SUPREME COURT OF INDIA

S.D.S. Shipping Pvt. Ltd.

Vs.

Jay Container Services Co. Pvt. Ltd.

C.A.No.4064 of 2003

(Shivaraj V. Patil and Arijit Pasayat JJ.)

08.05.2003

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. Shorn of unnecessary details, the factual background giving rise to the present appeal is as follows:-

3. Respondent No. 1 as plaintiff filed a suit in the ordinary original civil jurisdiction of the Bombay High Court, *inter alia*, with the following prayers:

> "a) That the Defendant No. 1 be ordered to pay the plaintiffs a sum of Rs. 1,61,13,173.24 (Rupees one crore sixty one lakhs thirteen thousand one hundred and seventy three and twenty four paise) details of which are given in the enclosure at Annexure "A" to this plaint and the Defendant No. 1 be directed to pay interest @ 21% till the date of actual payment.
>
> a-1) That Defendant No.1 be ordered and decreed to pay a sum of US $ 4140 per month alongwith interest @ 18% per annum from due date till payment/realization with effect from 1st November, 1997 towards lease rent until all the 92 containers are returned.
>
> In the alternative and without prejudice:
>
> a-2) If this Honourable Court holds that the plaintiffs are not entitled to claim lease rent beyond the termination of the lease agreement, in that event Defendant No. 1 be ordered and decreed to pay a sum of US $ 4140 per month with interest @ 18% per annum as liquidated damages to the plaintiffs."

4. Appellant is defendant No. 1 in the suit.

5. According to the plaintiff it is a private limited company engaged amongst others in the business of supply of containers for the ships to carry goods from one place to another. It supplied container to the present appellant from time to time. There was a lease agreement entered into between the parties for use of leased containers. The agreement expired on 30th March, 1996, but was further extended by one month. Even during the extended period and thereafter the containers were not returned by the defendant No.1. It entered into correspondence with defendant No. 1 calling up it to return the containers and to pay the lease charges. Cheques issued by the said defendant bounced on presentation. The defendant No. 1 by letter dated 26th April, 1996 addressed to the attorney of the plaintiff informed that efforts were on to look for a suitable vessel to bring those containers from Port Louis to Bombay. But the containers were not returned. Prior to the said letter dated 26th April, 1996, by two communications dated 10th January, 1996, it had been communicated that out of the total lot of 92, 35 containers could not be returned. It was stated that those containers were lost leaving a balance of 57 containers. The containers were given on lease basis and since there was no dispute about non-return, demands were made for payment. There was also no dispute regarding lease rental. Ultimately, when the plaintiff found that the containers were not returned and also the lease charges were not paid, the suit No. 4794 of 1997 was filed seeking a sum of Rs. 1,61,13,173.14. This included the claim for non-return of the containers and the claim for ourstanding rental. After the suit was filed, plaintiff took out a motion, being Notice of Motion No. 378 of 1998 for receiver and injunction for the containers which were not returned. The learned Single Judge by order dated 11th August, 1999, took the view that there was no case for appointing a Receiver for the properties by way of security for the amounts which may be due. He also held that no irreparable loss will be caused if interim relief was not granted. While rejecting this motion, however, liberty was granted to the plaintiff to take out the appropriate proceedings for a direction to defendant No. 1 to deposit the arrears of rent, if any, due. Order of the learned Single Judge was upheld by the Division Bench. While disposing of the appeal, however, it was observed by it that the view expressed by learned Single Judge were of *prima facie* nature and were intended to dispose of the motion. It was further observed that if the plaintiff moves an application for attachment before judgment, observations made in the orser of learned Single Judge as well as the Division Bench will not prejudice the application.

6. Thereafter another notice of motion was taken where it was prayed that defendant No. 1 be directed to deposit the amount of Rs. 81,77,632.50, being the amount towards arrears of rental and also for a direction that per month an amount of Rs. 1,78,020/- be deposited from time to time. Learned Single Judge took the view that the power of the Court under Order 12 Rule 6 of Civil Procedure Code, 1908 (in short `the Code') dealing with decree on admission could not be invoked in the matter. It was held that Section 151 of the Code was not available to the plaintiff to invoke the inherent jurisdiction on the facts of the case.

7. The orders were challenged by the plaintiff before the Division Bench which by the impugned order directed defendant No. 1 to deposit an amount of Rs. 81,77,632.50 (rounded off to Rs. 82,00,000/-) within 12 weeks period. It was further directed that the amount was to

be deposited in a nationalized bank for a period of 37 months and the deposit was to be renewed at a time by 13 months until the suit was decided. This order is under challenge.

