

OCD-9

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CS-COM/750/2024
IA No. GA-COM/1/2024, GA-COM/2/2024

SKIPPER LIMITED
-VS-
INDIAN BANK & ANR.

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : September 10, 2024.

Appearance :

Mr. Sabyasachi Choudhury, Adv.
Mr. Sayantan Bose, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Ms. Manisha Das, Adv.
...for the plaintiff

Mr. Dhiraj Trivedi, Adv.
Mr. Om Narayan Rail, Adv.
Ms. Deblina Lahiri, Adv.
Mr. Debashis Sarkar, Adv.
Mr. Mrinmoy Chatterjee, Adv.
... for the defendant no.1

Mr. Aritra Basu, Adv.
Mr. Ritoban Sarkar, Adv.
Ms. Archana Chowdhury, Adv.
... for the defendant no.2

The Court: Mr. Sabyasachi Choudhury, learned Advocate, is appearing for the plaintiff.

Mr. Dhiraj Trivedi, learned Advocate, is appearing for the defendant no.1.

Mr. Aritra Basu, learned Advocate, is appearing for the defendant no.2. He submits that he has received verbal instruction to appear but he is not having the *vakalatnama* on behalf of the defendant no.2.

The plaintiff has filed the present application being GA-COM/2/2024 praying for status-quo ante as on 2nd August, 2024 in connection with Bank Guarantee and all actions taken on or subsequent to order dated 2nd August, 2024 by directing the defendant no.2 to return the amount of Rs.2,44,74,199/- in the account of the defendant no.1 bank. The plaintiff had filed the suit against the defendant being CS-COM/750/2024 praying for the following reliefs :-

- a. Declaration that the extensions to the said Bank Guarantee caused after June 2022 are vitiated by coercion and fraud;
- b. Declaration that the invocation of the Bank Guarantee caused by the letter dated 31st July, 2024 written by the respondent no. 2 to the respondent no. 1 is vitiated by coercion and fraud and is liable to be adjudged null and void as the said Bank Guarantee has itself become null and void with effect from 11th June, 2022;
- c. Delivery up and Cancellation of the said Bank Guarantee as extended;
- d. Perpetual injunction restraining the respondents from giving any effect and/or further effect to the letter dated 31st July, 2024, invoking the Bank Guarantee and/or from making and/or from receiving any payment in relation thereto;”

In the said suit, the plaintiff has also filed an application being GA-COM/1/2024 praying for interim relief. This Court has taken up for

hearing of the application for grant of ad interim injunction and by an order dated 2nd August, 2024 this Court passed the following order :-

“In view of the above, this Court finds that the petitioner has made out a prima facie case and the balance of convenience and inconvenience is in favour of the petitioner and at this stage if an interim order is not granted, the petitioner will suffer irreparable loss and injury. Accordingly, the respondents, their men agents, servants and assigns are restrained from giving any effect or further effect to the impugned notice dated 31st July, 2024 issued by the Chief Engineer to the respondent no.1 for invocation/operation of performance security Bank Guarantee of the petitioner being no. RVPNL/SE/CONT-II/XEN-III/A-III/KFW/ICB-7/SKIPPER/D.302 dated 01.06.2018 till 10th September, 2024.

The plaintiff is directed to serve the copy of the application, documents and the copy of the plaint to the defendants and to file affidavit of service on the returnable date.”

The plaintiff by a communication dated 2nd August, 2024 had informed the defendant no.1 that the plaintiff has filed a suit along with an application for injunction and requested to stay their hand till the order is passed in the injunction application filed by the plaintiff and the said communication was duly received by the defendant no.1 on 3rd August, 2024 by hand by putting their stamp on the same. The said letter was also communicated to the bank by an e-mail dated 2nd August, 2024 at 4:59 PM. After the interim order passed by this Court, the plaintiff by a

communication dated 2nd August, 2024 had informed the defendants by an e-mail dated 2nd August, 2024 at 11:03 PM about the order passed by this court. The said letter was also received by the defendant bank by hand on 3rd August, 2024 at 10:52 AM.

