

CASE NO.:
Appeal (civil) 3142-43 of 2002

PETITIONER:
National Textile Corpn. Ltd. & Ors.

RESPONDENT:
M/s Haribox Swalram & Ors.

DATE OF JUDGMENT: 05/04/2004

BENCH:
S. Rajendra Babu & G.P. Mathur.

JUDGMENT:
JUDGMENT

(With CA No.3144 of 2002)

G.P. MATHUR, J.

These appeals by special leave have been preferred against the judgment and order dated 4.8.2000 of a Division Bench of Calcutta High Court, whereby the appeal preferred by respondent nos. 1 and 2 was allowed, the order dated 11.4.1997 of the learned single Judge dismissing the writ petition was set aside and the writ petition was disposed of with certain directions.

2. The respondent nos. 2 and 3 filed the writ petition praying that a writ of mandamus be issued commanding the appellant herein to produce the entire records relating to the withholding of delivery of goods pursuant to the contracts mentioned in Annexure-A to the writ petition and also to deliver the goods mentioned in Annexure-A upon adjustment of advance payment made by them. A further prayer was made that the appellants herein be directed to take a final decision as envisaged in the letter dated 24.10.1989 (Annexure \026A to the writ petition) and an injunction be issued restraining the appellants from transferring, dealing with or disposing of goods pursuant to the contracts mentioned in Annexure-A in any manner without keeping the goods which are to be supplied to writ petitioner no.1.

3. The case set up in the writ petition is as follows. The writ petitioners had been purchasing various quantities of cloth from Finlay Mills Limited and Gold Mohur Mills Limited, both situate in Bombay. The petitioners entered into contracts specified in Annexure-A to the writ petition and made advance payment against the same. The concerned mills supplied and delivered the goods to the petitioners from time to time but a substantial part of the contract remained unexecuted. By the letter dated 26.9.1993 the mills were requested to take necessary steps for immediate delivery of the goods, in respect whereof payment had already been made. The mills vide their letter dated 29.9.1993 intimated that deliveries could not be effected as the banking transaction and accounts of the mills had been frozen, but assured that arrangements were being made to deliver the goods as early as possible. The management of the mills was taken over by the Central Government on 18.10.1993 under Textile Undertakings (Taking Over of Management) Ordinance, 1983 which was subsequently replaced by Textile Undertakings (Taking Over of Management) Act, 1993 on 25.12.1993. The Central Government constituted National Textile Corporation (South Maharashtra) Limited for the purpose of managing the textile undertakings which in turn as additional custodian took over the management of the two textile undertakings. The writ petitioners, thereafter approached the appellants for release of the goods and one bale of contractual specification was delivered but 12 bales were detained by the Excise Authorities, as a consequence whereof the same were not delivered. The National Textile Corporation (South Maharashtra) vide their letter dated 15.3.1984 requested the Officer on Special Duty of taken over mills including Gold Mohur Mills and Gold

Mohur Mills to furnish particulars in prescribed proforma to enable it to take up the matter with the Central Government for taking action under section 11(1) of the Act for the purpose of cancelling or varying any contract or agreement entered prior to pre-take over period which action had to be taken on or before 14.4.1984. After giving a reasonable opportunity of hearing to the parties concerned, the textile mills called upon the writ petitioners to verify the pre-take over contracts and joint meetings took place for the said purpose and the matter was referred back to the Officer on Special Duty. The writ petitioners then vide their letter dated 13.10.1984 requested the Chairman-cum-Managing Director of National Textile Corporation (South Maharashtra) Ltd. to deliver the balance quantity of cloth in terms of the pending contracts and to adjust all sums of money which had been paid by way of advance. The appellants sent a reply on 7.11.1994 stating that (1) all the outstanding contracts had been cancelled on the date of take over as they were not binding upon them; (2) the deposits that were made with the erstwhile management were not specifically marked towards any of invoice of packed material and as such could not be adjusted against any future delivery and the writ petitioners will have to claim this amount from the erstwhile management since the custodian is prohibited from discharging any liability pertaining to pre-take over period; and (3) there were no invoices against which payments were received from the petitioners prior to take over and as such the question of effecting delivery of paid stocks did not arise. The writ petitioners made several representations and they were informed by the letter dated 4.10.1989 that the matter relating to delivery of cloth in pursuance of pre-take over contracts was under active consideration. However, no delivery was effected. The writ petition was thereafter filed in December, 1989 seeking the reliefs mentioned in the earlier part of the judgment.