8. Mr. R.F. Nariman, learned senior counsel for the appellants submitted that the Division Bench manifestly erred in directing deposit by overlooking the factual and legal background involved. In a commercal suit where there was dispute regarding the liability such directions could not have been given. Even in respect of a summary suit under Order 37 there was no scope for giving the type of direction as done. The Division Bench while implicitly upholding the view of learned Single Judge that Order 12 Rule 6 was not applicable could not have applied the logic of Order 39 Rule 10 of the Code which operates in an entirely different background. It was pointed out that the Division Bench committed factual error in observing that there was no clear denial to the claim of the plaintiff and/or that its stand was an evasive one and at times in the nature of an afterthought. Having ruled out application of Order 12 Rule 6, it was not open to the Division Bench to bring in operation of Rule 39 Rule 10, of the Code with the help of Section 151. It was also submitted that the claim as made clearly exaggerated, without any foundation or basis and neither in law nor equity plaintiff was entitled to any relief.

9. It was, however, accepted that at the most the plaintiff may be entitled to the arrears of rentals and nothing beyond that. The question of making any payment for the rentals after expiry of the agreement period is also not contemplated in law. There was no termination of the agreement and on the contrary it lost its currency after the extended period of one month beyond the initially stipulated last date.

10. Responding to the above submissions, Mr. K.K. Venugopal, learned senior counsel for the plaintiff (respondent No. 1) submitted that here is a case where the party has taken advantage of its own wrong doings. Undisputedly it had taken the containers on lease. Clause 6 of the agreement clearly stipulates that rental charges were to be paid till the containers are returned. This has admittedly not been done. There are several letters where there was express acceptance of the liability. Finally it was submitted that this is not a case where this court should exercise powers under Article 136 of the *Constitution of India, 1950* (in short `the Constitution').

11. By way of reply to the submissions made by Mr. Venugopal, Mr. Nariman submitted that the scope and ambit of Article 136 is too well known and, therefore, where substantial question of law relating to jurisdiction of a commercial court is raised, the Court has to see whether the impugned judgment meets the requirement of law. According to him, it is too futile to contend that Article 136 will not be exercised in a case of this nature where the Division Bench of the High Court clearly acted contrary to well-settled principle of law.

12. Few facts of relevance need to be noted in view of the rival stands. Undisputedly, the order impugned is an interim order. The direction is for deposit and no liberty has been granted to the plaintiff for withdrawal after the deposit. As noted supra, there was no serious dispute relating to the claim for arrears of rentals. Admittedly, 92 containers were leased out by the plaintiff to the defendant No. 1 according to whom some of the containers were not

traceable and were lost. We may add here that subsequent to the filing of the suit, it was contended that all the 92 vessels were lost.

13. In view of the factual scenario unfolded above, it does not appear to be a case where interference under Article 136 of the Constitution is called for. That power is exercised only on showing substantial injustice, and merely not for technical flaws in a proceeding. *(See Shahoodul Haque v. The Registrar, Co-operaative Societies, Bihar and Anr.*[1]. The position was illuminatingly stated in *Rashpal Malhotra v. Mrs. Satya Rajput and Anr.*[2]. This Court in *Heavy Engineering Corporation Ltd., Ranchi v. K. Singh and Co., Ranchi*[3], expressed the opinion that although the powers of this Court were wide under Article 136, it could not be urged that because leave had been granted the court must always in every case deal with the merits, even though it was satisfied that the ends of justice did not justify its interference in a given case. It is not as if, in an appeal with leave under Article 136, this Court was bound to decide the question if on facts at the later hearing the court felt that the ends of justice did not make it necessary to decide the point. Similarly in *Baigana v. Deputy Collector of Consolidation*[4] it was held that this Court was more than a court of appeal. It exercises power only when there is supreme need. It is not the fifth court of appeal, but the final court of the nation. Therefore, even if legal flaws might be electronically detected, it may not interfere save manifest injustice or substantial question of public importance.

14. In *Taherakhatoon (D) by Lrs. v. Salambin Mohammad*[5] it was noted that even in cases where leave has been granted, the Court might after declaring the correct legal position decline to interfere saying that it would not exercise discretion to decide the case on merits and that it would decide on the basis of the equitable considerations in the facts and circumstances of the case and mould the final order.

15. Even if it is accepted for the sake of arguments that there was some faulty conclusion in law, the impugned order being an interim one, we do not consider this to be fit case for interference in exercise of jurisdiction under Article 136. But, taking note of the peculiar facts, ends of justice would be best served if the appellant is directed to deposit Rupees Fifty lacs instead of Rupees Eight two lacs by end of June, 2003.

16. The appeal is accordingly disposed of leaving the parties to bear their respective costs

[1]*(1975 (3) SCC 108)*
[2]*(1987 (4) SCC 391)*
[3]*AIR 1977 SCC 2031*
[4]*1978(3) SCR 509*
[5]*(1999 (2) SCC 635)*