

Orient Transport Co. Gulabra and Another

Vs

M/S. Jaya Bharat Credit and Investment Co. Ltd. and Another

Civil Appeal No. 2286 of 1987

(Sabyasachi Kukharji, G. L. Oza JJ)

07.09.1987

ORDER

SABYASACHI MUKHARJI, J. -

1. Special leave granted.

2. This is an appeal from the judgment and order of the High Court of Madhya Pradesh dated December 17, 1986. The appeal was filed by the plaintiff whose suit for a declaration that the eight agreements / contracts executed between it and defendant 1 M/s. Jaya Bharat Credit and Investment Company Ltd. were not 'hire purchase agreements' but were agreements relating to transaction of loan and for injunction restraining defendant 1 from enforcing them until the decision of the suit, had been dismissed on the ground that the suit was not maintainable in view of the provisions of Section 32 of the Arbitration Act, 1940 (hereinafter called 'the Act'). Section 32 of the Act stipulates that notwithstanding any law for the time being in force no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be enforced, set aside, amended, modified or in any way affected otherwise than as provided in the said Act. The execution of documents containing the alleged arbitration clause was not disputed in this case. The clause was as follows :

All disputes, differences or claims arising out of this agreement shall be settled by arbitration in accordance with the provision of the Arbitration Act, 1940 or any statutory amendments thereof and shall be referred to the sole arbitration of a person to be nominated by the owners. In the event of death, refusal, neglect, inability or incapability of the person so appointed to act as arbitrator, the owners may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all the parties concerned.

3. Various issues were framed by the trial court. The appellate court confirmed the said decision. There was a second appeal to the High Court. The High Court framed the question of law in the impugned judgment as follows :

Whether the courts below were right in holding that Section 32 of the Arbitration Act barred the suit and in dismissing the same on the ground?

It was contended before the High Court by the appellant that the so-called 'hire purchase agreements' were nothing else than agreements entered into by the plaintiff and defendant 1 with respect to transaction of loan. It was the case of the appellant that the alleged arbitration agreement

was not entered into as such in the sense though certain documents were executed, these were not properly understood as hire purchase agreements. Therefore, the main question was whether the existence of the agreement as hire purchase agreement was denied by the appellant and put in issue before the court. Specific case of the appellant was that this was a transaction of loan and there was in fact no agreement of arbitration. It appears from the perusal of the plaint as well as the issue framed that the very existence of the agreement described as hire purchase agreements was put in issue. The execution of the documents was not denied but it was alleged that these were manipulated documents, in other words fraudulent documents and it was further the case of the appellant that there were in fact no agreements which contained the arbitration agreement. The case of the appellant was that there was no document containing any valid arbitration agreement in existence. This fact was raised in the plaint and issue to that effect was raised, in other words that the appellant, plaintiff in this case had contended that the agreement described as hire purchase agreements were untrue and void and procured fraudulently. The issue framed by the learned trial judge also included this specific point. Section of the Act does not contemplate the case of suits challenging the validity of a contract because it contains an arbitration clause. If the intention of the legislature were that all documents containing an arbitration clause should come within the purview of Section 32 and 33, the legislature would have said so in appropriate words. These sections have a very limited application, namely, where the existence or validity of an arbitration agreement and not the contract containing the arbitration agreement is challenged. Every person, it has to be borne in mind has a right to bring a suit which was of a civil nature and the court had jurisdiction to try all suits of civil nature under Section 9 of the Code of Civil Procedure. That right has not been taken away by Section 32 of the Act. Such a right can only be taken away by express terms or by necessary implication. Section 32 of the Act does not have that effect. We have perused the plaint in this case; one of the issue, namely, issue 4 was "whether defendant 1 obtained disputed hire purchase agreements from the plaintiffs in pursuance of its money-lending business? " The existence of the disputed hire purchase agreements were put in issue. It was suggested that these were obtained by dubious method or that these were fraudulently procured. It is true that the execution of that document was not in issue but the existence of that document as an arbitration agreement was in issue. Section 32 and 33 of the Act on the true construction do not purport to deal with suits for declaration that there was never any contract or that contract is void. This principle is well settled. The Division Bench of the Calcutta High Court consisting of Harries, C. J. and Banerjee. J. in *State of Bombay v. Adamjee Hajee Dawood and Co* (AIR 1951 Cal 147 : 87 : CLJ 352). held that Section 32 of the Act does not contemplate the case of a suit challenging the validity of a contract merely because it contains an arbitration clause. This is the correct position in law. If that is the law then in the facts and circumstances of the case the learned trial court, the learned appellate court and the High Court were in error in this case in dismissing the suit and the appeals respectively.

4. The appeals is, therefore, allowed and the judgment and order of the High Court and the courts below are set aside. In the facts and circumstances of the case costs of the parties will be costs in the suit. The suit will now proceed as expeditiously as possible.

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