State of Orissa

Vs

Klockner and Company and Others

Civil Appeal Nos. 7386-88 with 7574-76 of 1995 with Spl. Leave Petn. (C) No. 19846 of 1995

(J.S. Verma, K. Venkataswami JJ)

16.04.1996

JUDGEMENT

K. VENKATASWAMIJI, J. :-

1.The above Civil Appeals arise out of an Order passed in Misc. No. 426/93 in T. S. 152/93 on the file of Civil Judge. Bhubaneswar dated 16-4-94 which was later upheld by the Orissa High Court by Order dated 12-5-95. Against a single Order of the learned Civil Judge, Bhubaneswar in M. C. No. 426/93, the State of Orissa filed one Miscellaneous Appeal No. 553/94 and Civil Revision Petition No. 262/94 before the Orissa High Court on the plea that there was a doubt whether an appeal or revision petition would lie against the Order of the Civil Judge in the said Miscellaneous Case. The High Court rendered its decision in Civil Revision Petition No. 262/94. However, while moving this Court, the State of Orissa not only filed two Special Leave Petitions against the common Order of the Orissa High Court in Civil Revision and Civil Miscellaneous Appeal but also preferred independent Special Leave Petition against the Order of Civil Judge. Bhubaneshwar in Miscellaneous Case No. 426/93. Likewise, the Orissa Mining Corporation (appellant in C.A. Nos. 7574-76/95 and third respondent before the High Court), has also filed three Special Leave Petitions against the common order of the High Court and of Civil Judge. After leave was granted, all these Special Leave Petitions were numbered as Civil Appeals as mentioned above.

2. Brief facts, shorn of details, necessary for the disposal of these Appeals are as under :-

> The first respondent herein, namely, Klockner & Company, entered into an agreement on 20-4-82 described as "Marketing Agreement" with Orissa Mining Corporation (hereunder referred to as "O.M.C." for short), a Government of Orissa Undertaking. We are not giving all the clauses in the agreement under consideration. The said agreement inter alia stipulated that O.M.C. will establish a plant at Bamnipal in the district of Keonjhar, Orissa, for production of "charge chrome" (hereinafter called as the "product"). It (OMC) agreed to market the said product exclusive through Klockner and Co. upon the terms and conditions contained in the said agreement to which Klockner & Co. gave acceptance. The agreement stipulated that during the currency of the agreement, O.M.C. shall not be entitled to market its product by direct contract with purchasers nor shall it be entitled to market its product through any agent or distributor other than the Klockner and Co. That during the currency of the agreement, the Klockner and Co. shall not be entitled to purchase the product from any source in India other than O.M.C. One important clause in the

agreement is that the delivery of the product shall commence by April 1985 and shall continue over a period of five years but it will not come to an end until a total quantum of 250,000 MT of the product was delivered. There is also a clause in the agreement enabling the parties to extend the period by mutual consent. According to another clause in the agreement if the agreement is terminated by mutual consent or cancelled, then notwithstanding the termination/cancellation of the agreement, the parties shall remain responsible for the fulfilment of any obligations which are outstanding at the time of termination/cancellation of the agreement. It was agreed that OMC will pay to Klockner & Co. a commission on the sale of the product effected in the territory in consideration of the services rendered by it in terms of the agreement and the commission shall be 4% of the final FOB value of the product sold. The said commission shall be payable to Klockner & Co. by way of reduction from each invoice. Another important clause for the purpose of disposal of these Appeals is Clause 15 in the agreement which relates to arbitration. It reads as follows :

"15.1. In the remote and unlikely event of there being any dispute or difference whatsoever arising between the parties out of/or relating to the construction meaning and operation or effect of this contract or the breach thereof shall be settled in the first place by amicable agreement, failing an agreement all disputes arising between OMC and Klockner within the frame work of this contract are to be referred to the International Chamber of Commerce. The place of arbitration shall be London or such other place as is mutually agreed upon. The law applicable shall be substantial Swiss Law or any other law mutually agreed upon.....".

