

(2008) 05 CAL CK 0040

## Calcutta High Court

Case No: F.M.A.T. No's. 283 and 317 of 2008 and C.A.N. 2141 and 2468 of 2008

Balaji Agro Infotech Enterprise

APPELLANT

Vs

ICICI Bank Limited and Others

RESPONDENT

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**Date of Decision:** May 7, 2008**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151

**Citation:** (2008) 3 CHN 974**Hon'ble Judges:** Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J**Bench:** Division Bench

**Advocate:** L.K. Chatterjee and S. Chakraborty, for the Appellant; Jahar Lal De and S.K. Banerjee for Respondent No. 1, Soumya Majumdar and D. Banerjee for Respondent No. 2 and Kamalesh Bhattacharya and Anindya Bhattacharya, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Bhaskar Bhattacharya, J.

These two first miscellaneous appeals were heard together. By one of the appeals, being F.M.A.T. No. 317 of 2008, the plaintiff in a suit for declaration and injunction, has challenged the Order No. 5 dated 28th January, 2008 passed by the learned Trial Judge by which the said Court refused to grant any ad interim order of injunction on an application u/s 151 of the CPC filed by the plaintiff during the pendency of the main application under Order XXXIX Rules 1 and 2 of the Code.

2. By other appeal, being F.M.A.T. No. 283 of 2008, the selfsame plaintiff has challenged the Order No. 8 dated 1st March 2008 passed by the learned Trial Judge by which the learned Trial Judge dismissed the main application under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

3. The appellant before us filed a suit in the City Civil Court at Calcutta being Title Suit No. 2868 of 2007 thereby claiming for the following relief:

(a) A declaration that the plaintiff is entitled to sell the jute bales now lying in the godown of the defendant Nos. 2 and 3 in piecemeal manner through the buyers as arranged by it upon weighment thereof to liquidate the dues of the defendant Nos. 1 to 3 in protanto satisfaction thereof upon crediting the sale proceeds in favour of the Bank.

(b) A declaration that the defendant Nos. 1 to 5 and each of them are disentitled to create any obstruction in selling the said jute bales in piecemeal manner through its buyers to liquidate the dues of the defendant Nos. 1 to 3.

(c) Declaration declaring that the quantity of jute at the negotiated price agreed to be paid by a buyer should be allowed to be sold by the Bank upon deposit of the sale proceeds paid by the buyer in favour of the Bank and in the event of refusal by the Bank the quantity of the jute agreed to be purchased by the buyer would remain segregated on the account of the Bank with corresponding price thereof adjusted from the loan of the plaintiff remaining outstanding with the Bank i.e. defendant No. 1 upon payment of storage charge for the retention of the jute by the Bank.

(d) Mandatory injunction commanding the defendant Nos. 1 to 3 and each of them to allow the plaintiff to sell the jute bales lying in the warehouse of the defendant Nos. 2 and 3 through its buyers upon weighment thereof in piecemeal manner upon payment of the price thereof credited in favour of the Bank by way of Bank draft to liquidate the dues of the defendant Nos. 1 to 3 and particularly dues of the defendant No. 1 (by Bank draft) who would adjust the same towards the Loan Account of the plaintiff.

(e) Temporary injunction;

(f) Receiver;

(g) Costs;

(h) Further or other reliefs to which the plaintiff may be found entitled to in law and equity.

The case made out by the appellant may be summed up thus:

(i) The appellant, a registered firm, is engaged in Trading business and in connection with such business, it purchased jute bales of different quantities and thereafter, applied for storage space for storing these jute bales before the Central Warehousing Corporation and West Bengal State Warehousing Corporation, the defendants Nos. 2 and 3 respectively, who acted as bailees.

(ii) Those two bailees granted storage space for keeping those jute bales subject to the payment of godown charges with all incidentals thereto.

(iii) The appellant also applied for financial accommodation for their business before the ICICI Bank, the defendant No. 1, through its authorised agent and the said Bank,

after inspection of those jute bales and quantity thereof stored in the warehouses of the other two defendants, disbursed fund in Agricultural Business Loan to the appellant as per the Reserve Bank of India guidelines in phase-wise against the lien of warehouse receipts of those jute bales at the warehouse of the two defendants, as mentioned above and the Bank issued forwarding letter in favour of the defendant Nos. 2 and 3 in connection therewith.