4. The writ petition was contested on behalf of the appellants herein and the Principal Officer of National Textile Corporation (South Maharashtra) Ltd. filed a detailed counter-affidavit. Certain pleas taken in para 3 of the counter affidavit have an important bearing and therefore the same is being reproduced below:

"Para3. At the outset I state as follows :-

a) The writ petition being directed to obtain specific performance of the disputed contracts and further claiming a decree for the same which can and should be obtained by filing a regular suit, further the same being concerned with very many disputed questions of facts, this application to by pass the said usual procedure of suit is not maintainable and ought to be dismissed on that ground.

b) The contract in question admittedly having been entered into at Bombay, with companies situate at Bombay, relating to goods to be delivered from Bombay and the payment in respect thereof were required to be made at Bombay and some part whereof having in fact been paid at Bombay, the entirety of the cause of action being the subject matter of the writ petition had arisen, if at all, within the jurisdiction of the Bombay High Court. Accordingly the instant writ petition seeking to enforce such cause of action which has arisen wholly outside the said jurisdiction is not enforceable at the High Court at Calcutta, neither the High Court of Calcutta has jurisdiction over the same. Hence, the application is misconceived and not maintainable.

c) Admittedly, the cause of action contained in the writ petition having arisen in 1983 when the Take Over Act came into force and sought to be enforced in 1989 after expiry of long six years, is clearly belated. The applicant being also guilty of laches no relief should be granted in a writ petition which only helps the vigilant but not the indolent. Besides, the application is also barred

by the law of limitation and ought liable to be rejected."

It was further pleaded that on the appointed date no goods manufactured, earmarked and ready for delivery as claimed by the writ petitioners were lying and as such there was no question of delivery of any remaining goods under any alleged contract. Whatever goods were delivered to the writ petitioners, the same had been earmarked for them as invoices in respect whereof had already been issued for which payments had been received earlier and title in respect whereof had already passed on to the writ petitioners. Similar procedure had been adopted in respect of many others and cloth was delivered to them which were lying manufactured in their account. However, there was no liability to deliver any further goods. The respondents had not received any advance payment as alleged by the writ petitioners. It was further pleaded that the respondents under the provisions of the Act were not liable to deliver any further goods under any alleged contract for the pre-take over period in respect whereof no title had passed on to the writ petitioners. It was specifically denied that other dealers, similarly situate, had been delivered any goods in respect of pre-take over contracts and a uniform principle was adopted in this regard. No invoices had been raised in respect of any alleged balance goods of a pre-take over period. It was also pleaded that the payments, if any, alleged to have been made by the writ petitioners were in fact made to the erstwhile company and the writ petitioners were at liberty to recover the same from them but the respondents were not liable to pay back any amount or to deliver any goods. It was also asserted that the respondents had been discharged of every liability of any kind for the pre-take over period. The other allegations made in the writ petitions were also denied.