3. Subsequent to the original agreement as mentioned above, another agreement was entered into on 16-2-87 between OMC and Orissa Mining Corporation (Alloys) Ltd. which is a wholly owned subsidiary company of OMC to implement and establish 100% export oriented unit at Bamnipal for manufacturing inter alia charge chrome in which it was stipulated that OMC has already entered into a marketing arrangement with Klocker & Co. of the Federal Republic of Germany under which OMC is to market the products of Alloys exclusively through Klockner & Co. and that Alloys products would be handled through the agency and instrumentality of the OMC on the basis of OMC agreement with Klockner & Co. and the terms and conditions of the marketing agreement between OMC and Klockner & Co. dated 20th April, 1982 will be treated as if OMC (Alloys) replaced OMC. It is not in dispute that the agreement was acted upon by the parties and pursuant to that 108.429 MT of charge chrome were delivered leaving a balanced of 141.571 MT of Charge Chrome undelivered as per the agreements.

4. In the meanwhile the Department of Company Affairs of the Govt. of India ordered merger of Orissa Mining Corporation (Alloys) with the Orissa Mining Corporation on 30-8-91.

5. Shortly after the merger as mentioned above, the Government of Orissa (Law Department) promulgated Ordinance 8 of 1991 dated 24-8-91 and the Charge-Chrome Division was taken over under the said Ordinance. The relevant clauses in the Ordinance will be referred to at the relevant place hereinafter. After the taking over as mentioned above, the Charge Chrome Division was transferred by way of sale to Tata Iron & Steel Company.

6. At this stage, the first respondent (Klockner & Co.) after unsuccessful attempts to negotiate with OMC for fulfilment of the terms of the agreement, took steps to refer the dispute for arbitration to

the International Chamber of Commerce, invoking Clause 15 in the Agreement.

7. The appellant, State of Orissa, received notice of the arbitration proceedings on 3-5-93. Thereafter the appellant filed T.S. No. 152/93 on the file of Civil Judge, Bhubneswar, seeking the following reliefs :

> "(a) Declaration declaring that the plaintiff is not the successor of Defendant No.3 and more particularly is not the successor of Defendant No.3 in the context of the claim of Defendant No.1 against Defendant No.3 before Defendant No.3 and;
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> (b) Declaration declaring that plaintiff is not liable to pay joingly with Defendant No.3 or otherwise to Defendant No. 1 U.S.$ 2.949.93842 with ten percent interest or any part thereof as claimed by Defendant No.1 in its request dated 21-4-93 for arbitration to Defendant No.2 and in its statement of claim appended thereto which request for arbitration and claim Defendant No.1 has got served on the plaintiff through Defendant No.2.
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> (c) Declaration declaring that plaintiff has got no obligation whatsoever under document dated 20-4-1982, nomenclatured as Marketing Agreement and no obligation whatsoever towards Defendant No.1 under the said document.
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> (d) Declaration declaring that the aforementioned claim of Defendant No.1 against the plaintiff and Defendant No.2 jointly is not a matter agreed either between Defendant No.1 and Defendant No.3 or between the plaintiff and Defendant No.1 or amongst plaintiff, Defendant No.1 and Defendant No.3 to be referred to arbitration under the said document dated 20-4-1982 nomenclatured as Marketing Agreement or otherwise.
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> (e) Permanent injunction injuncting Defendant No.1 from prosecuting the arbitration proceeding, (bearing reference No.7878/HV of Defendant No. 2)initiated before Defendant No.2 by Defendant No.1 in its said request for arbitration dated 21-4-93 and said statement of claim dated 21-4-93 appended thereto.
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> (f) Such other relief/reliefs as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case".

8. The request herein on coming to know of the suit filed by the appellant moved and the Miscellaneous Case No. 426/93 invoking Section 3 of Foreign Awards (Recognition & Enforcement) Act, 1961 for stay of suit.

9. The appellant stoutly resisted the application for say of the suit. However, the learned Civil Judge on the basis of the materials placed before him and also on the basis of the arguments advanced came to the conclusion that the suit should be stayed under Section 3 of the Foreign Awards Act.

