

Hakam Sing

Vs

M/s. Gammon (India) Ltd.

Civil Appeal No. 646 of 1967

(CJI J. C. Shah, S. K. Hegde JJ)

08.01.1971

JUDGMENT

SHAH, C. J. -

1. On October 5, 1960, the appellant agreed to do certain construction work for the respondent on the terms and conditions of a "written tender". Clauses 12 and 13 of the tender were :

"12. In the event of any dispute arising out of this sub-contract, the parties hereto agree that the matter shall be referred to arbitration by two Arbitrators under the Arbitration Act of 1940 and such amendments thereto as may be enacted thereafter.

13. Notwithstanding the place where the work under this contract is to be executed, it is mutually understood and agreed by and between the parties hereto that this Contract shall be deemed to have been entered into by the parties concerned in the City of Bombay and the court of law in the City of Bombay alone shall have jurisdiction to adjudicate thereon."

Disputes arose between the parties and the appellant submitted a petition to the Court of the Subordinate Judge at Varanasi for an order under Section 20 of the Indian Arbitration Act, 10 of 1940, that the agreement be filed and an order of reference be made to an Arbitrator or Arbitrators appointed by the Court to settle the dispute between the parties in respect of the construction works done by him. The respondent contended that the Civil Courts in Bombay alone had because of the terms contained in Clause 13 jurisdiction to entertain the petition. The Trial Judge rejected that contention observing that the condition in Clause 13 that "the contract shall be deemed to have been entered into by the parties concerned in the City of Bombay has no meaning unless the contract is actually entered into in the City of Bombay", and that there was no evidence to establish that it was entered into in the City of Bombay. The Trial Judge concluded that the entire cause of action had arisen at Varanasi and the parties could not by agreement confer jurisdiction on the Courts at Bombay, which they did not otherwise possess.

2. The High Court of Allahabad in exercise of its revisional jurisdiction set aside the order passed by the Subordinate Judge and declared that the Courts in Bombay had jurisdiction under the general law to entertain the petition and by virtue of the covenant in the agreement the second branch of Clause 13 was applicable and binding between the parties and since the parties had agreed that the Courts in Bombay alone had jurisdiction to adjudicate upon the contract, the petition to file the arbitration agreement could not be entertained by the Courts at Varanasi. Against the order of the High Court directing that the petition be returned for presentation to the proper Court, the appellant

has appealed to this Court with special leave.

3. Section 41 of the Arbitration Act, 1940, provides in so far as it is relevant :

"Subject to the provisions of this Act and of rules made thereunder :

(a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court and all appeals under this Act."

4. The Code of Civil Procedure in its entirety applies to proceedings under the Arbitration Act. The jurisdiction of the Courts under the Arbitration Act to entertain a proceeding for filing an award is accordingly governed by the provisions of the Code of Civil Procedure. By Clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the City of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the Courts at Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act.

5. Counsel for the appellant contended that merely because the respondent carried on business in Bombay the Courts at Bombay were not invested with jurisdiction to entertain any suit or a petition for filing an arbitration agreement. Section 20 of the Code of Civil Procedure provides :

"Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction -

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

##(b) X X X(c) the cause of action, wholly or in part, arises.X X X ##

Explanation II. - A corporation shall be deemed to carry on business at its sole or principal office in India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

Plainly by the terms of Section 20(a), read with Explanation II, the respondent Company was liable to be sued at Bombay where it had its principal place of business.

6. The argument of counsel for the appellant that the expression "corporation" in Explanation II includes only a statutory corporation and not a company registered under the Indian Companies Act is, in our judgment, without substance. The Code of Civil Procedure uses the expression "corporation" as meaning a legal person and includes a company registered under the Indian Companies Act, Order XXIX of the Code of Civil Procedure deals with suits by or against a corporation and there is nothing in the Code of Civil Procedure that a corporation referred to under Order XX means only a statutory corporation and not a company registered under the Indian Companies Act.

7. Since an application for filing an award in respect of dispute arising out of the terms of the agreement could be filed in the Courts in the City of Bombay, both because of the terms of Clause 13 of the agreement and because the respondents had their Head Office when they carry on business at Bombay, the agreement between the parties that the Courts in Bombay alone shall have jurisdiction to try the proceeding relating to arbitration was binding between them.

8. The appeal fails and is dismissed with costs.

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