

OCD-6

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

In CS-COM/770/2024
IA No. GA-COM/1/2024, GA-COM/3/2024, GA-COM/4/2024

PCC LOGISTICS PVT LTD
-VS-
M/S SPML INFRA LTD AND ANR

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : October 7, 2024.

Appearance:

Mr. Rupak Ghosh, Adv.

Mr. Ayan Dutta, Adv.

Mr. Dilip Kumar Ghosh, Adv.

...for the plaintiff

Mr. Chayan Gupta, Adv.

,,,for the defendant No.1

The Court: Counsel for the respective parties are present.

The defendants have filed the present application being GA-COM/3/2024 for vacating the interim order. The defendants have also filed another application being GA-COM/4/2024 under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the parties to the arbitration.

Counsel for the defendants have argued the matter in connection with GA-COM/3/2024 for vacating the interim order. The defendants mainly argued on three points for vacating the interim order i.e.

- a) the work order which the plaintiff has relied upon is having the overleaf in which there is an arbitration clause but the plaintiff has not disclosed the overleaf portion of the work order and suppress the said material facts.

- b) The plaintiff has relied upon the paper publication wherein a sale notice has been issued with regard to the premises No.22, Camac Street, Kolkata -700016 but that is not published by the defendants.
- c) The interim order passed by this Court not satisfied with the provisions of Order XXXVIII Rule 5 of the Code of Civil Procedure.

The defendants have disclosed the assessment search details of ward No.63 of Camac Street of Kolkata Municipal Corporation and submitted that premises No.22 ward No.63 Camac Street having several business premises and as such it cannot be said that the sale notice relied by the plaintiff at page 114 of GA-COM/1/2024 it relates to suit property or the property of the defendant.

Counsel for the defendants submits that the plaintiff had the knowledge that in the work order there is a clause of arbitration by suppressing the said arbitration clause by not enclosing the said overleaf of the work order, the plaintiff has obtained an ad interim order.

Counsel for the defendants submits that the plaintiff has not satisfied the provisions of Order XXXVIII, Rule 5 of the Code of Civil Procedure while obtaining interim order.

Learned Counsel for the defendant relied upon the judgment reported in the case of ***The Bengal Club Ltd.-Versus-Susanta Kumar Chowdhary*** reported in ***AIR 2003 Cal.96*** and submitted that the question of pleading is of great importance in the context of an ex parte application for injunction. At that stage, proceedings before the Court rest on the basis of

total good faith on the pleadings. At that stage there is no contested hearing, therefore, the party making the prayer for ex parte ad interim order of injunction must plead the entire facts of the case. Such pleading must be clear, complete and candid. He submits that the present case the plaintiff has obtained the ex parte order by suppressing the material fact and place a false material before this Court.

Counsel for the defendant has relied upon the judgment in the case of **Ram Gopal Rajpuria-Versus-Sandeep Rajpuria & Ors.**, reported in **2016 SCC OnLine Cal 4582** and submitted that Order 39 Rule 4 of the Code of Civil Procedure gives right to the defendant to apply for vacation, variation and/or modification of an interim order of injunction on the ground of suppression of material facts.

Counsel for the defendant further relied upon the judgment in the case of **Phooltas Harsco Rail Solutions Private Limited-Versus-Auto Components Private Limited & Ors.**, reported in **2016 SCC OnLine Cal 202** and submitted that non-disclosure has a serious repercussion on extension of ex parte injunction.

Counsel for the defendant prays for vacating of the interim order. Per contra learned counsel for the plaintiff very outset prays for time to file affidavit in opposition. He submitted that the defendant is liable to pay an amount of Rs.59,97,875/- which the defendant was not paying in spite of several requests made by the plaintiff and accordingly the plaintiff has filed the present suit when the plaintiff came to know from the advertisement that the plaintiff is going to sell the premises No.22. The defendants are running

the business in the said premises and accordingly on the believe that the defendants have published the said notice for sale of the property and accordingly the plaintiff has filed the suit along with the injunction application by relying upon the said advertisement for sale.

Counsel for the plaintiff has brought to the notice of this Court at page 31 of the present application wherein the work order dated 27.12.2021 is disclosed. In the said work order in the bottom it is mentioned at page no.1 of 1, but there is no mentioning with regard to page no. 1 of 2. If there is only the page 1 of 1 it can be said that it is only one page work order it cannot be said that the work order contains the second page.

Counsel for the plaintiff has also drawn the attention of this Court to the work order dated 28.12.2021 disclosed at page 40 of the present application wherein in the bottom of the said work order it is mentioned at Page No. 1 of 2 and the page no.2 is the another work order or continuation of the said work order and the said page-2 also does not contain any terms and conditions of arbitration.

Counsel for the plaintiff submits that the document which does not contain the arbitration it cannot be said that the plaintiff has suppressed the material fact of the arbitration clause and filed the suit and obtained an ad interim injunction.

Learned counsel for the plaintiff further submits that the arbitration clause which the defendant has relied upon, the defendant has also filed an application for referring the matter to the arbitration under Section 8 of the

Arbitration and Conciliation Act, 1996, the plaintiff will deal the said application by filing affidavit in opposition.

Heard the counsel for the respective parties.

Perused the materials on record.

Admittedly this Court has granted ad interim order of injunction in favour of the plaintiff restraining the defendant from dealing with the account maintained by the State Bank of India, Udaipur Branch, Agartala, Tripura, without keeping aside an amount of Rs.59,97,875/- till 5th November, 2024. This Court passed the interim order on the basis of the advertisement that this sale of the property of the defendant i.e. premises No. 22 and the other documents i.e. work orders, invoices, part payment made by the defendants. Now, the defendants have claimed that the said advertisement is not in connection with the defendants. The defence taken by the defendants that the defendants have not published the said advertisement is the matter for consideration which can be decided only after exchange of affidavits.

As regard the work order is concerned, the plaintiff has relied upon the work order of page no.1 which does not contain the clause of arbitration, but the defendant has relied upon the work order which is having the overleaf. This matter is also to be decided after the exchange of affidavits.

As regards the compliance of the provisions of Order XXXVIII Rule 5 of the Code of Civil Procedure, it is settled by the Hon'ble Supreme Court of India in the case of **Rahul S.Saha-Versus-Jinendra Kumar Gandhi & Ors.**, reported in **(2021) 6 SCC 418** the Hon'ble Supreme Court has held that if the Court may at any stage, in appropriate cases during the pendency of suit

using power under Section 151 of the Code of Civil Procedure demand for security to ensure satisfaction of any decree.

Considering the above, at this stage, this Court is not inclined to vacate the interim order.

Let affidavit-in-opposition be filed within one week after the ensuing puja vacation. Affidavit in Reply thereto, if any, be filed within one week thereafter.

List this matter on 22nd November, 2024.

The interim order which is going to be expired on 5th November, 2024 is extended till 22nd November, 2024 or until further orders whichever is earlier.

(KRISHNA RAO, J.)

S.De/snn.