5. After exchange of affidavits the hearing of the writ petition commenced before a learned Single Judge on 14.6.1990 and finally judgment was reserved on 5.12.1990. However, after considerable period of time the writ petition was released by the learned Single Judge. Thereafter sometime in 1995 the writ petitioners made a prayer to file a supplementary affidavit for the purpose of bringing on record a letter dated 24.10.1989 allegedly written by the Chairman-cum-Managing Director, National Textile Corporation which was addressed to the Joint Secretary, Ministry of Textile, Government of India. The prayer was strongly opposed on behalf of the appellants herein. The learned Single Judge by his order dated 17.1.1995 granted permission for filing of a supplementary affidavit and affidavit-in-opposition, if any. Thereafter, the writ petitioners filed an affidavit annexing therewith a copy of a letter dated 24.10.1989 purported to have been written by Mr. Sundaram Chairman-cum-Managing Director, National Textile Corporation to Shri Saptharishi, Joint Secretary, Ministry of Textile, Government of India. The letter makes a reference to the representation made by the writ petitioners and two other firms regarding delivery of cotton fabrics by Finlay Mills and Gold Mohur Mills against pre-take over contracts. It states that the matter had been examined at their end and the position of contract balance as per the party and the contract balance as per the mills was as detailed in Annexure-A enclosed to the letter. It is further mentioned therein that the position could not be certified as absolutely correct as most of the original records and documents were in possession of CBI. It goes on to say that after taking over of the management, all the contracts for supply had not been subsequently cancelled and/or varied by the Additional Custodian at any time. If the request was to be considered, all parties similarly situated will have to be treated on the same footing and accordingly deliveries to the extent of Rs.101.72 lakhs will have to be effected to 224 parties of eight taken-over textile mills without receiving any demand. At the end of the letter it is stated that though the party had raised a dispute promptly the question whether a parties' claim had to be acceded to now after a lapse of six years raised a point of proprietary and also loss of Rs. 40.70 lakhs to NTC. In the concluding portion of the letter it is mentioned that although the party had raised a fairly arguable case, the best course of action would be to obtain a judicial pronouncement in the matter so as to avoid any possible future objection from audit or from propriety angle. In the Annexure to the letter the credit balance of the writ

petitioners as on 18.10.89 was shown as Rs.10,47,145.33 as against Finlay Mills and Rs.21,89,056.26 as against Gold Mohur Mills.

6. An affidavit in reply was filed to the aforesaid supplementary affidavit and it was submitted that the writ petitioners were put to strict proof of the letter dated 24.10.1989 as the same was alleged to have been given to them by Mr. Sundaram without disclosing the reason for doing so. The letter was a confidential internal communication and there was no occasion for Mr. Sundaram to hand over a copy of the same to the writ petitioners especially when he (Mr Sundaram) had left employment of National Textile Corporation (South Maharashtra) Ltd. in December, 1992. The letter was at best comment or opinion of Mr. Sundaram and was contrary to the opinion of the Attorney-General to the effect that the alleged contracts were not genuine. A copy of the opinion of the Attorney-General was also annexed. It was also pleaded that the Government of India had not accepted the alleged claim of the writ petitioners and had in fact launched prosecution against the Principal Officer of respondent no.4 for giving delivery of stocks to several parties after the date of taking over. It was further pleaded that the letter cannot be taken as an admission of the alleged claim of the writ petitioners under any circumstances.

7. The learned Single Judge held that the contract sought to be relied upon by the writ petitioners was doubtful as it did not signify the assent of the concerned mills. Whether sale contracts were made in the manner indicated and were acted upon by the mills concerned was a question of fact which had to be established by evidence. There was no evidence on record of the case to establish the contract. Similarly no attempt had been made by the writ petitioners to establish independently that a sum in excess of Rs. 40 lakhs was lying to the credit of the concerned mills. In fact there was no assertion to that effect in the writ petition and no particulars of such advance had been furnished. It was also held that the respondents in the writ petition were not in picture at the time the invoices, which had been relied upon, were prepared and it was the management which was in control of the concerned mills before the take over period and therefore in such circumstances it was obligatory on the part of the writ petitioners to prove the facts but no attempt to that effect had been made except relying upon the letter of the concerned mills of September, 1983. The learned Single Judge also held that he had directed the writ petitioners to produce the original of the pending contracts but they failed to comply with the said direction. They merely handed over a zerox copy of the contract of sale of cotton cloth which only contained the signature of the buyer and not of the seller. This zerox copy produced was of a printed proforma wherein the words "The Gold Mohur" had been typed before the printed words "Mills Ltd." Even this document did not make any mention of any payment having been made by way of advance nor it mentioned that any credit balance lying with the mills should be appropriated towards the contract. The learned Judge further held that the respondents had disowned their obligation to deliver the goods in November, 1984 but the writ petition was filed after more than five years and even if the period of limitation was taken to be that of a civil suit, the writ petition was barred by limitation. The learned Judge then considered in detail the effect of sub-section (7) of section 3, and sections 6 and 11 and other provisions of the Act and held that all contracts relating to the management of the business and all contracts relating to the management of the affairs of the Textile Undertaking stood terminated on the appointed day and consequently the Central Government or the Custodian were neither obliged to discharge the contractual obligations by effecting deliveries, nor they were obliged to give any adjustments of the advances said to have been made. Regarding the letter dated 24.10.1989 it was held that the letter itself mentions that the facts stated therein could not be verified as most of the original records and documents had been seized and were lying in possession of CBI. That apart, the object of the letter was not to admit any liability or obligation but an opinion was expressed that the best course of action was to obtain a judicial pronouncement in the matter. Finally, the learned Single Judge held that the entire cause of action accrued in Bombay and therefore the High Court of Calcutta had no jurisdiction to entertain the writ petition. On these findings the writ petition was dismissed.

