

M/S. CARAVEL SHIPPING SERVICES PVT. LTD. A

v.

M/S. PREMIER SEA FOODS EXIM PVT. LTD.

(Civil Appeal Nos. 10800-10801 of 2018)

OCTOBER 29, 2018 B

[R. F. NARIMAN AND NAVIN SINHA, JJ.]

Arbitration and Conciliation Act, 1996: ss.7(3), 7(4), 8 – Bill of lading – Suit for recovery by respondent-consignor in Kochi court – Application filed by appellant, who is agent to facilitate transport under s.8 of AC Act on the basis of arbitration clause in Bill of Lading – In the application, it was pointed out that s.11 application was also filed in Chennai court – Kochi court dismissed s.8 application on the ground that the printed conditions annexed to the Bill of Lading would not be binding upon the parties and also that as no part of cause of action arose in Chennai, application was not maintainable – High Court dismissed the Original Petition filed under Art.227 of the Constitution of India accepting the view of Kochi court – On appeal, held: Respondent expressly agreed to be bound by the arbitration clause despite the fact that it was a printed condition annexed to the Bill of Lading – Further, respondent itself had filed recovery suit by relying upon the Bill of Lading as part of its cause of action – Therefore, respondent cannot blow hot and cold and argue that for the purpose of its suit, it will rely upon the Bill of Lading (though unsigned) but for the purpose of arbitration, the requirement of the Arbitration Act that the arbitration clause should be signed is not fulfilled – The order of High Court is set aside. C D E F

Allowing the appeals, the Court

HELD:1. The Bill of Lading makes it clear that the term “Merchant” (which is defined in the Standard conditions Governing Multimodal Transport Documents - Clause (1) (e) as meaning shipper, consignor or consignee) expressly agrees to be bound by all the terms, conditions, clauses and exceptions on both sides of the Bill of Lading whether typed, printed or otherwise. A perusal of the arbitration clause, which is Clause 25 being a printed condition annexed to the Bill of Lading, shows G H

A that the respondent has expressly agreed to be bound by the arbitration clause despite the fact that it is a printed condition annexed to the Bill of Lading. Secondly, it must be remembered that the respondent has itself relied upon the Bill of Lading as part of its cause of action to recover the sum of Rs.26,53,593/-
 B in the suit filed by it. The respondent, therefore, cannot blow hot and cold and argue that for the purpose of its suit, it will rely upon the Bill of Lading (though unsigned) but for the purpose of arbitration, the requirement of the Arbitration Act is that the arbitration clause should be signed. [Paras 7, 8][292-E-F; 293-A-B]

C 2. The fact that the arbitration agreement shall be in writing is continued in the 1996 Act in Section 7(3) thereof. Section 7(4) only further adds that an arbitration agreement would be found in the circumstances mentioned in the three sub-clauses that make up Section 7(4). This does not mean that in all cases an arbitration
 D agreement needs to be signed. The only pre-requisite is that it be in writing, as has been pointed out in Section 7(3). This being the case, the present is a clear case where, under Section 7(5) of the Act the reference in the Bill of Lading is such as to make the arbitration clause part of the contract between the parties.
 E [Paras 9, 10][293-D-E]

M.R. Engineers and Contractors Private Limited v. Som Datt Builders Limited (2009) 7 SCC 696 : [2009] 10 SCR 373 ; Jugal Kishore Rameshwardas v. Mrs. Goolbai Hormusji AIR 1955 SC 812 : [1955] SCR 857 – relied on.

F Case Law Reference

[2009] 10 SCR 373	relied on	Para 5
[1955] SCR 857	relied on	Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10800-10801 of 2018.

G From the Judgment and Order dated 08.09.2015 of the High Court of Kerala at Ernakulam in OP(C) No. 522 of 2013 (O) and Judgment and Order dated 14.06.2016 in R.P. No. 135 of 2016.

Ms. Liz Mathew, M. F. Philip, Advs. for the Appellant.

H P. A. Noor Muhamed, Sunny P. Markose, Ms. Giffara S., Bilal Niamathulla, Advs. for the Respondent.

The Judgment of the Court was delivered by A

R. F. NARIMAN, J.

1. Leave granted.

2. The present appeals arise out of a document styled as
“*Multimodal Transport Document/Bill of Lading*” dated 25.10.2008. B
This Bill of Lading states that the Consignor/Shipper is one M/s Premier
Seafoods Exim Private Limited of Kerala, and that Caravel Shipping
Services Private Limited, who is the appellant before us, is the agent
who facilitates transport. The very opening Clause of the Bill of Lading
specifies: C

“In accepting this Bill of Lading the Merchant expressly agrees
to be bound by all the terms, conditions, clauses and exceptions
on both sides of the Bill of Lading whether typed, printed or
otherwise.”

3. The Respondent filed a Suit being O.S. No. 9 of 2009 before D
the Sub-Judge’s Court in Kochi to recover a sum of Rs. 26,53,593/- in
which the Bill of Lading was expressly stated to be a part of cause of
action. Soon after the Suit was filed, an I.A. being I.A. No. 486 of 2009
was filed by the appellant under Section 8 of the Arbitration and
Conciliation Act, 1996 (hereinafter referred to as “the Act”) in which E
it was pointed out to the Court that an arbitration clause was included in
the printed terms annexed to the Bill of Lading. The I.A. also pointed
out that a Section 11 petition to appoint an Arbitrator in accordance with
Clause 25, being the printed term in question, has also been filed in
Chennai. The Sub-Court, Kochi, by its judgment dated 08.01.2013
dismissed the I.A., stating that printed conditions annexed to the Bill of F
Lading would not be binding upon the parties, and also that as no part of
the cause of action arose in Chennai, the I.A. would have to be dismissed.

