CALCUTTA HIGH COURT

Ghewarchand Rampuria

Vs.

Shiva Jute Bailing Ltd

Civil Rule No. 661 of 1919

(R.P. Mookerjee and K.C. Chunder, JJ.)

18.11.1949

JUDGMENT

R.P. Mookherjee, J.

1. This is an application in revision against an order of the learned Judge, Presidency Small Cause Court, Calcutta, staying a suit under Section 34, Arbitration Act.

2. The plaintiff's case as made in the plaint is that the defendant company had entered into a contract with the plaintiff on 28th February 1946, for the purchase of a certain quantity of jute at Rs. 16-14-0 per maund. Against the said contract the plaintiff had delivered some quantity of jute out of which the defendant company had rejected 28 bales on 14th May 1946 and called upon the plaintiff to remove the same from the defendant's custody. After the receipt of the aforesaid letter, the plaintiff repeatedly attempted to obtain delivery of the said 28 bales of jute but on some pretext or other the bales were not delivered. Ultimately, on 29th October 1946, the plaintiff wrote to the defendant company again requesting it to return the said bales. The defendant company had not delivered the bales. The plaintiff accordingly filed the present suit to recover from the defendant company the value of the said bales at the market rate of Rs. 34 per maund as ruling on or about 30th October 1946, when the defendant refused to deliver "as damages for wrongful conversion of the goods as per bill submitted to them." Before filing the written statement, the defendant made an application under Section 34, Arbitration Act, and relied upon the following provision as contained in the contract between the parties :

> "Any dispute whatsoever arising out of or in any way relating to this contract or to its construction or fulfillment or payment between the parties hereto and whether arising before or after the date of expiration of this contract will be referred to the arbitration of two persons, one to be appointed by each party."

Before the learned Judge, it was contended on behalf of the plaintiff that the present claim was neither one arising out of or in any way relating to the contract but the learned Judge held that the dispute which gave rise to the suit was one entirely relating to the contract in which the arbitration clause appears. In this view, he allowed the defendant's prayer and stayed the suit sine die. It is against this order that the present rule has been obtained.

3. On behalf of the defendant opposite party, it is contended that the order passed by the learned Judge is in the exercise of a discretion allowed under Section 34, Arbitration Act, and this Court ought not to interfere in the exercise of that discretion by the Court below. No doubt the making of an order staying proceedings is a matter largely in the discretion of the Court, but when a strong case is made not only has the Court of appeal or the Court sitting in revision jurisdiction to interfere but ought to do so. In the present case, only if it can be shown, as is contended by the plaintiff, that the dispute is not one which arises out of or is in any way related to the contract then it must be held that the learned Judge had no jurisdiction to stay the suit under Section 34, Arbitration Act. It is therefore necessary to ascertain whether the arbitration clause is really attracted on the pleadings of the present case.

4. If we examine the facts of the present case, it will appear that when the quantity of jute was delivered, by the plaintiff to the defendant that act was in the performance of the terms of the contract. The rejection of a portion of the quantity so delivered as not being of the required quality was also without doubt in relation to the contract itself. After the plaintiff had been requested to take delivery of the rejected jute, that quantity of jute from that moment belonged to the plaintiff and the defendant had no right whatever to retain possession of that quantity of jute. If the defendant does not deliver the jute which he was bound to do after the jute had been rejected, the cause of action which arises is not based upon any provision in the contract at all but on the alleged act of the defendant in retaining possession of goods which the defendant had not right to do.

5. The cause of action as laid in the plaint is stated to have arisen on 29th October 1946 when the defendant is alleged to have wrongfully refused to return the said bales. The cause of action is not laid on the rejection of the jute fair less on the delivery which had been effected previously under the contract itself. No provisions contained in the contract are required to be interpreted or even referred to and the Court is not required, on the plaint as filed, to consider any of the terms contained in the contract.

6. An action is not to be considered to be in relation to and in connection with a contract merely because it is shown that if there had never been any contract there would not have been any cause of action,, there, would never have been any wrongful refusal of returning the bales had not there been an earlier rejection of the bales under the contract. Vide observations by Pickford L. J. in *Monroe v. Bognor Urban District Council*[1], relied upon by this Court, in *Johurmull Parasram v. Louis Drefus and Co. Ltd*[2], What the Court is to look into is what the substance of the plaint is but not how the claim is framed. If the cause of action on which the claim is based is an

independent one which does not arise on the contract or is in relation to the contract, it is idle to suggest that merely because at some earlier stage there was a contract and, not giving the history of the case, some reference has to be, made to a previous contract, it cannot be said in every such case that it is in some way or other related to the contract. Reliance however was placed by the learned advocate on behalf of the opposite party on *Woolf v. Collis Removal Service*[3], As observed by Lord Asquith, the breach in this particular case on which the cause of action was based was principally one of neglect in the performance of the contract itself. Under the contract, a party was bound to take due care of the different items of furniture and if

[1](1915) 3 K. B. 167: (84 L. J. K. B. 1091)
[2]52 C. W. N. 137: (AIR 1949 Cal 179)
[3](1948) 1 K.B. 11

such articles had been removed to an undesirable place and no proper care had been taken during the period the goods were so stored there, it is the failure of the party to take due care of those articles which they were bound to do under the contract. In this view of the reading of the contract, the Court of appeal came to the conclusion that even though the suit was technically framed in tort there is a sufficiently close connection between the claim as made and the transaction as under the contract to bring the claim within the arbitration clause. It was further observed that claims which were entirely unrelated to the transaction covered by the contract would no doubt be excluded. The claim in that case was held to be one which came within the arbitration clause as having arisen though not directly but at least indirectly under the contract.

7. Whether in a case the dispute arises out of the contract or is in relation to the contract or not must depend on the particular facts of each case. The facts of the case now before us however do not make it possible to attract the special reasons given by the Court of appeal in *Woolf v. Collis Removal Service, (1948-1 K. B. 11)* (supra). The cause of action in this case is based wholly upon tort and tort alone which has got no connection direct or indirect with the contract itself. As indicated already, the reference to the contract is only a link in the story to show how the goods came to be in the possession of the defendants and the claim is not based in any way or related to the contract itself.

8. This rule is accordingly made absolute with costs and the order for stay as directed by the Judge must be vacated.

9. Let the records be sent down so that the proceedings may continue according to law.

Chunder, J.

10. I agree.

Rule made absolute.