10. Aggrieved by the Order of the learned Civil Judge, the appellant, State of Orissa preferred Miscellaneous Appeal as well as Revision Petition before the Orissa High Court. The learned single Judge for the reason stated in the Order under Appeal observed as follows :

> "9. Testing the case at hand on the touch stone of the principles enunciated in the decided cases discussed above, the position in manifest that the parties to the

> arbitration agreement have decided that the place of arbitration shall be London and the law applicable shall be substantive Swiss Law. My attention has not been drawn to any stipulation in the agreement nor any other material which directly or impledly shows that the intention of the parties was that Indian Law will be applicable to the Arbitration Agreement. As noted earlier, Klockner & Co. is a Company registered in the Federal Republic of Germany and the Agreement of 20-4-1982 was entered in Germany. It is not the case of the petitioner that the award which may be passed in this case is not a foreign award as defined in Section 2 of the Foreign Awards Act, but it is a domestic award. In that view of the matter there is little scope for doubt that the provisions of the Foreign Awards Act, particularly Section 3 are applicable to the case. As held by the apex Court in the case of Renusagar Power Co. (supra) stay of the suit is mandatory if the conditions specified in Section 3 are fulfilled. The averments in the plaint and the objections filed to Section 3 do not make out the case that the agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred. The trial Court has specifically held that the circumstances to prove exception under the statutory provision have not been established. At the cost of repetition, I may state that it is clear from the materials on record that the agreement was acted upon by the parties, in pursuance of it contracts were entered between OMC Ltd. and OMC Alloys Ltd. with foreign buyers and Klockner & Co. was paid its dues relating to the transactions. In the circumstances the learned trial Judge was right in holding that a case for stay of the suit under Section 3 of the Foreign Awards Act has been made out by the opposite party No.1-Defendant. The order is therefore unassailable. Thus the case being devoid of merit are dismissed".

11. Still aggrieved, the appellant, State of Orissa as well as the Orissa Mining Corporation preferred these Appeals challenging the Order of stay of suit under Section 3 of the Foreign Awards Act.

12. Mr. B. M. Patnaik, Senior Counsel appearing both for the State of Orissa as well as for Orissa Mining Corporation, though the contentions of both parties are not identical and to a certain extent conflicting, strenuously contended that the Orders of the trial Court and of the High Court, granting stay of the suit cannot be sustained in as much as the State which has filed the suit was neither a party to the agreement in question nor the State claimed the right through or under the Orissa Mining Corporation Ltd. Further, the State being not a party to the agreement is not bound by the terms and, therefore, the suit cannot be stayed. He also put forward arguments relating to the merits of the claim put forward by the first respondent Klockner & Co. in the arbitration proceedings. In support of his argument, learned senior counsel placed reliance on two decisions of this Court reported in Renusagar Power Co. Ltd. v. General Electric Company, (1984) 4 SCC 679 : (AIR 1985 SC 1156) and Svenska Handelsbanken v. M/s. Indian Charge Chrome Ltd., (1994) 2 SCC 155 : (1994 AIR SCW 1295).

13. Mr. C. S. Vaidyanathan, learned senior counsel appearing for the first respondent, Klockner & Co. answering the contentions of the learned senior counsel for the appellant submitted that it is untenable to contend that the State of Orissa has nothing to do with the agreement in question having regard to the clauses in the Ordinance under which the Government took over Charge Chrome Division from Orissa Mining Corporation and also having regard to the terms under which the charge chrome Division was handed over to Tata Iron & Steel Company. He placed reliance in particular on clauses 4, 5, 7 and 12 in the take over Ordinance. He also placed reliance on Clause 9 of the agreement between State of Orissa and Tata Iron & Steel Company to support his contention

that State of Orissa for the purposes stepped into the shoes of Orissa Mining Corporation and, therefore, the appellant cannot contend that it is not claiming through or under Orissa Mining Corporation any rights regarding Charge Chrome Division. The learned senior counsel also placed reliance on the following judgments, of this Court to sustain the Order of stay granted by the Civil Judge and confirmed by the High Court. Anakapalle Co-operative Agricultural & Industrial Society Limited v. Workmen, (1963) Suppl (1) SCR 730 : (AIR 1963 SC 1489): National Thermal Power Corporation v. Singer Company, (1992) 3 SCC 551 : (1993 AIR SCW 131).

