

Abhijit Tea Company Pvt. Ltd.

Vs

Terai Co. (P) Ltd. and Others in the Matter of 1. Registrar, (Original Side) High Court of Calcutta 2. New Red Bank Tea Co. 3. Rabin Pal, Managing Director, New Red Bank Tea Co,

Contempt Petition No. 249 of 1994 in Civil Appeal No. 5647 of 1994

(K. Ramaswamy, K. S. Paripoornan JJ)

08.11.1995

ORDER

1. The petitioner herein is M/s. Abhijit Tea Co. (P) Ltd. and the respondents are (1) Registrar (Original Side), Calcutta High Court, (2) M/s. The New Red Bank Tea Co., Calcutta and (3) Shri Rabin Pal, Managing Director of the Second respondent Company.
2. A Division Bench of the Calcutta High Court, while disposing of Appeal No. 514 of 1992 on 25-4-1994, directed the Registrar (Original Side), High Court of Calcutta (hereinafter referred to as 'Registrar'), the first respondent herein to refund a sum of Rs. 19,33,873.74 to the petitioner. The said amount was held in Court deposit. An application for review was filed in the case. One of the members of the Bench had, by the, retired. The other member of the Bench, Shyamal Kumar Sen, J. by order dated 21-7-1994, rejected the review application, but directed the Registrar to hold the money for further one week. The petitioner herein filed Special Leave Petition (C) No. 9575 of 1994 in this Court and assailed the said direction. A Bench of this Court noticed another review application, filed by the party respondent in the meanwhile, was pending disposal, but, by order dated 16-8-1994 held that the direction issued by the learned Single Judge was improper and set aside the same. The advocate for the petitioner wrote to the Registrar on various dates requesting for refund of the money amounting to Rs. 19,33,873.74 with interest evidenced by communications dated 22-8-1994 (Annexure VI), 24-8-1994 (Annexure VII) and also intimated the Registrar by communication of the same date that all formalities for getting the refund, as directed, have been complied with. The records further disclose that the matter came up before Shyamal Kumar Sen, J. on 2-9-1994. The learned Judge recalled the order passed earlier and made it clear that there will be no interim order in view of the order passed by this Court dated 16-8-1994 and directed the posting of the review application on 8-9-1994. The petitioner again applied to the first respondent for refund on 2-9-1994. The order passed by the learned Judge on 2-9-1994 recalling the earlier order was also brought to the notice of the first respondent by communication dated 5-9-1994, with a request the amount in deposit. The review application was heard on 16-9-1994 and the court directed the parties to submit written notes by 26-9-1994. Stating that the review matter is pending for judgment, it was ordered that the Registrar will not make the payment "for a period of fortnight" (Annexure XII). It is thereafter the petitioner approached this Court on 23-9-1994 complaining that the order passed by this Court on 16-8-1994 has not been complied with and that appropriate action in contempt against the first respondent, the Registrar and the parties in the appeal, who are causing impediments from disbursing the refund to the petitioner, be initiated. The first respondent, Registrar has filed counter-affidavits dated 27-4-1994 and 21-7-1995. Respondents 2 and 3 have also filed a counter-affidavit dated April/May 1995.

3. We heard counsel. In the review application Shyamal Kumar Sen, J., by order dated 16-9-1994, observed that the first respondent, the Registrar, will not make the payment "for a period of fortnight". The same learned Judge, after noticing the order passed by this Court on 16-8-1994, vacated the earlier order withholding payment, by order dated 2-9-1994 (Annexure VII). But the same learned Judge, by order dated 16-9-1994, directed the first respondent not to make payment "for a period of fortnight" after the arguments in the review application were heard. In spite of the categorical order passed by this Court on 16-8-1994 the refund due to the petitioner was withheld. It is sad indeed to notice that the same learned Judge who passed the order dated 2-9-1994 passed the later order dated 16-9-1994 stating that the first respondent will not make payment "for a period of fortnight". What persuaded the learned Judge to hold so, is not clear.

4. We are of the view that there is no justifiable reason for the first respondent in failing to give effect to the order passed by this Court on 16-8-1994. It was brought to his notice more than once on 22-8-1994, 24-8-1994, etc. about the order passed by this Court. The learned Single Judge of the Calcutta High Court vacated the earlier order on 2-9-1994. The petitioner again requested for refund of the amount on the same day and thereafter on 5-9-1994. Prima facie we are of the view that the first respondent has no excuse, whatsoever in not refunding the amount to the petitioner from 8-9-1994 to 16-9-1994. (It was on 16-9-1994 a judicial order was passed by the learned Judge of the High Court directing withholding of the refund).

