ORDER BELOW EXH. 5 IN COMMERCIAL SUIT NO. 12/2020

(Anax Industries Pvt. Ltd. V/s Micrologistics (I) Pvt. Ltd.)
CNR No. MHPU01-007298-2020

1] In a suit for declaration and damages, Plaintiff has moved present application for interim relief in nature of temporary mandatory and prohibitory injunction to compel the defendant to issue Bill of Lading and / or Seaway Bill in respect of a consignment of 3 containers without payment of any detention / demurrage charges from the plaintiff or its customers / consignee. Further, plaintiff sought relief of temporary prohibitory injunction directing the defendant, its agents, assignee, etc. to release the said consignment of 3 containers containing therein 72,666 kg. core board paper.

2] According to the facts on record, plaintiff is a private limited company and doing business of manufacture of core board and high strength paper. Defendant is also one of the private limited company of a group of companies SJA Group and dealing with freight forwarding activities from one country to another country. Nafis Nakh Company situated at Iran is the customer of plaintiff company.

3] It is contended that by way of E-mail dated 12/03/2020 plaintiff has sought a quotation from defendant for the consignment to the Port Bandar Abbas, Iran in respect of 12 containers. Defendant replied said E-mail on 13/03/2020 quoting ocean freight US dollar 1225 and also on the same day forwarded name of vessel and schedule. Accordingly on 27/04/2020 core board papers having weight 2,22,334 metric tonne were shipped in 9 containers from the factory of plaintiff with a view to export the same at Iran through Nhava Shiva port. According to plaintiff, on 03/05/2020 the said 9 containers were reached its port of destination. However, defendant refused to part with Bill of Lading to the plaintiff with a view to extract past dues. Thereupon, plaintiff paid Rs. 8,65,000/- in respect of said first shipment to the defendant. Thereupon, defendant surrendered Bill of Lading and issued a Seaway bill dated 29/04/2020 enabling the plaintiff's customer / consignee to accept the delivery of goods. It is alleged that due to illegal demand by the plaintiff and non-issuance of Bill of Lading, the said consignment was lying in the port for 35 days. For that purpose, plaintiff's customer had required to pay demurrage US dollars 2340 i.e. Rs. 1,80,297/-. Thereupon, a concerned customer has raised credit note of Rs. 1,80,297/-.

4] It is alleged that one more consignment of remaining 72,666 metric tonne core board paper out of 2,95,000 metric tonne was shipped from Nhava Shiva port in 3 containers on 29/04/2020. Defendant being freight forwarding agent required to part with Bill of Lading immediately in respect of the said 3 containers to the concerned customer at Iran when the goods reached at Abbas Bandar, Iran on 08/05/2020. However, defendant flatly refused to hand over Bill of Lading. Thereupon, plaintiff made payment of Rs. 4,35,000/- to the defendant towards services rendered by it, but the defendant illegally made demand of more shipment and to clear entire outstanding or at least 50% amount which comes to the tune of Rs. 20,00,000/-. According to the plaintiff, the said action of the defendant is illegal, unfair and against provisions of law. Due to non-issuance of Bill of Lading, plaintiff and its customer are required to pay demurrage. It is alleged that the plaintiff is having annual business of Rs. 824,00,000/- with its customer. However, on account of default on the part of defendant, the concerned customer has cancelled all orders to which only defendant is responsible. Further, the said customer by E-mail dated 20/06/2020 also charged with demurrage US dollars 2340.

5] It is alleged that due to global pandemic spread of COVID-19 and consequential action of lockdown, the business activity of Plaintiff were completely slowed down onwards 15/03/2020. However, during the said lockdown period, Plaintiff has also made payment of Rs. 44,00,000/- during period 20/03/2020 to 30/05/2020. Therefore, a plaintiff, by way of this application, has prayed for mandatory temporary injunction directing the defendant to issue Bill of Lading in respect of 3 containers and prohibitory injunction directing the defendant to do all the required act to release the delivery of said consignment to its customers.

6] Application is opposed by the defendant by filing Say below Exh. 11. Most of the facts including consignment of the goods from Nhava Shiva port to Port Abbas Bandar, Iran payment of Rs. 4,35,000/- and non-issuance of Bill of Lading in respect of 3 containers in question are not disputed by the defendant. It is contended that the defendant company has not committed any illegal act by withholding Bill of Lading. Further, it is contended that once goods are delivered to the port of destination and once Bill of Lading is handed over to the concerned consignee then it will be very difficult for the defendant to recover outstanding amount of Rs. 50,33,382/-. Therefore, defendant prayed that mandatory injunction cannot be granted in favour of plaintiff unless outstanding amount of Rs. 50,33,383/- gets clear.

7] Considering rival contentions of the parties, following points arise for my determination and I have recorded my findings with reasons as under;

	POINTS	FINDINGS
1.	Whether plaintiff has made out *prima facie* case ?	No.
2.	Whether balance of convenience is in favour of plaintiff ?	No.
3.	Whether plaintiff will suffer irreparable loss, if injunction is refused ?	No.
4.	What order ?	As per final order.

