

IN THE SUPREME COURT OF INDIA  
 CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4537 OF 2006  
 (Arising out of SLP(C)No.18479 OF 2005 )

CHINA SHIPPING AGENCY CO.LTD. & ANR. ...Appellant  
 (s)

Versus

GANGES MANUFACTURING CO.LTD. & ANR. ...Responden  
 t(s)

O R D E R

Heard learned counsel for the parties.

Special Leave granted.

The impugned order dated 4th August,2005 is passed by the  
 Calcutta

High Court in APOT No.366 of 2005. The Division Bench of the High  
 Court was

considering an appeal against the order of the learned Single Judge dismissing th  
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injunction application filed on behalf of the plaintiff, who are respondents before this

Court, taking the view that since the suit itself had become infructuous, the period of

agreement having run out, no interim relief could be granted. In the appeal before

the Division Bench, the High Court passed an order remanding the m  
 atter to the

Original Court but with the direction that the defendant (appellant before us) must furnish a bank guarantee representing an amount equal to U.S. \$ 28,000 as on the

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date of the bank guarantee.

In this appeal counsel for the appellant contended that the suit having

become infructuous by efflux of time, no relief for specific performance could be

granted. There was no relief sought in the suit for damages and therefore, there was

no question of any amount being secured by furnishing a bank guarantee.

Counsel appearing on behalf of the respondent submits that the matter

had been argued at length before the Division Bench and, as it now appears, the

matter was remanded to the Original Court so that the respondent plaintiffs could

make appropriate application for amendment of the plaint claiming additional relief

including relief by way of damages. It is stated before us that such an application

was, in fact, filed before the Original Court and the same has been allowed subject to

the orders of this Court.

Having considered all aspects of the matter, we are of the view that the

order made by the Division Bench directing the defendant appellants to furnish

bank guarantee for a sum equivalent of US \$ 28,000 is not justified in the facts and

circumstances of the case because as on date when the said order was passed there

was no relief claimed by the plaintiffs by way of damages. It is only after the plaint is

amended that this question may arise for consideration. Since the plaint has been

amended, this question may be raised before the Original Court. We, therefore, set

aside the order of the High Court to the extent it directs defendants/  
appellants

before us to furnish bank guarantee for a sum equivalent of US \$ 28,  
000.00

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(amounting to Rs.12,32,000.00) but with a direction that if an application  
is made

before the Original Court for interim relief based on the amended plaint, the learned

Single Judge may consider the application and pass such order as it considers just,

proper, and appropriate in the facts and circumstances of the case.

Counsel for the respondents before us submitted that some security must

be provided so that in case an order is passed ultimately, the order can be executed.

Counsel for the appellants submitted that the appellant company is also  
a

Government of China Undertaking and at any particular time it has large number of

containers all over the country. There is therefore, no question of providing security.

At any time the appellant company has valuable assets in this country sufficient to

meet any liability that may be incurred by it in the suit by reason of any decree being

passed against it. He also submitted that any order of attachment of the assets of the

appellant company is not justified in the facts of the case.

Having regard to the facts of the case, we do not wish to pass any order

of attachment but we only direct the appellant company to keep within the territorial

jurisdiction of this country atleast 321 containers of the description mentioned in the

order of the High Court for a period of three weeks from today. The respondents

will, in the meantime, move the Original Court and obtain appropriate orders on the

application for interim relief whereafter the parties shall act in accordance with the order that may be passed by the Original Court. We however observe that any

observation made by us in this order shall not be construed as expression of opinion

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on the merit of the case and the Original Court will pass such order as it may

considers fair and appropriate.

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This appeal is allowed subject to the directions above.

.....J.

( B.P.SIN

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( TARUN CHAT

New Delhi,

October 18, 2006.

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ITEM NO.7

COURT NO.6

SECTION XVI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).18479/2005

(From the judgement and final order dated 04/08/2005 in GA No.1687/2005 in APOT No.366 of 2005

of The HIGH COURT OF CALCUTTA)

CHINA SHIPPING AGENCY CO. LTD. & ANR.

Petitioner(s)

VERSUS

GANGES MANUFACTURING CO. LTD. & ANR.

Respondent(s)

(With prayer for interim relief and office report )

(For final disposal)

Date: 18/10/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Petitioner(s)

Mr. Prashant Pratap, Adv.

Mr. Siddhartha Dave, Adv.

Ms. Vibha Datta Makhija, Adv.

For Respondent(s)

Mr. Jaideep Gupta, Sr. Adv.

Mr. C. Mukund, Adv.

Mr. Pankaj Jain, Adv.

Mr. Bijoy Kumar Jain, Adv.

UPON hearing counsel the Court made the following

O R D E R

Special Leave granted.

The appeal is allowed subject to the directions contained in the signed order.

(Sukhbir Paul Kaur)

(Vijay Dhawan)

n)

Court Master

Court Master

(Signed Order is placed on the file)