

The Megna Mills Co. Ltd.

Vs

Ashoka Marketing Co.

Civil Appeals Nos. 2012 and 2013/1966

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

06.11.1970

JUDGMENT

GROVER, J. -

1. These two appeals by special leave are from a judgment of the Calcutta High Court holding that the disputes between the parties could not be referred to arbitration.

2. It is necessary to state the facts only in Civil Appeal No. 2012/66. The appellant was and still is a member of the East India Jute and Hessian Exchange Limited, hereinafter called the "Exchange" which is the only association recognised under the provisions of the Forward Contracts (Regulation) Act, 1952, hereinafter called the "Act". The respondent is not a member of the said association. On December 21, 1962, a transaction was entered into between the parties by means of a letter written by the respondent to the appellant. This letter was in the following terms :

"We have today bought from you the following goods :

#Description : Jute Carpet Backing cloth bound on card-board cores 152" wide. Weight : 9 oz. on 36". Wrap Ends : Per inch 15. Weft Ends : Per inch 13. Oil contents : Up to 2%. Quantity : 5,000 rolls, each roll having continuous length of 300 yards approximately. Rate : Rs. 4,000/- per ton. Delivery : 500 rolls monthly, March, 1963 to December 1963.##

All other terms and condition of the East India and Hessian Exchange standard contract will be applicable to this contract. Please sign your acceptance on the duplicate copy of this letter."

3. The appellant from time to time delivered certain rolls of the Jute Carpet Backing cloth under the aforesaid contract, the price of which was paid by the respondent. As regard the balance number of rolls deliverable under the contract the appellant purchased back and the respondent resold the balance quantities of goods by contract, dated December 9, 1963, which transaction was embodied in a letter of the appellant to the respondent, dated December 9, 1963, and which was countersigned by the respondent. According to the appellant it was agreed or understood between the parties that deliveries under the two contracts of December 21, 1962 and December 9, 1963, would be set off against each other. As regards 1,000 rolls deliverable for the months of August and September 1963, under the contract, dated December 21, 1962, the appellant is stated to have received from the respondent difference in the price of goods but in respect of the balance of 1,500 rolls the respondent did not pay the difference. The appellant demanded the difference payable by the

responded-under the dais contracts. Disputes and difference having arisen between the parties in the matter the appellant referred its claim to the arbitration of Bengal Chamber of Commerce and Industry. This was purported to have been done on the footing that the contracts provided that all terms and conditions thereof would be governed by the bye-laws of the Exchanges for trading in transferable specific delivery contracts. The standard contract forms and the rules and bye-laws of the Exchange, inter alia, provided for arbitration of the Bengal Chamber of Commerce and Industry. When the Chamber proceeded with the arbitration pursuant to the reference the respondent filed a petition before the Calcutta High Court on February 19, 1966, under Section 33 of the Indian Arbitration Act, 1940. It was prayed that the extent and validity of the arbitration agreement contained in the contracts be determined and it be declared that there was no valid arbitration agreement between the parties in respect of the contracts, dated December 21, 1962 and December 9, 1963. The main point raised in the respondent's petition was that the contracts were not in accordance with the provisions of the Act or the bye-laws of the Exchange and were not in the forms prescribed and were, therefore, void and illegal. This petition was heard by A. N. Sen. J., who allowed the petition and held that the contracts were illegal and there was no valid arbitration agreement between the parties.

4. The Act provides for regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected there-with including the setting up of a Forward Markets Commission, recognition of association for the purpose of the Act, for issuing notifications for regulating or prohibiting forward contracts and option in goods, etc. Section 11 empowers a recognised association to make bye-laws for the regulation and control of forward contracts subject to previous approval of the Central Government. Sub-section (3) of Section 11 is as follows :

"(3) The bye-laws under this section may -

(a) specify the bye-laws the contravention of any of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (2) of Section 15;

(aa) specify the bye-laws the contravention of any of which shall make a forward contract entered into otherwise than in accordance with the bye-laws illegal under sub-section (3-A) of Section 15;

#(b) "##

5. Under Section 15(1) the Central Government may by notification declare the circumstances in which the forward contracts in notified goods would be void and illegal. Sub-section (2) of Section 15 provides that any forward contract in goods entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of Section 11 shall be void. Sub-section (3-A) makes any forward contract in goods entered into in pursuance of sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under clause (aa) of sub-section (3) of Section 11 illegal.

6. By means of a notification, dated March 29, 1958, the Central Government declared as follows :

"In exercise of the powers conferred by sub-section (1) of Section 15 of the Forward

Contracts (Regulation) Act, 1952 (74 of 1952), the Central Government hereby declares that the said section shall apply to jute goods (hessian cloth made of jute or bags of such hessian cloth and sacking cloth in the City of Calcutta."