8. Feeling aggrieved by the judgment and order of the learned Single Judge the writ petitioners preferred an appeal before the Division Bench of the Calcutta High Court. The Division Bench held that Calcutta High Court had the jurisdiction to hear the matter as part of cause of action accrued there. On merits it was held that ordinarily a writ of mandamus cannot be issued for specific performance of a contract yet there is no absolute bar in doing so. The Bench went on to hold that whether in fact there existed any contract or not would be a question of fact and having regard to the fact that the State has a statutory duty to perform the contract the appeal was disposed of with the following direction:

"In a situation of this nature, we are of the opinion that interest of justice would be subserved if the present incumbent of the post of Chairman-cum-Managing Director gives an opportunity of hearing to the petitioners and try to sort out the differences before the parties across the table. We do not intend to go into the merit of the matter so as to arrive at a finding one way or the other as to whether the existence of contract had been proved or not but by moulding the reliefs, we are of the opinion that even if it be found that it is not possible for the respondent no.2 to supply the goods to the petitioners, we have no doubt in our mind that in the event it is found that a sum of Rs.40 lakhs is lying in its hand, steps should be taken for its refund as expeditiously as possible and upon payment of interest @ Rs.12% p.a."

9. Shri Kirit N. Raval, learned Solicitor General appearing for the appellants, has strenuously urged that no part of cause of action had accrued in Calcutta as the Textile Mills were situate in Bombay and supply was to be made ex-factory at Bombay and the alleged payment by the writ petitioners was also made at the said place. It has thus been urged that it is not a case where even a part of cause of action may have accrued in the State of West Bengal which could enable the Calcutta High Court to entertain the writ petition and to grant any relief to the writ petitioners. Shri G.C.Bharuka, learned senior counsel appearing for the respondents herein (writ petitioners) has submitted that the writ petitioners were carrying on business at Calcutta, the letters were sent by them from Calcutta and replies to the same had also been received by them at Calcutta and therefore part of cause of action had accrued in the State of West Bengal and consequently the view taken by the Division Bench of the High Court that it had jurisdiction to entertain the writ petition was perfectly correctly.

10. Under Clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Cause of action as understood in the civil proceedings means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. To put it in a different way, it is bundle of facts which taken with law applicable to them, gives the plaintiff a right to relief against the defendant. In Union of India v. Adani Exports Ltd. AIR 2002 SC 126 in the context of clause (2) of Article 226 of the Constitution, it has been explained that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. A similar question was examined in State of Rajasthan v. M/s Swaika Properties AIR 1985 SC 1289. Here certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and a notice under Section 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The question which arose for consideration was whether the

service of notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land under Section 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government under Section 52 of the Act. It was thus held that Calcutta High Court had no jurisdiction to entertain the writ petition.