14. We have considered the rival submissions. From the above narration, it is obvious that the main thrust of Mr. B. M. Patnaik, Sr. Counsel for the appellant is that the State of Orissa is not a successor in interest of OMC, in particular, the Charge Chrome Division of OMC, taken over by the Govt. To appreciate this argument on behalf of the appellant and the counter argument on behalf of the first respondent, it is necessary to set out certain relevant clauses in the take over Ordinance, namely, Ordinance 8 of 1991 dated 24-9-91. Clauses 4(5), 5, 6 and 7 read as follows :-

> 4(5). If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any property, which has vested in the State Government property; which has vested in the State Government under Section 3 or instituted or preferred by or against the Charge Chrome Division is pending, the same shall not abate, be discontinued or be, in any way prejudicially affected by reason by the vesting and transfer of the Charge Chrome Division of the Company but the suit, appeal or other proceeding may be continued or enforced by or against the State Government or where the Charge Chrome Division of the Company is vested under Section 6 in any other company, by or against the other company.
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> 5. Every liability of the Charge Chrome Division of the Company including dues to foreign and Indian Banks shall be the liability of the State Government on which the properties of the Charge Chrome Division has vested and shall be enforceable against the State Government or, where the Charge Chrome Division of the Company is directed to vest in any other Company, against the order company.
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> 6(1). The State Government may, if it is satisfied that any other company is willing to comply with such terms and conditions as the Government may think fit to impose, direct by notification that the Charge Chrome Division of the Company and the right, title and interest of the Charge Chrome Division of the Company which have vested with the State Government under Section 3 shall, instead of continuing to vest in the State Government, from the date of publication of the notification of such vesting, vest in the other company.
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> 6(2). Where the right, title and interest of the Charge Chrome Division of the Company is vested under sub-section (1) in any other company, the other company shall, on and from the date of such vesting, be deemed to have become the owner in relation to the Charge Chrome Division and all rights and liabilities of the State Government in relation to such Division shall, on and from the date of such vesting, be deemed to have become the right and liabilities of the other company.
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> 7. The State Government hereby takes over all the assets of the Charge Chrome Division at the depreciated written down value or book value as the case may be as on the date of transfer. The State Government also hereby takes over the liabilities of

> the Charge Chrome Division including loans of foreign and Indian Banks on the said date of transfer. The net difference between the value of the assets and the liabilities referred to above shall be settled by actual payment".

15. In this context, Clause 9 of the agreement between the State Government and Tata Iron & Steel Company, with whom the Charge Chrome Division of OMC, taken over by the Government subsequently, came to be vested is also relevant to be noted and that reads as follows :-

> "9. It is specifically, agreed between the parties that Tata Steel shall not be bound on governed by any agreement whatsoever entered into or executed by OMC Alloys Ltd., OMC Ltd., or Government, including marketing agreement in respect of the sold plant which is not agreed to be ratified by Tata Steel. Any claim, action, liability in respect of such agreement shall be discharged by Government and it shall kept Tata Steel indemnified at all time against such claims, actions, loss and liability".

16. A conjoint reading of the clauses extracted from the take over Ordinance and the agreement between the State of Orissa and Tata Iron & Steel Co. will clearly show that the State of Orissa is the successor in interest of OMC Charge Chrome Division, taken over by the Government under Ordinance 8 of 1991. In view of this clear position, it is not possible to accept the contention of the learned senior counsel for the appellant that the State of Orissa has nothing to do with the contract entered into between the Klockner & Co. and OMC in respect of which the former has initiated arbitration proceedings invoking Section 3 of Foreign Awards Act.

17. The other aspect to be considered is whether the requirements of Section 3 of the Foreign Awards Act are satisfied to justify the invocation of that provision on the facts of this case.

18. In this case, the existence of agreement dated 20-4-82 cannot be disputed by OMC or by the appellant. The first respondent (Klockner & Co.) one of the parties to be agreement has commenced arbitration proceedings against the other party is also an undisputed fact. In the light of the wide scope of Clause 15 of the agreement between the first respondent and OMC dated 20-4-82 (already extracted) relating to arbitration and in view of our finding that the State of Orissa is the successor to OMC, it is not open to the appellant to contend that the legal proceedings initiated was not in respect of any matter agreed to be referred to arbitration in the agreement. Except filing an application under Order 7, Rule 11, C.P.C. for rejection of the plaint in the suit filed by OMC, the first respondent has not taken any step in the legal proceedings and that application for rejection of the plaint cannot be construed as any step in the legal proceedings to bar the invocation of Section 3 of the Foreign Awards Act by the first respondent vide General Electric Company v. Renusagar Power Company, (1987) 4 SCC 137.