Pursuant to the provisions of Section 11 of the Act the Exchange made bye-laws for trading in transferable specific delivery contracts in jute goods. These bye-laws and the forms of the contract prescribed are contained in Working Manual, Volume III. Chapter V of the bye-laws contains the general trading provisions. According to bye-laws (1)(b) all transferable specific delivery contracts shall be in writing in the prescribed forms (Appendix II for jute goods and Appendix IV for raw jute). Clause (g) of the aforesaid bye-laws (1) laid down that all transferable specific delivery contracts shall be subject to the provisions of the bye-laws. Bye-laws 15 and 17 may be reproduced :

"15. No member shall enter into a transferable specific delivery contract in raw jute and/or jute goods otherwise than on the terms and conditions prescribed under these bye-laws."

"17. Any transferable specific delivery contract entered into in raw jute and/or goods which at the date of the contract is in contravention of the provisions of any of the Bye-laws (1)(c), 13, 14, 15 and 16 of Chapter, V shall be illegal under the provisions of Section 15(3-A) of the Forward Contracts (Regulation) Act, 1952."

7. The main controversy has centred on the question whether the contracts out of which the disputes arose were in the forms set out in Appendix II in the Working Manual. It was maintained by the appellant that although the contracts out of which the disputes arose did not strictly conform to the prescribed form but they were substantially in the same terms as were contained in the form. As only substantial compliance was necessary the appellant could not be denied the benefit of bye-law contained in Chapter X of the Working Manual relating to arbitration. Bye-law (1) of that Chapter provides that arbitration of any claims and disputes whether admitted or not arising out of or in relation to all transferable specific delivery contracts in raw jute and/or jute goods between members or between members and non-members under the provisions of the bye-laws shall be referred to the Tribunal of Arbitration either of the Bengal Chamber of Commerce and Industry or of the Indian Chamber of Commerce, Calcutta, as is agreed in the contract in accordance with the rules framed by the said Chamber for the purpose of arbitration by its tribunal from time to time provided where in a T.S.D. contract the name of the Tribunal of Arbitration of either of the aforesaid two Chambers is omitted, such reference shall be made to the Tribunal of Arbitration of the Bengal Chamber of Commerce and Industry. The case of the respondent, however, was that the contracts were not in the form contained in Appendix II in the Working Manual which was the prescribed form under the bye-laws and therefore the bye-laws including the one relating to arbitration in Chapter X could not be made applicable for the purpose of referring the disputes to the Tribunal of Arbitration which in the present case, was the Bengal Chamber of Commerce and Industry, Calcutta. The High Court came to the conclusion that the contracts in question violated bye-laws (1)(b) and 15 in Chapter V of the Working Manual. The contravention of these bye-laws rendered the contracts illegal under the provisions of bye-law 17 of the same Chapter. The learned Judge noticed in particular the absence of any term in the contracts similar to clause (2) in the prescribed form in Appendix II which is as follows :

"Buyers to give clear working days' notice to place goods among side.

Now in the contracts no such term appeared that the buyers would give clear notice to place goods along, side, of the number of working days specified. It has been

contended before us on behalf of the appellant that the mere absence of this condition or term in the contract was not sufficient to take them outside the prescribed form which had only to be substantially complied with and it was not necessary that blank in each and every condition in the form should have been filled up. It has further been urged that bye-law 1(b) of Chapter V could not be regarded as mandatory requiring the details in the form in Appendix II to be completed in all cases. Even with reference to condition (2) in the prescribed form it has been submitted that if the number of days was not specified a reasonable time should have been read into that condition. In other words the buyers were to give notice to place goods along side within a reasonable time.

8. In our opinion, the High Court was right in holding at the contract in question were not in the prescribed form and thus they did not comply with the requirement of bye-law 1(b) of Chapter V. There can be no manner of doubt that that bye-laws is mandatory when read with bye-laws 15 and 17. It must be remembered that under bye-laws 15 no member shall enter into any transferable specific delivery contract otherwise than on terms and conditions prescribed under the bye-laws and under bye-law 17 if there is a contravention, inter alia of bye-laws 15 the contract shall be rendered illegal by virtue of the provisions contained in Section 15(3-A) of the Act. Section 11(3)(aa) specifically empowers the Exchange to make bye-laws the contravention of any of which shall make a forward contract entered into otherwise than in accordance with such bye-laws illegal. If, therefore, the contracts in question did not comply with the requirement of bye-law 1(b) of Chapter V they would be rendered illegal and void.

9. It is true that in the letters evidencing the contracts it was mentioned "all other terms and conditions of the East India and Hessian Exchange standard contract will be applicable", which may be taken to import conditions 1 to 7 given in the penultimate column of the prescribed form. There would still be non-compliance with condition No. 2 reproduced before. Even if it was not necessary to use the same language the number of clear working days had to be specified which was not done in the contracts in dispute. Conditions No. 2 cannot be regarded as inconsequential because it must be stipulated how many working days' notice has to be given by the buyers to place goods alongside "export vessel in the Port of Calcutta". Literal compliance with the prescribed form may not be essential but if the contract does not contain all the provisions set out before : (See the ratio of the decision in Radhakissen Gopikissen v. Balmukand Ramchandra). (60 IA 63)

10. For the reasons given above the appeals must fail and they are dismissed with costs. One hearing fee.

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