(iv) As the market price of the jute bales after storage in the godown of the warehousing authorities had remarkably fallen down and the price thereof already reduced massively, the appellant on 13th July, 2007 sent a letter to all the three defendants slating therein that to avoid further loss to be incurred in this respect, they should permit the plaintiff to sell the goods which were being stored in the godown of the defendant Nos. 2 and 3 but the defendants did not give any permission. In such circumstances, the suit was filed.

4. After filing of the suit, the appellant came up with an application for temporary injunction in terms of prayer made in the plaint thereby commanding the respondents and each of them and their subordinates and agents to allow the appellant to sell the jute bales lying in the warehouses of the respondents Nos. 2 and 3 through its buyers upon weighment thereof in piecemeal manner upon payment of the price thereof credited in favour of the respondent No. 1 by way of bank draft to liquidate the dues of the respondent Nos. 1 to 3 and particularly, the dues of the respondent No. 1, the ICICI Bank, towards the loan account of the appellant.

5. The learned Trial Judge, on such application, issued a notice to show cause why the prayer for temporary injunction should not be granted but refused to grant any ad interim order of injunction.

6. It appears that on 23rd November, 2007, the respondent Nos. 1 and 2, namely, ICICI Bank and Central Warehousing Corporation appeared in the suit by filing Vakalatnama and by filing separate petitions prayed for time to file written objection and accordingly, 20th February, 2008 was the date fixed for filing written objection to the application for temporary injunction.

7. According to the appellant, as in the meantime, the price of the jute bales were gradually reducing day by day and the quality of the goods was getting deteriorated, it came up with a further application for ad interim mandatory injunction although described as one Section 151 of the CPC thereby praying for direction upon the respondents to allow the plaintiff to sell such quantity of the jute bales that has been agreed to be purchased by the intending buyers as stated in the application.

8. The learned Trial Judge by order dated 28th January, 2008 rejected such application thereby holding that the appellant, in the past, having already filed a writ application which was withdrawn, it was not a fit case for grant of such injunction.

The Court further recorded that the defendants would be prejudiced if the jute bales were ordered to be released in a piecemeal manner as because the warehouse receipt was a single document.

9. Subsequently, when the main application under Order 39 Rules 1 and 2 of the CPC came up for hearing, the learned Trial Judge dismissed such application virtually on the ground that previously, the same Court having rejected the application u/s 151 of the Code, there was no reason to deviate from the earlier order.

10. Being dissatisfied, the present two appeals have been preferred.

11. After hearing Mr. Chatterjee, the learned Advocate appearing on behalf of the appellant, Mr De, the learned Advocate appearing on behalf of the Bank, Mr. Bhattacharya and Mr. Mazumdar, the learned Advocates appearing on behalf of the two Warehousing Corporations and after going through the materials on record, we are of the view that the entire relief claimed in the suit filed by the appellant cannot be granted by way of mandatory injunction unless the parties agreed to the proposal of the plaintiff. For the purpose of arriving at such agreement, we adjourned the matter.

12. It appears that according to the Bank and the Warehousing Corporations, their total dues would be about Rs. 35,00,000/- which is disputed by the appellant whereas the appellant is in a position to secure buyers for the sale of the entire goods by piecemeal manner at the price of Rs. 31,00,000/-. The appellant was even not in a position to give further security to cover the alleged additional dues of the respondents.

13. In such circumstances, Mr De, the learned Advocate appearing on behalf of the Bank submitted that the said jute bales being the only security for the loan advanced by his client, he had specific instruction not to agree to the proposal of the appellant.

14. In our view, in the facts of the present case, by way of mandatory injunction, the entire relief claimed by the plaintiff cannot be granted. Although, we do not appreciate all the reasons assigned by the learned Trial Judge, in our opinion, the ultimate conclusion thereby rejecting the application for temporary mandatory injunction was justified in the facts of the present case.

15. It is now settled law that the temporary mandatory injunction should be granted in the rarest of the rare cases. The present case is, in our view, not one where such injunction should be granted unless the appellant can secure the entire dues of the respondents as claimed by them at this stage subject to the final decision of the suit. The appellant is unable to secure that amount.

16. We, therefore, find no merit in these two appeals and those are dismissed accordingly.

17. We make it clear that our observations are all tentative for the purpose of disposal of these appeals and will not be binding upon the learned Trial Judge at the time of hearing of the suit. The hearing of the suit be expedited.

18. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

I agree.