19. In the absence of any serious challenge to the commercial contract or to the arbitration agreement, it has to be found that the agreement was valid, operative and can be of being performed and that there are disputes between the parties with regard to the matters agreed to be referred to.

20. In General Electric Company's case (1987 (4) SCC 137) (supra) this Court had occasion to consider the scope of Section 3 of the Foreign Awards Act and it observed as follows :

> "It may be straightway noticed that while Section 34 of the Indian Arbitration Act vests in the Court the discretion to stay or not to stay the proceedings, Section 3 of the Foreign Awards (Recognition and Enforcement) Act vests no such discretion in

the Court. Under the Foreign Awards (Recognition and Enforcement) Act it is mandatory that the proceedings should be stayed if the conditions prescribed are fulfilled. But the application of the defendant to the Court, be it under Section 34 of the Indian Arbitration Act or Section 3 of the Foreign Awards (Recognition and Enforcement) Act, may be filed before filing a written statement or taking any other step in the proceedings. It is competent then only and not thereafter".

21. In Renusagar Power Co. Ltd. v. General Electric Co., (1994) 4 SCC 679 : (AIR 1985 SC 1156 at p. 1182), the Court held that as follows :

"On a plain reading of the section as it now stands two thinks become very clear. In the first place the section opens with a non obstinate clause giving overriding effect to the provision contained therein and making it prevail over anything to the contrary contained in the Arbitration Act, 1940 or the Code of Civil Procedure, 1908. Secondly, unlike Section 34 of the Arbitration Act which confers a discretion upon the Court; the section uses the mandatory expression "shall" and makes it obligatory upon the Court to pass the order staying the legal proceedings commenced by a party to the agreement if the conditions specified therein are fulfilled. The conditions required to be fulfilled for invoking Section 3 are :

(i) there must be an agreement to which Article II of the Convertion set forth in the Schedule applies. (It is not disputed that this is so in the instant case);

(ii) a party to that agreement must commence legal proceedings against another party thereto. (It is again not disputed that Renusagar and G.E.C. are the two parties to the arbitration agreement and that Renusagar has commenced legal proceedings against G.E.C. by filing Suit 832 of 1982);

(iii) the legal proceedings must be "in respect of any matter agreed to be referred to arbitration" in such agreement. (The question whether this condition is fulfilled here needs to be decided);

(iv) the application for stay must be made before filing the written statement or taking any other step in the legal proceedings. (Admittedly this condition is fulfilled);

(v) the Court has to be satisfied that the agreement is valid, operative capable of being performed; this relates to the satisfaction about this "existence and validity" of the arbitration agreement. (In the instant case these question do not arise);

(vi) the Court has to be satisfied that there are disputes between the parties with regard to the matters agreed to be referred; this relates to effect (scope) of the arbitration agreement touching the issue of arbitrability of the Claims.

22. We have already found that on a conjoint reading of relevant clauses in the takeover Ordinance, the agreement between the State of Orissa and Tata Iron & Steel Company and the marketing agreement dated 20-4-82, the requirements of Section 3 of Foreign Awards Act have been satisfied. We, therefore, find the test laid down by this Court in Renusagar's case (AIR 1985 SC 1156) (supra) for invoking Section 3 of the Foreign Awards Act is satisfied and the High Court was, therefore, justified in confirming the stay granted by the trial Court.

23. As observed earlier, the main thrust of the learned counsel for the appellant was to challenge the finding of the High Court that State of Orissa was the successor in interest to OMC Charge Chrome Division. The connected arguments relate to disputes or differences that arise between the parties in the arbitration proceedings concerning the construction, meaning etc. of the contract. These connected arguments need not be gone into in these proceedings and those arguments are to be addressed before the appropriate forum. Once it is found that the first respondent has established a case for invoking Section 3 of Foreign Awards Act, all other disputes will have to be addressed and settled in appropriate forum. The limited issue before us is with reference to the legality and validity of invoking Section 3 of the Foreign Awards Act which we have found in favour of the first respondent.