5. The first respondent has, in his affidavit, referred to Rule 3-A of Chapter XXIV of the Calcutta High Court, Original Side Rules and Rule 51-A of the said Rules to contend that before making the refund a series of steps had to be taken and that took time. According to him, State Bank of India is appointed as the custodian for any securities, for money ordered to be delivered into court on account of any suit, appeal or other proceeding and that payments may be made by issuing a cheque or draft or pay order drawn on Reserve Bank of India. It is stated that the first respondent, on receiving a memorandum from State Bank of India on 7-9-1994, presented a Lodgment Schedule in proper form on 8-9-1994 itself and the Reserve Bank of India was bound to acknowledge the factum of credit of the amount which reached him only on 14-11-1994 though dated 15-9-1994. It is further stated that unless the first respondent has knowledge of the fact that the money of the State Bank of India has been transferred to Reserve Bank of India and the same is credited to the account of the first respondent, he could not issue a cheque. This he could do so only after 14-11-1994 by which time the High Court of Calcutta had injuncted him by a judicial order on 16-9-1994 from paying the money.

6. We heard counsel for the first respondent at length. The first respondent was also present in the Court one of the days when the case came up for hearing. We perused the relevant rules placed before us. In the affidavit of the first respondent dated 27-4-1995 in paragraphs 14 to 20 steps taken from 6-9-1994 to 16-9-1994 have been catalogued. The first respondent would say that on receipt of the request from the petitioner's counsel on 5-9-1994 and on receipt of the fixed deposit receipts from the State Bank of India the same were duly discharged by him for encashment before maturity and the letter dated 5-9-1994 was written to the Bank to credit the principal amount with accrued interest in the deposit account of the Registrar with the said Bank and to intimate the principal amount with interest. He received a memorandum from the State Bank of India on 7-9-1994 stating that a total sum (principal and interest) which has been credited to the Deposit Account in this case is Rs. 24,41,821.74. It was transferred to his personal account with Reserve Bank of India on 8-9-1994. The only further event that has taken place thereafter and before 16-9-1994 seems to be that the letter of the petitioner's advocate dated 14-9-1994 to take immediate steps for refund was endorsed by him to the cash department on the same day.

7. It is clear that State Bank of India has intimated the first respondent on 7-9-1994 that the total sum of Rs. 24,41,821.74 has been credited to his deposit account. It was transferred to the personal account of the first respondent on 8-9-1994. From 8-9-1994 till 14-9-1994 no step was taken to expedite the refund to be made. A casual statement is made that on 14-9-1994 the letter of the petitioner's advocate was endorsed to the cash department. On a perusal of the material on record and in particular the counter-affidavit filed by the first respondent in this contempt petition itself, it is clear that the first respondent was absolutely careless and indifferent to give effect to the orders passed by this Court till the learned Single Judge of the Calcutta High Court made the order on 2-9-1994. The first respondent would appear to have thought that delay is a safe route to tide over the devil and deep sea forsaking constitutional duty cast on him under Article 142 of the Constitution, as an arm of the court, to effectuate the order passed by this Court dated 16-8-1994. His reprehensible conduct and indifference to implement the order of this Court calls for strong condemnation and in our opinion, he is unworthy to hold any office of responsibility. The same need to be entered in his confidential character rolls. The Hon'ble Chief Justice of the High Court of Calcutta would look into his conduct to take action as is appropriate in this behalf. However, no one shall be left in lurking doubt that by manoeuvre or otherwise one would get over non-implementation of the order of the court and was successful in its avoidance or seem to be defeated. The arm of the Court is long enough to reach injustice wherever it is found, which should be dealt with appropriately. The learned Single Judge passed final order on review application on 23-12-1994 setting aside the order of the Division Bench to which he was a member.

8. In this backdrop scenario we deem it appropriate that though the appeal against the order of the learned Single Judge is pending before this Court, instead of relegating the parties to seek appropriate direction therein, as a part of this order and as a logical consequence, we direct the petitioner to withdraw the amount on furnishing bank guarantee to the satisfaction of the Registrar of the High Court, Calcutta and the withdrawal will be subject to the result in the appeal filed against the order of the learned Single Judge of the High Court dated 23-12-1994.

9. The contempt application is accordingly disposed of.