11. The question of jurisdiction was considered in considerable detail in *Oil and Natural Gas Commission v. Utpal Kumar Basu* 1994 (4) SCC 711 and it was held that merely because the writ petitioner submitted the tender and made representations from Calcutta in response to an advertisement inviting tenders which were to be considered at New Delhi and the work was to be performed in Hazira (Gujarat) and also received replies to the fax messages at Calcutta, could not constitute facts forming an integral part of cause of action. It was further held that the High Court could not assume jurisdiction on the ground that the writ petitioner resides in or carries on business from a registered office in the State of West Bengal.

12. In the present case, the textile mills are situate in Bombay and the supply of cloth was to be made by them ex-factory at Bombay. According to the writ petitioners, the money was paid to the mills at Bombay. The learned Single Judge after a detailed discussion of the matter held that the Calcutta High Court had no jurisdiction to entertain the writ petition. The Division Bench has reversed this finding on the ground that concluded contract had come into existence which could be cancelled only after giving an opportunity of hearing and consequently the question of revocation of the contract at its Calcutta address would constitute a cause of action. In our opinion, the view taken by the Division Bench is wholly erroneous in law. It was nowhere pleaded in the writ petition that the appellant herein had initiated any action under Section 11 of the Act by issuing any notice to the writ petitioner for cancellation of the contract. In fact, it is stated in para 18 of the petition that the Central Government did not follow the procedure prescribed in Section 11 for cancellation of contract. Regarding the jurisdiction of the Calcutta High Court, the relevant statement was made in para 73 of the writ petition wherein it was stated as under :

"73. Your petitioner carries on business and maintains all accounts at the aforesaid place of business within the jurisdiction. Your petitioner states that by reason of the aforesaid, your petitioners have suffered loss and damage at its said place of business within the jurisdiction. All notices and correspondences referred to herein-above addressed to your petitioner has been received by your petitioner at your petitioner's place of business within the jurisdiction. In the circumstances this Hon'ble Court has the jurisdiction to entertain the present application."

As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed. However, in order to avoid any further harassment to the parties and to put an end to the litigation, we would examine the matter on merits as well.

13. Chapter II of the Textile Undertakings (Taking over of Management) Act, 1983 deals with Taking Over Of The Management Of Certain Textile Undertakings. Sub-section (1) of Section 3 lays down that on and from the appointed day, the management of all the textile undertakings shall vest in the Central Government. Sub-section (7) of Section 3 is important and it

reads as under :

Section 3 (7): For the removal of doubts, it is hereby declared that any liability incurred by a textile company in relation to the textile undertaking before the appointed day shall be enforceable against the concerned textile company and not against the Central Government or the Custodian.

This provision is very clear and says in no uncertain terms that any liability incurred by a textile company in relation to the textile undertaking shall not be enforceable against the Central Government or the custodian. The effect of this provision was examined in *Rashtriya Mill Mazdoor Sangh v. National Textile Corporation (South Maharashtra) Ltd.* 1996 (1) SCC 313 where the question of payment of gratuity of a workman who left the employment just a few months before "the appointed day" came up for consideration. It was held that the language of sub-section (7) of Section 3 is clear and unambiguous inasmuch as in the said provision it has been declared that any liability incurred by the textile company in relation to the textile undertaking before the appointed day shall be enforceable against the textile company concerned and not against the Central Government or the Custodian. It was also held that the words "any liability" in sub-section (7) of Section 3 are of wide amplitude to cover every liability that was incurred by the textile company in relation to the textile undertaking before the appointed day. The Court thus rejected the contention that sub-section (7) of Section 3 must be so construed as to exclude its applicability in respect of liability for payment of gratuity under the Payment of Gratuity Act. The Court also examined the provisions of the Textile Undertakings (Nationalisation) Ordinance, 1995 (Ordinance No.6 of 1995) which was later on replaced by the Textile Undertakings (Nationalisation) Act, 1995) and held as under :

"The provisions of Ordinance 6 of 1995 also show that the liabilities for the period prior to the take-over of the management are to be discharged from the amount payable to the owner of the textile undertaking for the acquisition of the undertaking and not by the NTC. It is, therefore, not possible to uphold the contention urged on behalf of the appellant that NTC is liable in respect of the gratuity amount payable under the Payment of Gratuity Act to Respondent 2."