24. Now coming to Special Leave Petition (C) No. 19846/95, this petition is filed against the judgment and order of the High Court of Orissa at Cuttack in First Appeal No. 14/95 dated 12-5-1995. By the Order under appeal, the High Court has reversed the Order of the learned Subordinate Judge. Bhubaneswar dated 26-3-94, by which the learned Subordinate Judge accepting an application filed under Order 7, Rule 11, C.P.C. rejected the plaint in title suit No. 231/92 filed by the first respondent in Special Leave Petition. The learned single Judge of the High Court while reversing the Order of the learned Subordinate Judge observed as follows :-

> "In the present case on a fair reading of the petition filed by the defendant No.1 under Order 7, Rule 11 of C.P.C. it is clear that the case of the applicant is that the plaintiff has no cause of action to file the suit. It is not specifically pleaded by the applicant that the plaint does not disclose any cause of action. The learned trial Judge has also not recorded any specified finding to this effect. From the discussions in the order it appears that the learned trial Judge has not maintained the distinction between the plea that there was no cause of action for the suit and the plea that the plaint does not disclose a cause of action. No specific reason for ground is stated in the order in support of the finding that the plaint is to be rejected under 0.7, R.11(a). From the averments in the plaint, it is clear that the plaintiff has pleaded a cause of action for filing the suit seeking the reliefs stated in it. That is not to say that the plaintiff has cause of action to file the suit for the reliefs sought that question is to be determined on the basis of materials (other than the plaint) which may be produced by the parties at appropriate stage in the suit. For the limited purpose of determining the question whether the suit is to be wiped out under Order 7, Rule 11(1) or not the averments in the plaint are only to be looked into. The position noted above is also clear from the petition filed by defendant No. 1 under Order 7, Rule 11 in which the thrust of the case pleaded is that on the stipulation in the agreement of 20-4-82 the plaintiff is not entitled to file a suit seeking any of the reliefs stated in the plaint.
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> 10. Coming to the question whether the plaint is to be rejected under Clause (d) of Rule 11 of Order 7, the Supreme Court in the case of Orient Transport Co. (AIR 1987 SC 2289) (supra) has clearly laid down that there is a distinction between a case in which the validity, effect and existence of the arbitration agreement is challenged and suit in which the validity of the contract which contains an arbitration clause is challenged. The bar to suit under Section 32 of the Arbitration Act extends to a case where the existence, effect or validity of an arbitration agreement is challenged and not to the latter type of the suit. On this question too the learned trial Judge has failed to maintain the distinction between the two types of cases. He has failed to notice that the case pleaded by the plaintiff is that the entire agreement including the

arbitration clause is null and void and unenforceable and not that the arbitration agreement is null and void.

11. From the lower Court record in the case and also the records in a similar suit filed by the State of Orissa. Title Suit No. 152 of 1993 in which O.M.C. Ltd. is a defendant, it appears that in both the cases the defendant No.1 - Klockner & Co. filed applications under Section 3 of the Foreign Awards (Recognition and Enforcement) Act, 1961. Such application presupposes that the applicant accepts the position that the said applies to the case and the Arbitration Act, 1940 has no application to the case. Under the Foreign Awards Act, there is no specific provision for bar of suit. Further, from the averments in the application filed under Order 7, Rule 11 of C.P.C. it is clear that the main case pleaded by the applicant was that the parties had agreed that the Swiss Law will be applicable to the contract as well as the arbitration agreement and the venue of arbitration will be at London and, therefore, the Indian Law in general and the arbitration Act in particular, have no application to the case. Alternatively the applicant has pleaded that even assuming that the Indian Law of Arbitration applies to the case then the suit is barred under Section 32 of the Act. The learned trial Judge does not appear to have considered the main case pleaded by the applicant but disposed the petition on consideration of the alternative case pleaded by it. Therefore this finding against bar of the suit under Order 7, Rule 11 (d) is also vitiated.

12. On the analysis and discussions in the foregoing paragraphs, it is my considered view that the order passed by the learned trial Judge rejecting the plaint under Order 7, Rule 11 (a) and (d) of C.P.C. is unsustainable and has to be set aside. Accordingly the appeal is allowed and the order dated 26-3-1994 of the Civil Judge (Senior Division), Bhubaneswar in Misc. Case No. 75 of 1993 is set aside. There will be no order for costs of this Court". After hearing the learned counsel on both sides and after carefully perusing the relevant pleadings, we do think that the High Court has committed any error in rejecting the application of the appellant under Order 7, Rule 11. We accept the view taken by the High Court and consequently find no case for interference. In the result all the Civil Appeals are dismissed with costs and Special Leave petition is dismissed without costs. Order accordingly.