

Avijit Tea Co. Pvt. Ltd.

Vs

Terai Tea Co. and Others

Civil Appeals No. 10871 of 1996 with Nos. 10872-73 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

08.08.1996

ORDER

1. Leave granted.

2. We make it clear at the outset that we are not expressing any opinion on merits as regards the contentious controversy between the parties in the dispute in several suits in the High Court on the original side and appeals arising thereunder and some orders passed by this Court in that behalf. We are concerned in this appeal with the legality of the order of the learned Single Judge in review order dated 23-12-1994 in Appeal No. 514 of 1992.

3. The admitted position is that there was an agreement between Terai Tea Co. Pvt. Ltd. said to be having shares and represented by Ajit Kumar Agrawal as its Managing Director who was said to be in the management of Dharanipur Tea Estate and the appellant for sale of tender and good quality green tea leaves of the Dharanipur Tea Estate and in consideration thereof a sum of Rs 20 lakhs was advanced. It is not in dispute that Rs 20 lakhs came to be deposited with a Court Receiver in a pending suit. The appellant filed Suit No. 89 of 1991 for specific performance of the said agreement. In that suit, an application for ad interim injunction under Order 39 Rule 1 CPC was filed but the same was dismissed. On appeal, by consent of the parties, the suit itself was taken up. While dismissing the suit for specific performance, the Division Bench by judgment dated 25-4-1994 directed refund of a sum of Rs 19,33,873.74 which was with the Court Receiver with interest thereon to the account of the suit maintained by the Court Receiver. Thereafter an application for review came to be filed. In the impugned order the learned Single Judge held that the direction for refund of the amount was bad in law. Calling that order in question, this appeal has come to be filed.

4. It is contended by Dr Shankar Ghosh, the learned Senior Counsel for the appellants, that the view of the learned Single Judge is clearly erroneous for the reason that it is not an error apparent on the face of the record warranting review under Order 47 Rule 1 CPC. At best, it would be a case for an appeal against the judgment of the Division Bench, but, admittedly, no appeal came to be filed. We find force in the contention advanced for the appellants. It is an admitted position that in respect of the management of the estate of Dharanipur Tea Estate a contract came to be executed between Terai Tea Estate which was said to be in its management at the relevant time, and the appellant for sale of tender green leaves of the tea grown in the said estate. The suit for specific performance of that agreement came to be dismissed. One of the covenants in the agreement was that he was entitled to the specific performance. Since the specific performance was not granted alternative relief sought for refund of the amount was granted. Therefore, when the decree for refund was granted, whatever may be the demerits in the grant of decree that will be only correctable in an appeal. The ground given by the learned Single Judge to review the order was that since the amount

came to be deposited in another suit but not in relation to the suit for specific performance, the decree for refund was not valid in law. The view of the learned Single Judge is wholly illegal. So long as the amount came to be deposited with the Court Receiver in pursuance of the contract of the agreement, when the contract was found to be not specifically enforced, the decree for refund was rightly granted. The appellant is entitled to follow and keep track of the estate wherever the amount lies and entitled to recover the same in pursuance of the decree. It would be immaterial in which suit the amount came to be credited by the Receiver. Under those circumstances, the learned Judge has committed grievous error of law in reviewing the order.

5. We need not go into the controversy and wisdom whether the learned Single Judge alone can review the decree in the appeal of a Division Bench though one of the learned Judges of the Division Bench happened to retire on the date of the review order. Whatever may be the propriety or otherwise of the High Court's adopting that procedure, it is for that Court to correct itself. Suffice it to state that on merits the order of the Single Judge is unsustainable.

6. In *Abhijit Tea Co. (P) Ltd. v. Terai Tea Co. (P) Ltd.* [(1996) 1 SCC 589] this Court directed the appellant to withdraw the amount of Rs 10 lakhs and odd pending disposal of this appeal subject to the appellant furnishing the bank guarantee to the satisfaction of the Registrar of the High Court. It was held therein that the withdrawal would be subject to the result of this appeal. Since we are informed that the respondent - Red Bank Tea Co. Pvt. Ltd. - had filed another suit in the High Court in April 1992 impleading the appellant as second defendant, claiming a decree for a sum of Rs 55,34,273.04 said to be due towards alleged price of alleged 2,37,523 kgs of green leaves said to be loss and damage caused to the respondent in this behalf and the suit is said to be pending. Shri Kapil Sibal, the learned Senior Counsel for the contesting respondent - the New Red Bank Tea Co. Pvt. Ltd., made a request that a petition would be made in the said suit seeking appropriate direction against the appellant to safeguard its alleged right in the suit. Pending disposal of that application a direction may be given to the appellant not to encash the bank guarantee given pursuant to the aforesaid order. In the circumstances, we direct the appellant to keep alive the bank guarantee, given pursuant to the above order for a period of four months from today. If no appropriate orders by any competent court are obtained against the appellant within the above period, after expiry of four months the appellant would be at liberty to have the bank guarantee cancelled.

7. We reiterate that it may not be construed that we are expressing any opinion on the merits in the suit for recovery of the alleged damages.

8. The main appeal is accordingly allowed. No costs. Following the result, the connected appeals are not pressed. They are accordingly dismissed. No costs.