14. The legal position is, therefore, absolutely clear that any liability incurred by a textile company in relation to the textile undertaking before the appointed day cannot be enforced against the Central Government or the Custodian. According to the case set up by the writ petitioners, money was paid by them to the two textile mills before the appointed day but they had failed to supply the cloth. Assuming the aforesaid position to be correct, after receipt of money, the textile mills having incurred a liability, were under an obligation to supply the cloth to the writ petitioners. On the facts pleaded, the liability had been incurred by the textile company and consequently it could not be enforced against the Central Government or the Custodian. We are thus unable to accept the view taken by the Division Bench of the High Court that it was not a liability of the textile company.

15. In paras 7 and 9 of the counter affidavit filed by the appellants before the High Court, the correctness of Annexure A was specifically denied. In paras 15 and 16 it was categorically pleaded that on the appointed day no goods manufactured and earmarked for the writ petitioners were lying in the mills. In paras 21, 22, 24 and 27 receipt of payment allegedly made by the petitioners was also denied. The appellants herein having specifically denied receipt of any payment or existence of any manufactured and earmarked cloth for the writ petitioners on the appointed day, no relief could have been granted to the writ petitioners in proceedings under Article 226 of the Constitution. The writ petition raised highly disputed questions of fact which, as rightly observed by the learned Single Judge, could be proved by leading evidence in a properly constituted suit and was not a matter to be investigated in a writ petition.

16. The appellants herein had also disputed the correctness of the letter allegedly written by Mr. V. Sundaram, Chairman-cum-Managing Director of NTC to the Joint Secretary, Ministry of Textiles, Government of India on 24.10.1989. It is noteworthy that though the letter is of October 1989 but the same was filed along with the supplementary affidavit on 27.1.1995 i.e. more than 5 years after filing of the writ petition which had been filed in December, 1989. Mr. Sundaram had left the employment in 1992. As the letter shows, it was an internal correspondence between the Chairman of National Textile Corporation and Joint Secretary, Ministry of Textiles, Government of India. The letter does not show that its copy was sent to anyone else much less to the writ petitioners. In para 4 of the supplementary affidavit filed by Mahender Kumar Goenka, it was stated that on his request Mr. Sundaram was kind enough to hand over a copy of the said letter dated 24.10.1989 to the petitioner. It is extremely difficult to believe that though Mr. Sundaram left the employment in 1992, but he was keeping a copy of the said letter with him and handed over the same to Shri Goenka in 1995. Shri Sundaram, who was an IAS Officer holding a very responsible post of Chairman-cum-Managing Director of National Textile Corporation, is not expected to keep private copies of official documents nor to hand over the same to a private party. We are, therefore of the opinion that the view taken by the learned Single Judge that the said document is of extremely suspicious character and could not be taken into consideration is perfectly correct.

17. We are also in agreement with the view taken by the learned Single Judge that the writ petition which was filed in December 1989 was highly belated as the claim of the writ petitioners had been categorically refuted by the letter dated 7.11.1990 by the Director Finance on behalf of National Textile Corporation (South Maharashtra). The petition was therefore liable to be rejected on this ground alone. That apart, the prayer made in the writ petition is for issuance of a writ of mandamus directing the appellant herein to supply the goods (cloth). It is well settled that in order that a mandamus be issued to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the Statute to enforce its performance. The present is a case of pure and simple business contract. The writ petitioners have no statutory right nor any statutory duty is cast upon the appellants whose performance may be legally enforced. No writ of mandamus can, therefore, be issued as prayed by the writ petitioners.

18. For the reasons mentioned above, we are of the opinion that the writ petition filed by the respondent herein was wholly devoid of merit and the same was rightly dismissed by the learned Single Judge of the High Court. The appeal is accordingly allowed. The judgment and order of the Division Bench of the Calcutta High Court dated 4.8.2000 is set aside and that of the learned Single Judge restored. The appellant will be entitled to their cost here as well as in the High Court.