4. In the Original Petition filed under Article 227 of the Constitution
of India, the High Court referred to certain provisions of the Multimodal
Transportation of Goods Act, 1993, and also stated that the arbitration
clause, being in a printed condition, there being no intention to arbitrate G
and nothing to show that Clause 25 was brought to the notice of the
respondent, agreed with the learned Sub-Judge and dismissed the Original
Petition. A Review filed against the said judgment was also dismissed
by a judgment dated 14.06.2016.

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A 5. Ms. Liz Mathew, learned counsel appearing on behalf of the
appellant pointed out that printed conditions of the Bill of Lading were
expressly referred to in the Bill of Lading and both parties were stated
to be bound by the same. This being so, in accordance with Section 7(5)
of the Arbitration Act read with this Court's judgment in *M.R. Engineers*
B *and Contractors Private Limited vs. Som Datt Builders Limited*, (2009)
7 SCC 696 would make it clear that there was a reference in the contract
to the arbitration clause, and since it is in writing and the reference is
such that the arbitration clause formed part of the contract, according to
her, both the courts were in error. She also pointed out to us that, in the
meanwhile, the Madras High Court, by order dated 09.01.2015, has
C referred to the Kerala proceeding, but nonetheless applied the arbitration
clause and appointed a Senior Advocate to arbitrate between the parties
in that proceeding.

6. On the other hand, Mr. P.A. Noor Muhamed, learned counsel
for the respondent, invited our attention to Section 7(4) of the Act and
D argued that Section 7(4)(a) requires an arbitration agreement to be in a
document that is signed by the parties. Since the Bill of Lading was not
signed by his client, according to him, he is, therefore, not bound by the
arbitration clause contained in that document. Further, he has also argued
that at present the stage of the suit is that issues have been struck and
one witness is being examined.

E 7. Having heard learned counsel for both parties, we are of the
view that the Bill of Lading makes it clear that the term "Merchant"
(which is defined in the Standard Conditions Governing Multimodal
Transport Documents - Clause (1) (e) as meaning shipper, consigner or
consignee) expressly agrees to be bound by all the terms, conditions,
F clauses and exceptions on both sides of the Bill of Lading whether typed,
printed or otherwise. The arbitration clause, which is Clause 25 being a
printed condition annexed to the Bill of Lading, reads as under:

"25. Jurisdiction/Arbitration:

G The contract evidenced by the Bill of Lading shall be governed by
the laws of India, and subject to the exclusive jurisdiction of court
in Chennai only. Disputes/difference arising out of this contract
and/or connection with the interpretation of any of its clauses
shall be settled by arbitration in India in accordance with the
Arbitration & Conciliation Act, 1996. The No. of Arbitrators shall
be three, the Arbitrators shall be commercial persons the venue
H for arbitration shall be Chennai."

8. A perusal of the same shows that the respondent has expressly agreed to be bound by the arbitration clause despite the fact that it is a printed condition annexed to the Bill of Lading. Secondly, it must be remembered that the respondent has itself relied upon the Bill of Lading as part of its cause of action to recover the sum of Rs.26,53,593/- in the suit filed by it. The respondent, therefore, cannot blow hot and cold and argue that for the purpose of its suit, it will rely upon the Bill of Lading (though unsigned) but for the purpose of arbitration, the requirement of the Arbitration Act is that the arbitration clause should be signed.

9. In addition, we may indicate that the law in this behalf, in *Jugal Kishore Rameshwardas vs. Mrs. Goolbai Hormusji*, AIR 1955 SC 812, is that an arbitration agreement needs to be in writing though it need not be signed. The fact that the arbitration agreement shall be in writing is continued in the 1996 Act in Section 7(3) thereof. Section 7(4) only further adds that an arbitration agreement would be found in the circumstances mentioned in the three sub-clauses that make up Section 7(4). This does not mean that in all cases an arbitration agreement needs to be signed. The only pre-requisite is that it be in writing, as has been pointed out in Section 7(3).

10. This being the case, the present is a clear case where, under Section 7(5) of the Act read with *M.R. Engineers and Contractors Pvt. Ltd.* (supra) (paras 22 & 24), the reference in the Bill of Lading is such as to make the arbitration clause part of the contract between the parties.

11. The fact that the stage of the present suit is that a particular witness is being examined would not come in the way of the Section 8(3) application being allowed inasmuch as the Section 8(3) application was filed in the same year as that of the suit. We may also add that we have not gone into the Multimodal Transportation of Goods Act, 1993 for the reason that whether the present Bill of Lading is governed by the provisions of the Act (Section 26 in particular) or not would not make any difference to the position that an arbitration clause forms part of an agreement between the parties, and would, therefore, be governed by Section 7 of the Arbitration Act.

12. We, therefore, allow the appeals and set aside the judgments of the High Court.