SUPREME COURT OF INDIA

Coats Viyella India Ltd.

Vs.

India Cement Ltd.

(B.N. Kirpal and M.B. Shah JJ.)

10.02.2000

ORDER

B.N. KIRPAL, J.

1. The appellant herein is aggrieved by the decision of the High Court which had partly allowed the appeal filed by the respondent against the decree of the trial court which was in favour of the appellant.

2. The facts which unfold from the pleadings and the evidence which were led before the trial court are that the respondent No. 1 is a manufacturer of cement. It had entered into an agreement with the State Trading Corporation (hereinafter referred to as 'the STC') to supply 1,20,000 tonnes of cement which the STC was to export to Iran. The said respondent agreed to act on behalf of STC to arrange for the actual loading and shipping of the cement from the port of Tuticorin.

3. Pursuant to this agreement between the respondent No. 1 and STC, the appellant herein by agreement dated 5.12.1974 was appointed by the said respondent as the forwarding and handling agent. Clause 1(d) of the agreement stipulated the rate of loading. Clause 7 specifies the handling and another charges which were payable by the said respondent to the appellant. Clause 14 with which we are concerned in this appeal related to the preparation of lay time statement and the said clause reads as follows:

14. Immediately after the sailing of the vessel you should send us lay time statement prepared together with all certificates for stoppage of work etc. to enable us to take with agents/owners for settlement.

You will endeavour to furnish us the lay time calculations etc. in about 3 weeks' time from the date of sailing of each vessel and we would make efforts to have the claim settled by the ship owners in about 3 months from the date.

4. It was the case of the appellant that the said respondent had stipulated the quantum of cement to be loaded per day. If the required speed was not maintained then the said respondent was entitled to claim demurrage from the appellant. On the other hand, if the loading was done in the quicker time then the amount of time saved would be calculated and the appellant would get despatch money for the time so saved. It was in this connection that aforesaid Clause 14 required the preparation of lay time statements. It appears that the said respondent, in turn, was entitled to reimbursement of the

amounts payable to the appellant and on the receipt of the lay time statements, contemplated by Clause 14 the said respondent would make a claim from the owners of the vessels or their agents. From the very nature of things the statements were to be furnished only after the date of sailing of each vessel. Clause 14 contemplated that these statements would be furnished within three weeks of the date of sailing and the respondent No. 1 would make efforts to have their claim settled by the ship owners in about three months' time from that date.

5. It seems that on the basis of this lay time statement so prepared the appellant made a claim for Rs. 3,06,665.53 as being payable to the appellant in terms of the said agreement dated 5.12.1974. In the plaint it was inter alia stated the respondent No. 1 had wanted three months' time to pay the despatch money on its acceptance of the lay time calculations and this was reflected in Clause 14 of the agreement wherein it is mentioned that the said respondent would endeavour to have, the claim settled with the vessel owner in about three months' time from the date of the receipt of the lay time calculations.

6. The case of the respondent No. 1 was that it was the liability of the ship owner to make payment to the appellant and it is for this reason Clause 14 contemplated, the furnishing of the lay time statements by the appellant to the said respondent who in turn was to realise money from the vessel owner and then pay the same to the appellant. It was also contended that necessary parties had not been impleaded as defendants and it was obligatory on the part of the appellant to implead the ship owners who alone were held to be liable to pay despatch money.

7. On the basis of the pleadings the trial court framed the following issues:

1. Whether the plaintiff is entitled to the plaint amount?

2. Whether the 1 st defendant is only an agent for ship owners and hence not liable for the plaint amount?

3. Whether the suit is bad for non-joinder or necessary parties?

4. Whether the suit is not maintainable against the 1st defendant on the alleged want of privity of contract?

5. Whether the 1 st defendant is estopped from denying its liability for the suit claim regarding the handling of ships at New Port of Tuticorin?

6. Whether any interest is payable for despatch money as claimed by plaintiff?

7. Whether the claim is barred by limitation?

8. To what relief, if any, the plaintiff is entitled?

8. After the evidence, both oral and documentary, were led the trial court answered the issues in favour of the appellant and decreed the suit as prayed for. As a result thereof the respondent No. 1 became liable to pay to the appellant a sum of Rs. 72,670/- and subsequent interest in the manner indicated in the decree.

9. The respondent No. 1 then filed an appeal to the High Court. The High Court came to the conclusion that the aforesaid Clause 14 of the agreement did not make the said respondent liable to pay despatch money to the appellant herein. The said clause, it was held, contemplated the appellant sending the lay time statement which was then to be sent by the said respondent to the vessel owners for settlement. There was no direct liability of the said respondent herein. The High Court took note of the fact that dispute with regard to the amount of despatch money payable had been settled between the STC, the foreign buyers and the said respondent and as a result thereof some money was received by the said respondent and the appellant's share in respect thereof came to Rs. 82,669.37 with interest thereon at the rate of 16 per cent per annum up to the date of decree and thereafter future interest at the rate of 6 per cent. Hence this appeal by special leave.

10. We have heard learned Counsel for the parties. From the facts enumerated hereinabove it is quite clear that as far as the appellant is concerned it had privity of contract only with the said respondent. The said agreement contemplated a sort of bonus being paid to the appellant in case of quicker or speedy loading of the ship by the appellant of the cement supplied by the said respondent. At the same time, the said agreement also contemplated that appellant would be liable to pay demurrage to the said respondent in case the required rate of loading as contemplated by the agreement was not maintained. The agreement dated 5.12.1974 was only between the appellant and the respondent No. 1 and the charges referred to in Clause 7 of the agreement relating to handling charges for cement, stevedoring rates etc. were admittedly payable to the appellant by the respondent alone. Clause 14 of the said agreement contemplated that on the basis of the lay time statements which are prepared, the respondent No. 1 was to make claim on the ship owners presumably in respect of the handling and other charges. This claim by the said respondent on the owners of the vessels or their agents could only have been made as a result or consequence of an agreement between the said respondent and the STC or the owners/agents of the vessels for the simple reason that neither STC nor the said owners/agents were parties to the agreement dated 5.12.1974. Clause 14 in that sense indicated that what was payable to the appellant would be reimbursed to the said respondent. But we cannot read this agreement as a whole to mean that there was any liability of the ship owners or the STC to make any payment to the appellant. The agreement dated 5.12.1974 was a principal to principal contract between the appellant and the said respondent. The rights and liabilities of the appellant arise only under this agreement and they could make no claim on the other party on the basis of the lay time statements nor could, for that matter, the STC or the owner of the ship raise a claim on the appellant for demurrage in the event of slow handling of the cargo. The decision of the High Court which has taken a contrary view is not correct.

11. In its judgment the High Court has indicated that it is not deciding other contentions which had been raised before it. We, however, find that for the view which we have taken no other contention really survives. The issues were correctly decided by the trial court in favour of the appellant. Neither the ship owners nor anyone else was a necessary party to the suit. The rate of interest which has been awarded by the trial court has been upheld by the High Court and, therefore, the question of remanding the case to the High Court does not arise.

12. For the aforesaid reasons, this appeal is allowed, judgment of the High Court dated 6.10.1988 in Appeal No. 690/ 1982 is set aside and the decree dated 16.12.1981 passed by the Addl. Subordinate Judge, Tuticorin is restored. The appellant would be entitled to costs.