

OCD-10

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE  
[Commercial Division]

CS-COM/668/2024  
IA No.GA-COM/1/2024

RAJ KUMAR PODDAR  
-VS-  
AJAY KUMAR SURANA

BEFORE:  
The Hon'ble JUSTICE KRISHNA RAO  
Date : April 26, 2024.

Appearance:  
Mr. Rupak Ghosh, Adv.  
Mr. Ratul Das, Adv.  
Mr. Ashutosh Singh, Adv.  
... for the plaintiff

The Court: Mr. Rupak Ghosh, learned counsel, is appearing for the plaintiff.

The plaintiff has filed the present application being GA-COM/1/2024 praying for an order of *ad interim* injunction.

The plaintiff says that the parties have entered into an agreement for purchase of green peas and chick peas for a sum of Rs.1,79,22,363/-. The plaintiff has paid Rs.1,28,00,000/- to the defendant from its bank account maintained in HDFC Bank, Kalakar Street Branch. Despite receipt of the advanced amount, the defendant failed to supply the goods as agreed upon by the parties. Subsequently, the defendant had represented the petitioner that he would supply 10 containers of yellow peas and refund part of the advanced amount but the balance amount of Rs.80,00,000/- has

not yet been refunded. Subsequently, the defendant had issued a cheque for an amount of Rs.80,00,000/- dated 22<sup>nd</sup> April, 2019 being cheque no.005814 drawn on ICICI Bank, Chowringhee Branch but when the plaintiff had presented the said cheque on 17<sup>th</sup> July, 2019, the same was dishonoured with the endorsement 'insufficient fund'. Subsequent to the dishonour of the cheque, the plaintiff had issued notice to the defendant but the defendant had not paid the said amount. Accordingly, the plaintiff had initiated a proceeding under Section 138 of the Negotiable Instrument Act against the defendant which is pending before the Chief Metropolitan Magistrate at Kolkata. In the said case also the defendant failed to appear before the Magistrate and accordingly, warrant was issued but the warrant was not executed and proclamation was issued by the Magistrate. The plaintiff submits that there are all together 11 cases pending against the defendant for recovery of money initiated by several entities or parties concerned. Recently, the plaintiff came to know that there was a claim before the custom authorities and accordingly, the Tribunal has passed an order in favour of the defendant and the custom authorities had challenged the said order in appeal. In the appeal also the defendant has got favourable order as the appeal preferred by the custom authorities has been dismissed.

Counsel for the plaintiff submits that the defendant failed to pay the amount in spite of several assurance and requests made by the defendant and in the criminal case initiated by the plaintiff, warrant is pending and proclamation has also been issued. Now, in terms of the order passed by the Tribunal in Customs Appeal No.76127 of 2019 dated 12<sup>th</sup> October, 2023, the defendant will get certain amount and if an injunction

order is not passed, the defendant will siphon the said amount to some other third party for which the plaintiff will be badly suffered and will not get any fruits if this Court may pass decree in favour of the plaintiff.

Counsel for the plaintiff prays that there is an urgency to pass an *ad interim* order directing the defendant for maintaining an amount of Rs.80,00,000/- in his bank account maintained in ICICI Bank, Chowringhee Branch being Account No.594705500197 and/or Standard Chartered Bank, Shakespeare Sarani Branch being Account No.33705900667.

Considered the submission made by the counsel for the plaintiff. Perused the documents on record.

There is a transaction between the plaintiff and the defendant and the defendant is required to pay an amount of Rs.80,00,000/- against which the defendant had issued a cheque which has been dishonoured and the plaintiff has initiated a criminal proceeding which is pending and in the criminal proceeding the defendant had not appeared and warrant of arrest as well as proclamation is pending. From the document it also reveals that the defendant will get some amount from the custom authorities and if the amount is not secured, there is every chance that the defendant will transfer or siphon of the said amount to some third party and as such this Court finds that the plaintiff is having good *prima facie* case and the balance of convenience and inconvenience lies in favour of the plaintiff and if at this stage an order of *ad interim* injunction is not passed, the plaintiff will suffer irreparable loss and injury.

Accordingly, the defendant is directed to maintain an amount of Rs.80,00,000/- either in the account maintained in ICICI Bank, Chowringhee Branch being Account No.594705500197 or Standard Chartered Bank, Shakespeare Sarani Branch being Account No.33705900667 till 25<sup>th</sup> June, 2024.

The plaintiff is directed to serve the copy of this order as well as the copy of the plaint, documents, application along with its connected documents to the defendant and to file the affidavit-of-service on the returnable date.

The plaintiff shall also communicate this order to the above mentioned Banks for information.

Let the matter appear on 25<sup>th</sup> June, 2024.

(KRISHNA RAO, J.)

RS