

Food Corporation of India

Vs

Evdomen Corporation

Civil Appeal No. 897 of 1999

(Sujata V. Manohar, R.C. Lahoti JJ)

17.02.1999

JUDGMENT

Sujata V. Manohar J

1. Leave granted.

2. The appellant-Food Corporation of India entered into a charter party agreement with the respondent for transport of rice from Bangkok to Paradeep Port in Orissa. The charter party was signed at Delhi where the principal office of the appellant is situated, on 30.9.1988. Under the charter party agreement cargo was brought and discharged at Paradeep Port in the State of Orissa. In respect of the cargo so discharged there were disputes and differences between the parties regarding freight and demurrage charges. Since the charter party agreement contained an arbitration clause, the parties referred the disputes to arbitration. The arbitration took place in Bombay. Arbitrators gave their award and filed it in the Bombay High Court.

3. It is contended before us by the appellant that the Bombay High Court had no jurisdiction to take the award on file or the issue any process in connection with it. The High Court in the impugned judgment, has upheld the jurisdiction of the Bombay High Court on the ground that the appellant who is in the position of a defendant, has one of its places of business at Bombay.

4. Under Section 2(c) of the Arbitration Act, 1940, "Court" means a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject matter of a suit. Under Section 31(1) of the Arbitration Act, 1940 an award may be filed in any court having jurisdiction in the matter to which the reference relates.

5. Ordinarily, the phrase "Civil Court having jurisdiction to decide" in Section 2(c) of the Arbitration Act, 1940 would refer to a court having jurisdiction under Section 20 of the Civil Procedure Code. Section 20(a) of the Civil Procedure Code 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..... (c) the cause of action wholly or in part arises." In the present case no part of the cause of action has arisen within the jurisdiction of the Bombay High Court. We have, therefore, to see whether Section 20(a) would confer jurisdiction on Bombay High Court as has been held in the impugned judgment. Section 20(a) has to be read along with the explanation to Section 20 which provides as follows :-

"_Explanation._ : 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 arisen at any place where it has also a subordinate office at such place."

In view of this Explanation the appellant under Section 20 is deemed to carry on business at its principal office in India. In respect of any cause of action which arises at a place where it has its subordinate office, the court at that place would also have jurisdiction. In view of this Explanation, the Bombay High Court would not have jurisdiction under Section 20 of the Civil Procedure Code.

6. In this connection our attention was also drawn to a decision of this Court in *Hakam Singh v. M/s Gammon (India) Ltd.*, 1971(3) SCR 314, where this Court said that the Code of Civil Procedure in its entirety applies to the proceedings under the Arbitration Act by virtue of Section 41 of the Arbitration Act. The jurisdiction of the court to entertain a proceeding in connection with arbitration including taking on file an award, is accordingly governed by the provisions of the Code of Civil Procedure.

7. However, under Section 120 of the Civil Procedure Code, Sections 16, 17 and 20 of the Civil Procedure Code do not apply to a High Court in the exercise of its original civil jurisdiction. Jurisdiction of the Bombay High Court to entertain a suit under its ordinary original civil jurisdiction is determined by Clause 12 of the Letters Patent of the Bombay High Court. Under Clause 12 of the Letters Patent a place where the defendant, or each of the defendants where there are more than one, at the commencement of the suit, carry on business would be a place where the court would have jurisdiction. Therefore, under Clause 12 of the Letters Patent of the Bombay High Court, the Bombay High Court would have jurisdiction over the subject matter of the dispute in the present case because the appellants does carry on business in Bombay.

8. In the present case the Arbitrators gave their award on 29.11.1994. The appellant received a notice from the Arbitrators of the signing of the award on 15.12.1994. Thereafter on 13.1.1995 the appellant filed Arbitration Misc. Case No. 13 of 1995 before the Civil Judge, Senior Division, Jagatsinghpur, under Section 14(2) of the Arbitration Act, 1940 for directing the Arbitrators to file the original award and all relevant records in court and to permit the appellant to file objections under Section 30 of the Arbitration Act against the said award. In the meanwhile on 1.2.1995 the award was filed in Bombay. Thereafter the appellant amended the application in Case No. 13/95 to ask for transfer of the award from Bombay to the court at Jagatsinghpur. Application being Misc. Case 13/95 was rejected by the Court at Jagatsinghpur. It directed the appellant to file its objections in Bombay. We do not know whether anything further is pending in connection with that application. The appellant did not rely upon Section 31(4) of the Arbitration Act either before the Bombay High Court or before us. The above facts were known to the appellant and were brought to the notice of the High Court. Perhaps, looking to the findings of the Civil Judge, Senior Division, Jagatsinghpur, regarding lack of jurisdiction in his court to decide claims for demurrage etc., Section 31(4) has not been pressed into service.

9. We, therefore, do not find it necessary to set aside the judgment of the Bombay High Court.

10. The appeal is, therefore, dismissed with no order as to costs.