REASONS

8] I have heard arguments advanced on behalf of both the parties at length. A learned Advocate for plaintiff submits that the plaintiff being seller / debtor has availed services of defendant forwarder / creditor. The plaintiff and defendant are doing business with each other since long. He also submits that in spite of payment of Rs. 4,35,000/- defendant illegally detained Bill of Lading, therefore, its customer could not get the delivery of consignment. Further, he submits that due to non-issuance of Bill of Lading, the plaintiff's customer required to pay the additional costs of demurrage. He submits that due to pandemic of COVID-19, plaintiff could not make payment to the defendant but only on this cause defendant cannot detain the Bill of Lading. Lastly, he submits that plaintiff is having good prima facie case and balance of convenience in his favour and in such situation if relief of injunction is not granted then plaintiff will suffer which cannot be compensated in terms of money. In support of contentions, plaintiff has relied upon a landmark decision ***Dorab Cawasji Wardon Vs. Commi Sorab Wardon and others (1990) 2 SCC 117***.

9] *Per contra*, the learned Advocate for defendant submits that the capacity of defendant is a forwarder and defendant has lien on the shipment. He further submits that unless and until entire outstanding charges are cleared, defendant has legal right to withhold the Bill of Lading. In support of contention, he has relied upon the provisions containing Section 170 and 171 of Indian Contract Act which deals with Baillie's lien and general lien of bankers, factors, wharfingers, etc. Lastly, he submits that plaintiff has not made out any prima facie case and balance of convenience lies in its favour nor it will suffer any irreparable losses if relief of injunction is refused.

10] I have considered submissions made on behalf of both the parties. Gone through the documents produced on record by both the parties.

11] There is no dispute that the plaintiff company is a seller of goods whereas the defendant is dealing in a business of forwarder of the goods of plaintiff from India to Iran. It appears that since long the plaintiff is availing the services of defendant and paying for the same. It is also not in dispute that first consignment of 9 containers has been successfully delivered by the defendant to the consignee / customer of the plaintiff at Iran. It is not in dispute that due to non-payment of required charges defendant had not issued Bill of Lading, so a concerned customer has required to pay the damage of 2340 US dollars which comes to Rs. 1,80,297/-. It is also not in dispute that in the meantime, plaintiff has paid Rs. 4,35,000/- to the defendant and still is in arrears of Rs. 50,33,382/- as contended by the defendant.

12] The real controversy between the parties is whether due to non-payment of outstanding, defendant has any legal right to retain the Bill of Lading until entire outstanding amount is paid. To that extent plaintiff submits that the defendant cannot withhold the Bill of Lading. According to the plaintiff, due to non-issuance of Bill of Lading, the consignment of 3 containers is lying at Port Abbas Bandar at Iran and the said port authority is charging demmurage. It is also contended that the defendant is illegal claiming more business from the plaintiff and for that purpose not issuing Bill of

Lading. According to plaintiff, it is a fit case to issue mandatory as well as prohibitory injunction as claimed.

13] Coming towards the contentions of the defendant, the defendant has admittedly not issued Bill of Lading on account of alleged non-payment of entire outstanding and taking recourse of Section 170 of Indian Contract Act. Section 170 deals with provision where the Baillie has in accordance with the promise of the bailment, rendered any services involving the exercise of labour or skill in respect of goods bailed, he has in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them. Further, Section 171 of Contract Act provides bankers, factors, wharfingers, etc. may in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them.

14] Upon considering these provisions and taking into account the relation between plaintiff and defendant in respect of export of containers from India to Iran, there exists relation of Bailor and Baillie between them. As entire remuneration / arrears payable by plaintiff to the defendant has not been paid by the plaintiff, therefore, the defendant has every right to exercise power of lien and to retain the goods bailed in accordance with Section 170 and 171 of the Indian Contract Act. Therefore, action on the part of the defendant in retaining Bill of Lading cannot be said to be illegal, unwarranted and contrary to the provisions of law.

15] In a ruling **Dorab Wardon** (*cited supra*), it is ruled that the Court has power to issue ad-interim mandatory injunction to preserve status-quo of the last non-contested status which proceeded to the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or restoration of that which was wrongfully taken from the party compelling. But, since the granting of such injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm. Therefore, to grant the relief of mandatory injunction, the plaintiff apart from balance of convenience ought to have made a strong prima facie case and has to establish irreparable injury which normally cannot be compensated in terms of money if injunction is not granted.

16] Taking into account facts of the above case and taking into account facts of the case at hand, I am of the opinion that the plaintiff has not made out strong prima facie case to grant interim mandatory as well as prohibitory injunction as prayed for. Granting of temporary mandatory injunction in the light of these facts, to my mind, it would amount to decree of the suit without trial. Further, in the light of these facts, in the event of decree of the suit, the plaintiff can recover the loss sustained by it in terms of money. So, plaintiff has not established that it will suffer irreparable loss in case of refusal of an injunction. Further, plaintiff company is in arrears of huge amount, therefore, the balance of convenience is also not in its favour. Therefore, I left no option than to record negative finding on the point Nos. 1 to 3. Hence, following order is passed in reply to point No. 4 –

ORDER

Application is hereby rejected.

DISTRICT COURTS MAHARASHTRA

Digitally signed by Deepak Dadarao Almale
Date: 2020.08.10 14:21:06 +0530

(Deepak D. Almale)

Dated: 10.08.2020 **I/c District Judge - 2, Pune.**

CERTIFICATE

"I affirm that the contents of this PDF file are same word for word as per original."

Name of Steno : Shri. Gudde – Steno(Grade-I)

Court Name : Shri. D.D.Almale,
I/c District Judge-2, Pune

Date : 10.08.2020

Order signed by
presiding officer on : 10.08.2020

Order uploaded on : 10.08.2020