The plaintiff has also communicated the order passed by this Court through WhatsApp message to the defendant no.2 on 3rd August, 2024 at 10:38 AM which was duly received by the defendant no.2. On 3rd August, 2024, the defendant no.1 bank has replied the plaintiff through WhatsApp message that their legal team requires the order to reach conclusion. Subsequently, the plaintiff has forwarded the order passed by this Court to the defendant bank.

In spite of having the knowledge that the plaintiff has filed a suit and this Court has passed an interim order, the defendant no.1 bank has handed over the Demand Drafts to the defendant no.2 and the defendant no.2 having the knowledge that this Court has passed an order of injunction, has presented the Demand Drafts for encashment and on 5th August, 2024 the defendant no.2 has got the said Demand Drafts encashed from the bank.

Learned counsel for the defendant no.1 bank submits that on 2nd August, 2024 in between 2:57 PM and 3:04 PM the defendant no.1 bank had already handed over the Demand Drafts to the defendant no.2.

Counsel for the defendant no.1 bank has handed over an e-mail dated 5th August, 2024 at 01:31 PM and says that after receipt of the order passed by this Court, the defendant no.1 bank has informed about the said order to the defendant no.2.

Counsel for the defendant no.1 submits that before the interim order passed by this Court, the bank had already issued Demand Drafts and after the issuance of the Demand Drafts in favour of the defendant no.2, the defendant no.1 cannot stop the defendant no.2 from encashment of the same.

Though Mr. Basu, learned Advocate is appearing for the defendant no.2 but he is not having the *vakalatnama* and as such this Court finds that it will not be proper to record the submission made by Mr. Basu on behalf of the defendant no.2.

Considered the submission made by the counsel for the respective parties. Perused the materials on record.

Though the defendant no.1 bank has taken the specific stand that the Demand Drafts were issued in favour of the defendant no.2 in between 2:57 PM and 3:04 PM and subsequently, the bank came to know about the interim order and the same was communicated to the defendant no.1, thus there was no deliberate intention on the part of the defendant no.1 bank to violate the order passed by this Court. This Court finds that the defendant no.2 also had the knowledge with regard to the interim order passed by this Court which was duly communicated by the plaintiff to the defendant no.2 by e-mail as well as through WhatsApp message and both the communications have been received by the defendant no.2.

By an order dated 2nd August, 2024 this Court specifically directed the defendants, their men agents, servants and assigns restraining from giving any effect or further effect to the impugned notice dated 31st July, 2024 issued by the Chief Engineer to the respondent no.1

for invocation/operation of performance security Bank Guarantee of the plaintiff.

The bank has handed over some documents wherein it reveals that though three Demand Drafts have been received by the Chief Account Officer of Chief Engineer (Contract), RVPN, Jaipur on 2nd August, 2024 from the defendant no.1 but without complying with the order passed by this Court, the Chief Account Officer has handed over the Demand Drafts to the defendant no.2 for encashment. This Court finds that the defendant no.2 has deliberately and willfully violated the order passed by this Court and encashed the demand draft, having the knowledge that this Court has passed an ad interim order.

Accordingly, the defendant no.2 is directed to immediately return the amount of Rs.2,44,74,199/- to the bank i.e. the defendant no.1 and on receipt of the said amount, the defendant no.1 bank shall keep the said amount in a separate interest bearing account until further order passed by this Court.

Though Mr. Basu is representing the defendant no.2 without having the *vakalatnama* but Mr. Basu is given liberty to communicate this order to the defendant no.2.

The plaintiff and the defendant no.1 are also directed to communicate this order to the defendant no.2.

The defendant no.2 is directed to act upon the website copy of this order.

The defendants are directed to file affidavit in opposition within three weeks; reply thereto, if any, be filed within two weeks thereafter.

List the matter on 19th November, 2024.

The interim order which is due to expire today, is extended till 22nd November, 2024 or until further order, whichever, is earlier.

The documents filed by the defendant no.1 bank be kept with the record.

(KRISHNA RAO, J.)

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