

PETITIONER:
BRITISH INDIAN CORPORATION LTD.

Vs.

RESPONDENT:
M/S. RASHTRACO FREIGHT CARRIERS

DATE OF JUDGMENT: 07/05/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
FAIZAN UDDIN (J)
G.B. PATTANAIK (J)

CITATION:
1996 SCC (4) 748 JT 1996 (5) 662
1996 SCALE (5)11

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel on both sides.

The appellant had entrusted to the respondent 147 bales of raw wools worth Rs.51.48 lakhs as carriers for transportation to Cawnpore Woolen Mills. In spite of taking delivery thereof, the respondent had detained the goods in his custody, laid the suit O.S. No.612/94 in the Civil Court at Kanpur for a permanent injunction restraining the appellant from taking forcible possession of the goods with the allegation that a sum of Rs.13,48,817.13 was due from the appellant towards arrears of transportation charges. The interim injunction sought for was initially granted but later on vacated. Ultimately, in appeal, the High Court directed the appellant to give bank guarantee to the tune of the amount purported to be due as pleaded for in the suit. We are informed that the bank guarantee has accordingly been given. The appellant entrusted taking of delivery of the possession of the goods to the carriers-respondent who laid the suit on July 1, 1994 and interim mandatory injunction was sought for and was granted.

These proceedings arise out of an application made under Section 10 CPC on September 19, 1994 seeking stay of the trial in O.S. No.793/94. The trial court dismissed it, but the High Court in revision has directed stay of the suit. Thus, this appeal by special leave.

Section 10 of CPC envisages that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed. It is seen that the claim of the respondent in the

suit No.612/94 is for the recovery of the alleged dues said to be payable by the appellant-Corporation while the suit of the appellant is for recovery of the goods lawfully entrusted to and unlawfully detained by the respondent. The causes of action are entirely different. There is no common issue directly or substantially in issue in both the suits. The High Court, therefore, committed gross error of law in staying the later suit.

The appeal is accordingly allowed. The impugned order of the High Court dated 25th May, 1995 is set aside. No costs.

JUDIS