

CIVIL APPEAL NO.622 OF 2001

Hindustan Organic Chemicals Ltd.Appellant

Versus

M/s. Adani Exports Ltd. & anr.Respondents

ORDER

1. The subject matter of dispute in the instant appeal relates to an order of injunction granted by the High Court of Gujarat at Ahmedabad from encashing a bank guarantee, executed by the respondents in favour of the appellant.

2. By the impugned order, the High Court of Gujarat at Ahmedabad had reversed the finding of the Trial Court and granted an interim order of injunction in respect of an unconditional bank guarantee. Against the aforesaid order dated 6th of September, 2000

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passed by the High Court of Gujarat at Ahmedabad granting an order of injunction restraining the appellant from encashing the bank guarantee during the pendency of the suit, which was simpliciter a suit for permanent injunction restraining the appellant from encashing the said bank guarantee, a special leave petition was preferred in this court. This court, while granting leave had passed the following order: -

"I.A. Nos. 1 & 2 are allowed.

Special leave granted.

We have heard the learned senior counsel for the parties.

The judgment dated 6th September, 2000 of the High Court of Gujarat in Appeal from Order No. 287/2000 is stayed in so far as it stays the encashment of bank guarantee, the effect of which would be that the order of trial court

refusing injunction will revive."

3. In view of the aforesaid interim order of this court, it is now an admitted position that the appellant has already encashed the bank guarantee. Such being the position, the present civil appeal has become infructuous. Accordingly, we are not inclined to go into the merits of the present appeal at this stage. Since, the bank guarantee has already been encashed, we grant liberty to the respondents to approach the Trial Court for amending the plaint of the suit by making a prayer for recovery of money within a period of four weeks from this date. If an application for amendment of the plaint converting the aforesaid suit to a suit for recovery of money is filed, the Trial Court shall decide the said application for amendment of plaint on merits and in accordance with law. However, the Trial Court, while considering the application for amendment of plaint, shall proceed liberally and in the event, the plaint is allowed to be amended, it would be open for the appellant to file an amended written statement if it has already been filed or an additional written statement, as the case may be, within two weeks from the date of service of copy of the amended plaint on the appellant and thereafter, the Trial Court shall dispose of the suit within a year from the date of supply of a copy of this order positively without granting any unnecessary adjournment to either of the parties.

4. This appeal is thus disposed of without any order as to costs.

.....J.
(TARUN CHATTERJEE)

.....J.
(DALVEER BHANDARI)

NEW DELHI,
NOVEMBER 13, 2007.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 622 OF 2001

HINDUSTAN ORGANIC CHEMICALS LTD.

Appellant (s)

VERSUS

M/S. ADANI EXPORTS LTD. & ANR.

Respondent(s)

Date: 13/11/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE TARUN CHATTERJEE

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s)

Mr. Shyam Devan, Sr. Adv.
Mr. P. Venugopal, Adv.
Mr. Pawan Kr. Bansal, Adv.
for M/S. K.J. John & Co., Adv.

For Respondent(s)

Mr. Ashok Desai, Sr. Adv.
Mr. Huzefa Ahmadi, Adv.
Mr. Pradyumna Gohil, Adv.
Mrs. V.D. Khanna, Adv.
for M/S I.M. Nanavati Associates, Advs.

UPON hearing counsel the Court made the following
ORDER

The Civil Appeal is disposed of without any order as to
costs, in terms of signed order.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed Order is placed on the file)