

Title Suit No. 2055 of 2024 (CNR WBCC01-011099-2024)
Present : Sri S. Dasgupta (J.O. Code: WB01246)

Order No. : 02

Dated : 06.12.2024

Record is put up today by a put up petition filed by the plaintiff/petitioner.

The plaintiff/petitioner has filed an application under Order 39 Rule 1 & 2 read with section 151 of the C.P.C.

From the office report it appears that no caveat has been filed till this date.

The ad-interim injunction application is moved today by the Ld. Advocate for the plaintiff.

Perused the injunction application, its enclosures and the case record.

The plaintiff has stated that the main business of the plaintiff company is to manufacture and supply jute and jute related products like B-Twill Bags, A-Twill Bags etc. The Jute Mill of the plaintiff company is situated at 284, Maharaja Nanda Kumar Road, Alambazar, Kolkata – 700035 which is commonly known as Barnagore Jute Mill, with its corporate office at Commercial House, 135, Biplabi Rash Behari Basu Road, P.S. Burrabazar, Kolkata – 700001, within the territorial jurisdiction of this Court.

It is stated that the plaintiff used to receive orders from the office of the Jute Commissioner having its office at Patsan Bhawan, CF-Block, 7th and 8th Floor, Action Area – 1, New Town, Kolkata – 700156 for supply of B-Twill Bags from time to time and accordingly, the plaintiff supplies the same to different consignees as per order received from the aforesaid office.

It is further stated that on or about 1st April, 2021, the plaintiff received an order from the Jute Commissioner for supply of Type-A, B-Twill Bags and Type-B, B-Twill Bags. The plaintiff duly manufactured the aforementioned products, which were found to be in order by an independent inspection agency namely, SGS India Private Limited. Thereafter, as per the said order dated on or about 1st April, 2021, the plaintiff supplied the products to various consignees including the defendant No.1 and the same were received by the defendant No. 1 without any complaint whatsoever. The deliveries were made through railway transport as directed and approved by the defendant No.1 and mentioned in the purchase order.

It is further stated that after successful delivery of the products, the plaintiff raised invoices in respect of the same.

It is stated that on 1st July, 2021, the defendant No.1 entered a complaint in the Jute Smart Portal about 336 bales supplied to them and rejected the same. On the basis of that complaint a joint inspection of the aforesaid 336 bales of B-Twill sacking supplied by the plaintiff was held on 07.09.2021, upon which on 15.09.2021 a showcause notice was issued against the plaintiff alleging unfair practices. The plaintiff replied to the said showcause notice on 21.09.2021 denying all the allegations. On the basis of the said showcause notice and the reply thereto the Jute Commissioner fixed a hearing on 22.10.2021 at his office. Thereafter, by a letter dated 21st October, 2021, the plaintiff offered to replace the rejected bags/bales with fresh ones.

It is stated that the Jute Commissioner by order dated 22.10.2021 debarred the plaintiff from being allocated with any PCSO for one year from 1st December, 2021. The plaintiff was further directed to replace all the 336 bales within 30 days, and that if the plaintiff fails to do so

then an amount equivalent to the cost of 336 bales would be deducted from the pending bills of the plaintiff. Challenging this order the plaintiff appealed before the appropriate authority. By order dated 21.07.2022 the appeal was disposed of by the Secretary, Ministry of Textiles, Jute Division, Government of India directing the plaintiff to replace all the 336 bales within 30 days, and that if the plaintiff fails to do so then an amount equivalent to the cost of 336 bales would be deducted from the pending bills of the plaintiff.

The plaintiff informed the defendant No. 1 on 29.07.2022 that they will replace all 336 bales of gunny bags and requested them to give necessary order for the same and to return their goods in good condition as originally supplied by them against the replacement goods. The plaintiff by letter dated 12.08.2022 requested the Jute Commissioner that they may be allowed to inspect the rejected goods lying at the consignee's end to issue necessary order so that the plaintiff can replace all the bales within the stipulated time. On 22.08.2022 the plaintiff requested the defendant No.1 to give necessary order to dispatch 5 lorries containing 336 bales and return their rejected goods against the replacement of the fresh goods received by the defendant No.1. In reply by letter dated 23.08.2022 the defendant No.1 directed the plaintiff to replace the jute bales but necessary orders were not passed. By three separate letters plaintiff requested the defendant No. 1 and 2 to issue necessary orders for replacement of the bales but necessary orders were not issued by either defendant. On 29.09.2022 the Deputy Jute Commissioner requested the defendant No.1 to take necessary action for immediate replacement of the 336 bales. The plaintiff by letter dated 14.10.2022 informed the defendant No.1 that they had booked transportation and had issued delivery order for 75 bales and asked the transporter to return the rejected bales from the defendant No.1's depot. The plaintiff requested the defendant No. 1 to issue a permission letter for lifting 75 bales, disputed/rejected goods against fresh replacement of 75 bales.

