SUPREME COURT OF INDIA

P.A. Ahammed Ibrahim

Vs.

The Food Corporation of India

(D Wadhwa and M Shah JJ.)

17.08.1999

ORDER

M.B. SHAH, J.

1. By the impugned order dated 14th July, 1998 in C.R.P. No. 494/ 87, the learned Single Judge of the High Court of Kerala by exercising jurisdiction under Section 115 of the Civil Procedure Code has granted permission to the respondent to amend the application filed on 4.4.1978 under Section 20 of the Arbitration Act, 1940 (hereinafter referred to as "the Act") for appointment of arbitrator to resolve the dispute between the parties so as to convert the same as a suit for recovery of amount claimed therein. On 30.3.1986, the respondent-Corporation filed an interim application being I.A. No. 885 of 1986 for amending the pending application under Section 20 of the Act so as to convert the same as a plaint under Order VII Rule 1 of the C.P.C for recovery of money. The application was rejected by the trial court. The High Court set aside the order passed by the trial court and allowed the same by exercising powers under Section 151 and Order VI Rule 17 of the CPC. That order is challenged by filing this appeal.

2. It is the case of the appellant that the appellant entered into an agreement with the respondent-District Manager, Food Corporation of India, Palghat, Kerala State to carry out the work of loading-unloading and transportation of foodgrains on behalf of the Corporation from 4th April, 1973 to 4th April, 1975 at or around the godowns of the respondent at Palghat under the terms and conditions embodied in the tender document. The agreement contained an option clause which gave the respondent unilateral option to extend the contract by one year. It is also admitted position that agreement contained a clause for arbitration in case of dispute; that before the expiry period of the contract, appellant informed the respondent on 16.12.1974 that he was not ready and willing to extend the period of contract beyond the original contract period which was to expire on 3rd April,

1975. On the basis of the communication, respondent-Corporation invited fresh tenders for the period commencing from 4th April, 1975.

3. Thereafter, on 3.4.1978, the appellant filed Civil Suit No. O.S.130 of 1978 before the Court of Subordinate Judge, Palghat for recovery of Rs. 2,05,921.90 from the respondent being money due on account of pending bills, security deposit etc., for the contract period 4 4.1973 to 3.4.1975.

4. As against this, respondent filed Petition (Original Suit No. 107/78) under Section 20 of the Arbitration Act, 1940 on 4.4.1978, before the Subordinate Judge, Palghat praying that (i) the agreement be filed; (ii) an arbitrator be appointed and directed to proceed to adjudge the dispute in accordance with law and (iii) for a direction for costs and such further relief. The respondent-Corporation also filed an application being Interlocutory Application No. 1406 of 1978 under Section 34 of the Arbitration Act in Civil Suit No. 130 of 1978 for stay of further proceedings and for referring the dispute to the arbitrator. The trial court dismissed the said application as not maintainable inasmuch as the application failed to disclose any dispute or difference between the parties which would come within the arbitration agreement. Against that order, the respondent-Corporation preferred an appeal to the High Court of Kerala being M.F.A No. 661 of 1980. By order dated 1.8.1985 the Division Bench of the High Court dismissed the said appeal by holding that the trial court has rightly exercised its jurisdiction in declining to stay the suit under Section 34 of the Arbitration Act.

5. Subsequently on 13th March, 1986, the respondent filed an application for amendment of the pending application under Section 20 of the Arbitration Act for converting it as a suit and praying for recovery of a sum of Rs. 1,74,067.08 from the appellant. The Principal Sub Judge, Palghat dismissed the said application inter alia by holding that the dispute for appointment of Arbitrator was now sought to be changed into a suit for recovery of amount which could not be allowed as it would change the nature and character of suit and also on the ground that the claim of the respondent was barred by the period of limitation as the alleged debt claimed by the respondent became due on 3rd April, 1976.

6. Against that order the respondent preferred Revision Application which was allowed by the learned Single Judge by giving reasons, in his own words thus-Jurisprudentially speaking an arbitrator is only a delegate of judicial powers which essentially are the property of the State. In short the courts are repositories of judicial powers, subject to the divesting of the power by the State, the proprietor of this power. Here comes the relevance of the law of arbitration which is mainly procedural in content. In short it is not only the privilege of the Court but it is duty also "to come to the assistance of the parties by the removal of the impasse and the extrication of their rights". Learned Judge thereafter held that the suit No. O.S. 107 of 1978 instituted by respondent contains all particulars that should contain in a regular suit, whether the suit is one under Section 20 or regular suit, the cause of action will be same, the difference between the suit filed under Section 20 and regular suit is only in regard to the reliefs prayed for, the suit under Section 20 is in the nature of a regular suit; the amendment shall not cause prejudice to other side which cannot be compensated in terms of cost; it cannot also be said that by allowing the amendment, the plaintiff is allowed to agitate a cause barred by limitation. The learned Judge also resorted to inherent jurisdiction under Section 151 C.P.C. and held that in the interest of justice, amendment requires to be allowed.

7. Reading the order as above, it is apparent that the learned Judge has not verified the provisions of

Section 20 of the Arbitration Act. Sub-section (2) no doubt provides that the said application shall be in writing and shall be numbered and registered as a suit, but at the same time, it cannot be stated as a plaint filed under the CPC. The language of Sub-section (1) is clear which provides that in case of arbitration agreement "before the institution of any suit with respect to the subject matter of the agreement or any part thereof...", any persons may apply to a Court having jurisdiction in the matter to which the agreement relates, that agreement be filed in Court. This would clearly mean that it is a stage prior to the institution of the suit and is not a suit. Under the said Section after notice is given to the other party and if no sufficient cause is shown, the Court shall order that agreement be filed in the Court and refer the matter for arbitration to the arbitrator to be appointed by the parties or to an arbitrator appointed by the Court. The procedure for deciding the said application is different from deciding the suit. Final order which is required to be passed in the said application is either to refer the matter to the arbitrator or to reject the same and there is no question of passing any decree in favour of the applicant. Section 20 nowhere provides that application filed for referring the dispute to the arbitrator is to be treated as a plaint as contemplated under C.P.C. Hence, it cannot be considered to be a plaint.

8. Further, before applying provisions of Order VI Rule 17, there must be institution of the suit. Any application filed under provisions of different statutes cannot be treated as a suit or plaint unless otherwise provided in the said Act. In any case, the amendment would introduce totally new cause of action and change the nature of suit. It would also introduce a totally different case which is inconsistent with the prayer made in the application for referring the dispute to the arbitrator. Prima facie, such amendment would cause serious prejudice to the contention of the appellant that the claim of the respondent to recover the alleged amount was barred by the period of limitation as it was pointed out that cause of action for recovery of the said amount arose in the year 1975 and the amendment application was filed on 30.3.1986. Lastly, it is to be stated that in such cases, there is no question of invoking inherent jurisdiction of the Court under Section 151 of the C.P.C. as it would nullify the procedure prescribed under the Code.

9. In the view of the matter, the appeal is allowed with costs. The impugned order passed by the High Court of Kerala in C.R.P. No. 494/87 is quashed and set aside and the order passed by the trial court is restored.