

HIGH COURT OF PUNJAB AND HARYANA**Bench: Hon'ble Mr. Justice Arun Palli and Hon'ble Mr. Justice Vikram Aggarwal****Date of Decision: 9th May 2024**

FAO-COM-10-2024(O&M)

Appellant: OFB Tech Private Limited**VS****Respondents: KCC Buildcon Private Limited and another****Legislation and Rules:**

Order XXXIX Rules 1 and 2, Rule 3A of the Code of Civil Procedure, 1908

Subject: Appeal against the order of the Commercial Court, Gurugram, which restrained the appellant from invoking/encashing a bank guarantee during the pendency of a suit for declaration and permanent injunction related to business transactions between the parties.

Headnotes:

Commercial Law – Interim Injunction Against Encashment of Bank Guarantee – Commercial Court Gurugram restrained appellant from encashing bank guarantee pending suit resolution concerning business transactions over procurement of raw materials for infrastructure projects – Transactions were based on purchase orders without a formal contract – Appellant challenges the interim order – Argument hinges on the propriety of the injunction granted without substantial evidence of irretrievable harm or injustice [Paras 1-5].

Commercial Court's Authority and Obligations – Emphasis on the necessity of compliance with Order XXXIX Rule 3A CPC, requiring decision on injunction applications within 30 days when ex parte injunctions are granted – Appellant and respondents agree to continuation of the interim order if the application is decided within the prescribed timeline [Paras 6-13].

Direction – High Court does not rule on merits but directs the Commercial Court to adhere strictly to the procedural timeline for deciding the injunction

application, extending the interim order till a decision is made, potentially affecting the business operations and contractual obligations of the parties involved [Para 14].

Referred Cases: None cited specifically.

Representing Advocates:

For the Appellant: Mr. Amit Jhanji, Senior Advocate with Ms. Eliza Gupta, Mr. Himanshu Jain, Mr. Sangam Kheterpal, Mr. Viren Sibal, and Mr. Rajneesh Budhiraja.

For Respondent No.1: Mr. Anand Chibbar, Senior Advocate with Mr. Rajat Khanna, Mr. Sanjeev Kumar, Mr. Anshul Sehgal, Mr. Pranshu, Mr. Vishal Saini, and Mr. Vijay Pratap Singh.

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VIKRAM AGGARWAL, J.

1. The appellant-defendant No.1 assails the order dated 15.04.2024, passed by the Commercial Court, Gurugram, vide which, while issuing notice of the injunction application preferred under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short “the CPC”), it has restrained the appellant-defendant No.1 from invoking/encashing the bank guarantee issued by the IndusInd Bank (respondent-defendant No.2), at the request of respondent No.1-plaintiff.
2. A suit for declaration along with consequential relief of permanent injunction was filed by respondent No.1-plaintiff against the appellant-defendant. The parties had business relations, wherein respondent No.1-plaintiff used to procure raw materials like bitumen, petroleum products, steel and other products from the appellant-defendant No.1, to use in its business of infrastructure and road construction across the country.
3. Though no formal contract had been executed between the parties and all procurements were based on purchase orders and counter delivery invoices/*challans*, two bank guarantees amounting to Rs.3.5 crore and Rs.1.5 crore each had been furnished at the instance of the respondentplaintiff in

favour of the appellant-defendant on 21.08.2021. They were extended from time to time and were last extended till August 2024. Upon certain disputes having arisen between the parties, bank guarantee amounting to Rs.1.5 crore was invoked/encashed by the appellant-defendant No.1. With regard to the second bank guarantee amounting to Rs.3.5 crore, the suit in question was filed by the respondent No.1-plaintiff.

4. While issuing notice in the said suit, encashment of the bank guarantee of Rs.3.5 crore was stayed, leading to the filing of the present appeal.
5. Learned Senior Counsel representing the appellant-defendant No.1 submits that the Commercial Court erred in granting the stay. Reference has been made to various documents on record.
6. On the other hand, learned Senior Counsel representing the respondent No.1-plaintiff, while causing appearance on notice having been served, submits that the order is perfectly legal and valid and does not call for any interference. He also submits that the pleadings have since been completed and the case is now listed for 14.05.2024 and it has been ordered that arguments on the injunction application shall be heard on 14.05.2024. Reference has been made to orders dated 22.04.2024 and 04.05.2024 passed by the Commercial Court, Gurugram, in this regard.
7. It has been submitted that even otherwise, since the impugned order was passed on 15.04.2024, the Commercial Court, in view of the provisions of Order XXXIX Rule 3A CPC, is under an obligation to dispose of the injunction application within a period of 30 days on account of the *ex parte* injunction having been granted.
8. To this, learned Senior Counsel representing the appellantdefendant No.1 submits that if the injunction application is decided within the aforesaid period, he would not have any objection and would not press for a decision on merits in the present appeal.
9. We have considered the submissions made by learned counsel for the parties.
10. Vide the impugned order dated 15.04.2024, the Commercial Court restrained the appellant-defendant No.1 from invoking the bank guarantee bearing No.OGT0005210057750 issued by the IndusInd Bank till the next date of hearing, which was fixed as 22.04.2024. The operative part of the said order is as under:-

“7. Notice of the suit as well as the injunction application be issued to defendants for 22.04.2024 through postal courier as well as through speed post in BNPL scheme on filing of copies of plaint, registered cover etc. as well as through email on email id of defendant mentioned in memo of parties on filing of soft copy of summons, plaint and supporting documents and from email id of the office of learned District & Sessions Judge, Gurugram. Process be filed forthwith.

8. Till then the defendant No.1 is restrained from **FAO-COM-10-2024** - 4-

invoking/encashing the bank guarantee no. OGT0005210057750 issued by IndusInd Bank at the request of the plaintiff in favour of defendant no.1 till next date of hearing. However, this injunction order is subject to compliance of Order 39 Rule 3 CPC strictly which be made forthwith. Keeping in view the nature of interim relief granted and providing of certified copy of the order may take some time, let copy of this order be provided to learned counsel for plaintiff under the signatures of the Reader.”

11. On 22.04.2024, the appellant-defendant No.1 caused appearance before the Commercial Court and the case was adjourned to 04.05.2024 for filing written statement and the interim order dated 15.04.2024 was ordered to be extended till the said date. On 04.05.2024, written statement by appellant-defendant No.1 was filed and the case was adjourned to 14.05.2024 for arguments on the injunction application and the interim order was ordered to be extended till that date.
12. As per the provisions of Order XXXIX Rule 3A CPC, where an *ex parte* injunction is granted, the injunction application has to be decided within a period of 30 days.
13. Learned counsel for the parties are *ad idem* that in case the said time line is adhered to in letter and spirit, they would have no objection on the order of injunction continuing till the decision on the injunction application.
14. That being so, we dispose of the instant appeal with a direction to the Commercial Court, Gurugram to hear arguments on the injunction application on the date fixed i.e. on 14.05.2024 and decide the same thereafter at the

earliest and preferably on the same day. If for some reasons, the Court concerned is not in a position to hear arguments and decide the application for injunction on the said date, it may defer the hearing and decision on the injunction application while complying with the provisions of Order XXXIX Rule 3A CPC. In any case, the hearing and decision on the injunction application shall not be deferred for a period of more than one week from the date fixed i.e. 14.05.2024. Till the decision on the application for injunction, the interim order dated 15.04.2024 passed by the Commercial Court, Gurugram, shall continue.

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