It is stated that during the entire month of November, 2022 the plaintiff on repeated occasions tried to replace 75 bales of B-Twill bags but could not do so due to non-cooperation of defendant No.1. Although, the plaintiff sent lorry containing 75 bales of fresh bags but the representative of defendant No.1 refused to return the old bags.

It is further stated that on 02.12.2022, 66 bales of previously supplied jute bags were returned to the plaintiff upon which the plaintiff replaced the same with 66 bales of fresh bags.

On 01.02.2023, defendant No. 1 filed a complaint before the Jute Commissioner for taking penal action against the plaintiff.

It is stated that the goods returned to the plaintiff were in loose and damaged condition and that bags supplied by other companies were also present among the same.

It is further stated that the Jute Commissioner on 10.04.2023 issued a fresh showcase notice to the plaintiff and that the plaintiff filed a reply thereto on 12.04.2023.

It is also stated that by letter dated 28.12.2023, the Ld. Advocate of the plaintiff requested the Jute Commissioner to immediately release the payment of Rs.15,06,480/- and Rs.44,51,739/- in favour of the plaintiff. However, by letter dated 11.01.2024, the Deputy Jute Commissioner

replied that since the plaintiff has not replaced the entire 336 bales, an amount of Rs.81,55,701.90/- had been adjusted with the pending bills of the plaintiff. In reply thereto, the Ld. Advocate of the plaintiff by letter dated 30.01.2024 informed the Jute Commissioner that the plaintiff is ready and willing to replace all the remaining 261 bales and requested the appointment of an inspection agency for loading of rejected materials lying at the consignee's end, and not to take any action or deduct any bill amount of the plaintiff. However, the Jute Commissioner by letter dated 13.03.2024 refused to comply with the aforesaid request and further by letter dated 26.04.2024 the Jute Commissioner informed the plaintiff that Rs.81,55,701.90/- had been adjusted with the pending bills of the plaintiff. The plaintiff has stressed that while the plaintiff has replaced 75 bales, 66 bales were returned mostly in damaged condition and that the rest were not supplied by the plaintiff but by other companies. As such, the plaintiff did not replace the balance 261 bales. The plaintiff has further submitted that the defendant authorities as per the request of the plaintiff ought to have appointed an independent inspection agency for segregating the rejected materials lying at the consignee's in three parts – fresh materials, damaged materials and materials supplied by other companies. The plaintiff has stressed that they are ready and willing to replace the fresh materials but not the other ones. The plaintiff has submitted that the products were rejected by the defendant No. 1 for specification difference but not on the ground of quality of the same. The plaintiff has submitted that since the supplied goods are kept in open plinth area, there is every possibility that the same will be damaged and that the plaintiff bears no responsibility for replacement of the same.

As the defendant No. 1 is unnecessarily restraining the plaintiff from the replacing the goods and is withholding the pending bills of the plaintiff, which will lead to closure of the Jute Mill with immediate effect, for such non-cooperation of defendant No.1 the plaintiff has prayed for an ad-interim injunction order.

Having carefully perused the materials on record and having heard the Ld. Advocate for the plaintiff and taking into account the entire facts and circumstances, this Court has come to the conclusion that an order of ad-interim injunction should be passed right now, otherwise the very purpose of granting injunction would be defeated by delay and the same will invite multiplicity of proceedings. The plaintiff has been able to make out a prima facie case in order to get the ad-interim order of injunction as prayed for. Balance of convenience and inconvenience are in favour of the plaintiff. This is a case where if an ad-interim order of injunction as prayed for is not passed then the same will cause irreparable loss and injury to the plaintiff, which cannot be compensated by monetary value. That apart, I find urgency in the matter.

Hence, it is

ORDERED

that the plaintiff/petitioner's prayer for ad-interim injunction is hereby considered and allowed, restraining the defendant No.1 from withholding any payment of the plaintiff and from issuing any instruction to that effect to the Jute Commissioner and also restraining the defendants from taking any

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steps for realizing/adjusting the amounts receivable by the plaintiff from the office of the Jute Commissioner, against the outstanding/due bills of the plaintiff, in any manner whatsoever till **08.01.2025**.

Issue notice upon the defendants/opposite parties, directing them to showcause within 15 days, as to why an order of temporary injunction shall not be granted against them in terms of the prayer so made by the plaintiff/petitioner.

Plaintiff/petitioner to comply with the provision as laid down in Order 39 Rule 3(a) & 3(b) of C.P.C. at once.

Fix **08.01.2025** for S/R, A/D and appearance.

Requisites be filed at once.

D/c by me,

Sd/-

Judge, Bench-III,
City Civil Court, Calcutta.

Sd/-

Judge, Bench-III,
City Civil Court, Calcutta.