of the lease effected by the L&DO on account of such misuse and the misuse charges having not been paid was also set aside and it was further held that the respondents shall be entitled to consequential relief of mutation of the property in their name subject to completion of other formalities.

2. We have heard the learned ASG appearing for the appellant L&DO and the senior counsel appearing for the respondents.

3. At the hearing of this appeal on 5th March, 2012, the contention behalf of the appellant was that this appeal was entitled to be allowed in terms of the judgment of the Division Bench in LPA No.336/2009 titled Union of India Vs. Savitri Devi. However the counsel for the respondents controverted contending that Savitri Devi (supra) was a case of collusion between the landlord and the tenant misusing the property; on the contrary in the present case, there was no such collusion and the landlord had taken all possible action against the tenant for misuse and thus as per the judgment in Savitri Devi (supra) also penalty could not be more than 1%. Reliance in this regard was also placed on Clause 7 of the Office Order No.23/76 dated 31st March, 1976. It was also informed that the respondents had also made a representation in this regard. Accordingly, vide order dated 5th March, 2012 in

this appeal, the appellant was directed to take a decision on that representation within four weeks.

4. The appellant L&DO however vide letter dated 16 th July, 2012 rejected the representation of the respondents.

5. The respondent no.1 has filed an additional affidavit dated 7 th August, 2012 setting out as to how the reasons given for rejection of the representation are erroneous.

6. We have thus enquired from the learned ASG appearing for the appellant as to how these reasons can be controverted.

7. We may mention that the Division Bench of this Court in Savitri Devi (supra) also noticed that Clause 7 of the Office Order No.23/76 dated 31 st March, 1976 of the appellant L&DO takes care of a situation where a landlord is put to a disadvantage by the tenant exploiting the premises for commercial purpose. Inspite of the landlord having bona fide given out the premises for residential premises only and more so when the landlord has received a meagre amount of rent which is not commensurate with the misuse charges; in such cases, the misuse charges instead of 10% can be 1%. However in Savitri Devi (supra) the Division Bench, as aforesaid, found the landlord to be in collusion with the tenant misusing the property and thus held misuse charges to be not liable to be reduced to 1%.

8. The senior counsel for the respondents has also drawn our attention to paras no.72 to 74 of the subsequent judgment of another Division Bench of this Court in Union of India Vs. Jor Bagh Association Regd. 188 (2012) DLT25 where also the aforesaid principle enunciated in Clause 7 was approved as well as to the judgment dated 10th July, 2012 of the Full Bench of this Court in LPA No.1125/2007 titled Union of India Vs. Engineering and Industrial Corporation Pvt. Ltd. in accordance with the reference made in Jor Bagh Association Regd. (supra) to show that the said aspect was not interfered with.

9. We are satisfied that the present is not a case of the respondents or their predecessor having connived in the misuse of the property on account of which the demand for misuser charges was levied. Accordingly, in accordance with Clause 7 of the Office Order No.23/76 dated 31st March, 1976 of the appellant L&DO itself, the appellant L&DO is entitled to charge misuse charges of not more than 1% and penalty also of 1% and not more.

10. The respondent no.1 present in person states that the respondents shall within four weeks deposit with the appellant L&DO further amount if any due towards 1% misuse charges and 1% towards penalty charges in excess of the accounts already deposited / paid to the appellant L&DO.

11. Subject to the aforesaid, the directions as issued by the learned Single Judge be complied within further six weeks thereafter.

12. The appeal is disposed of modifying the judgment of the learned Single Judge in above terms and with no order as to costs. CHIEF JUSTICE RAJIV SAHAI
ENDLAW, J NOVEMBER24 2014 gsr

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