
(1936) 09 CAL CK 0007
In the Calcutta High Court

Brindaban Chandra Dutt and Co.

APPELLANT

Vs

Bissesswarlal

RESPONDENT

Date of Decision : 25-09-1936

Acts Referred:

Arbitration Act, 1940 — Section 19

Citation : AIR 1938 Cal 10

Hon'ble Judges : R.C. Mitter, J

Bench : Division Bench

Judgement

R.C. Mitter, J.—This is an application by Messrs. Brindaban Chandra Dutt & Co. u/s 19, Arbitration Act, for stay of the aforesaid suit which has been instituted on 6th July 1936 by the opposite party, Bissesswarlal, on his own behalf and as karta of a joint family against the applicant. In the said suit, Bissesswarlal claims damages for breach of contract. The contract is contained in indent No. 0460 dated 20th February 1936 by which the opposite party agreed to buy from the applicant waterproof rain coat cloth described in three items. According to the applicant, he offered delivery of the goods described in item 3, but the opposite party refused to accept delivery on the pretext that they were not of the quality contracted for. The rest of the articles were not tendered to the opposite party. The plaint proceeds on the footing that the articles which were tendered for delivery by the applicant was not of the contract quality and that the defendant failed to deliver the rest. There is a provision in the said indent for arbitration. It runs thus:

Clause 6.-If any dispute arises with regard to this indent or to relative goods, it shall be optional to you (seller) to release me/us from the contract and take the goods back or to refer the dispute in respect of Japanese goods to the arbitration of Japanese Commercial Museum and in respect of other goods to the arbitration of the Bengal Chamber of Commerce or to two mer-chants, one to be nominated by each party, and I/we agree to accept the decision of the arbitration as final.

2. Although there is nothing specific in the said indent, it is clear from the

correspondence that the goods contracted for are of Japanese make. On the receipt of the invoice (No. 3395 dated 22nd April 1936) in respect of three cases, the applicant presented the same to the opposite party. The goods covered by the said invoice had not arrived then. The plaintiff refused to accept the same, taking up the position that the said invoice did not relate to the goods contracted for by him. An invoice relating to five other cases was also presented, but the same objection was taken. After the arrival of the goods, the applicant on 22nd May 1936 wrote a letter to the opposite party indicating his intention to refer the matter to the arbitration of the Japanese Commercial Museum. That letter was replied to on 26th May 1936. The opposite party maintained that there was no organization as "Japanese Commercial Museum", and offered to refer the dispute to the arbitration of two merchants of the City. The applicant in reply pointed out that "Japanese Commercial Museum" is an abbreviation of the Indo-Japanese Commercial Museum which was located at No. 135, Canning Street. On the materials on the record, especially the letter of the President of the Indo-Japanese Commercial Museum dated 28th May 1936 I have no doubt that by clause 6 of the contract, that body was meant, and by the said clause the parties agreed to the arbitration by that body. I am also of opinion that H.K. Dutt who is connected with the Indo-Japanese Museum is not a relation of Maniklal Dutt, the sole proprietor of Brindaban Dutt & Co. This disposes of one of the three points raised by Mr. Chatterjee, counsel for the opposite party.

3. Mr. Chatterjee raises two other points, namely (i) that cl. 6 of the contract does not amount to a "submission" within the meaning of the Arbitration Act, and (ii) that the scope of the suit instituted by his client is wider than the scope of the submission. I do not see any point in the second contention. The words "with regard to this indent or to relative goods" occurring in clause 6, in my judgment, are sufficiently comprehensive to cover the subject matter of the suit. The case of non-delivery would be included therein. If any authority is needed, the case in *Ghamandi Lal Narayan Dass v. Churanjilal Pokhar Mal* AIR 1923 Lah 453 is such an authority. I cannot also accept the first contention of Mr. Chatterjee. The applicant had under Clause 6 the option of either releasing the opposite party from the contract or to proceed by way of arbitration if there was any dispute. When he elected not to release the opposite party from the contract, he was bound to refer the matter in dispute to arbitration. The opposite party had agreed to refer disputes covered by Clause 6 to arbitration. The contract binds him. That clause fulfils the definition of "submission" as given in the Arbitration Act. The test is in my opinion whether both parties are bound by that clause and not whether a right has also been expressly given to the opposite party to initiate arbitration proceedings. The case cited by Mr. Chatterjee, namely *Marittima Italiana Steamship Company Vs. Burjor Framroze Rustomji Joshi*, -the passage is at page 281-has no application to this case. I accordingly grant the application made before me by Brindaban Chandra Dutt & Co. The result is that the opposite party's suit and all proceedings thereunder are stayed. The applicant must have the costs of this application from the opposite party.