
(1996) 07 MAD CK 0022
In the Madras High Court
Case No : O.S.A. No. 141 of 1996

Fraser and Ross Associates, Chartered Accounts and Others	APPELLANT
Vs	
P.S. Swaminathan	RESPONDENT

Date of Decision : 13-07-1996

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : (1997) 1 CTC 436 : (1998) 1 LW 783

Hon'ble Judges : Subramani, J;Srinivasan, J

Bench : Division Bench

Advocate : V.S. Subramaniam, for P.P.S. Janarathana Raja, for the Appellant; R. Gandhi, for R.G. Narendran, K. Banumathy and V. Manohar, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—This appeal is against an order passed by the learned Judge of this Court u/s 20 of the Arbitration Act appointing arbitrators

for deciding the disputes raised by the plaintiff as set out in the plaint. The defendants in the suit have preferred this appeal, according to learned

counsel for the appellants, the affidavit filed in support of the application, which is really registered as a suit, according to the practice in this Court,

does not disclose what exactly is the dispute between the parties. He has taken us through the relevant paragraphs in the affidavit and contended

that the affidavit has not set out the disputes between the parties.

2. He has invited our attention to several judgments of the other High Courts and also an observation made by the Supreme Court and contended

that setting out the dispute clearly in the affidavit filed in support of an application u/s 20 of the Arbitration Act is absolutely essential.

3. The learned Judge has, after extracting portions of paragraphs 6, 7 and 13 of

the plaintiff, observed that the said extracts clearly show the existence of the disputes between the parties and they relate to the furnishing of the balance sheet and the accounts. The learned Judge has also said that the correctness of those accounts is the subject matter of the dispute as the plaintiff contends that the accounts maintained by the defendants are not true and correct. There exists a dispute. The learned Judge has also pointed out that there is a dispute regarding the remuneration due to the plaintiff for the period prior to 1993. After referring to the various rulings cited by learned counsel for the defendants, the learned Judge has observed that the proposition that the disputes must exist before any arbitration can be sought is eciomatic and in this case the pleadings do disclose the existence of dispute. Consequently, the learned Judge has appointed two arbitrators for deciding the dispute between the parties.

4. It is not necessary for us to repeat the extracts from separations of the plaintiff, which the learned Judge has quoted in his judgment. It is sufficient if we express our agreement with the learned Judge that those paragraphs themselves do disclose the existence of disputes between the parties. A reading of the entire affidavit filed in support of the application will show clearly that there are disputes between the parties which have to be determined by arbitrators in view of the specific arbitration clause found in the partnership agreement. The learned Judge has extracted Clause 18 of the partnership agreement, which is the relevant clause. A perusal of the clause show that all dispute and questions whatsoever which arise between the partners will have to be referred to arbitration. We must point out that there is no dispute whatever before us and on the other hand there is an express concession by learned counsel for the appellants that if there is a dispute, it shall be decided only by arbitration. According to him, in this case, no dispute has been set out in the pleading. It is not the case of the appellants that there is no dispute at all between the parties.

But the contention is that it is not disclosed in the plaintiff filed by the respondent.

5. We are unable to accept the contention of the appellants. A perusal of the affidavit filed as plaintiff and a perusal of the counter filed by the appellants will show that there do exist disputes between the parties, who are partners and necessarily they have to be decided only by arbitration.

6. We shall now advert to the various rulings referred to by learned counsel for the appellants. In *Rai Bahadur Basakha Singh and Sons*

(Contractors) Pvt. Ltd. Vs. *Indian Drugs and Pharmaceutical Ltd.*, a learned single Judge of that Court held that the petition u/s 20 of the

Arbitration Act had not disclosed the disputes which were to be referred to an arbitrator and in the absence of specific pleadings, no arbitrator

could be appointed. It is seen that on the facts of the case the learned Judge came to that conclusion and on a reading of the pleadings, the learned

Judge held that there was nothing in the pleadings to disclose any existing dispute between the parties. The ruling cannot have bearing in the present

case.

7. In *B.L. Graver v. Union of India*, AIR 1980 Delhi 45, the same learned Judge held that in order to attract the provisions of Section 20 of the

Arbitration Act, the following conditions are necessary:-

(i) That the arbitration agreement must have been entered into before the institution of any suit, with respect to the subject matter of the agreement

or any part of it.

(ii) That a difference has arisen to which the agreement applies, and it is sought to be referred, and

(iii) That proceedings under Chapter II of the Act have not been started, i.e. arbitrator has not been appointed without interventions of the Court

for adjudication of such disputes.

In this case there is no dispute that conditions (i) and (iii) are satisfied. As regards condition No. (ii), we are satisfied that the pleadings do disclose

that a difference has arisen between the parties and the said difference is covered by the arbitration clause in the partnership agreement. Hence, the

ruling will not help the appellants.

8. In *Villayathi Ram v. Union of India*, AIR 1981 Delhi 313, a learned Single Judge of the Delhi High Court held that Section 20(1) of the

Arbitration Act requires that when differences have arisen between the parties to the agreement, then the same may be subject matter of a petition

u/s 20 and the Court has to determine whether the differences arising between the parties are covered by the agreement. No exception can be

taken to the proposition as such. The proposition will not help the appellants in this case.

9. In *Lohia Jute Press P. Ltd. and Others Vs. The New India Assurance Co. Ltd. and Others*, a Division Bench of that court found factually that

there was no dispute existing between the parties when the arbitrator was appointed. On that basis, they held that the entire arbitration proceedings were incompetent and the *ex parte* award passed by the arbitrator was liable to be set aside. The ruling has no bearing in this case.

10. In *Inder Singh v. Delhi Development Authority* AIR 1988 SC 107, the Supreme Court observed.

The existence of dispute is essential for appointment of an arbitrator u/s 8 or a reference u/s 20 of the Act. See *Law of Arbitration* by R.S.

Lachwat, 1st Edition, page 345. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the

other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive

element assertion in denying not merely inaction to accede to a claim or a request. When in a particular case a dispute has arisen or not has to be

found out from the facts and circumstances of the case.

11. As pointed out by the Supreme Court, the question as to whether a dispute has arisen, has to be found out from the facts and circumstances of

the case. In this case we are of the opinion that disputes have arisen between the parties and they do require to be decided by arbitration.

12. Learned Counsel for the appellants placed reliance on the judgment of the Delhi High Court *Mukand Iron and Steel Works Ltd. v. Union of*

India, 1989 (2) A LR 306. It is seen that the petitioner in that case had not placed a copy of the contract on record. The respondents raised a plea

that the claim made by the petitioner did not arise out of the contract in question and it did not relate to the contract in any manner. The Court

pointed out that without even producing the contract, the plaintiff in that case could not be held to have proved that a particular dispute existed and

it arose out of the contract. While doing so, the court observed:-

From these averments it cannot be understood if the case of the petitioner is that these cranes were supplied over and above which had to be

supplied by the petitioner in terms of the contract and for that reason the petitioner is seeking compensation or that the possession of these cranes

by the respondent was for any period over and above the one to which the

respondent was entitled as per the terms of the contract. The averments in question are cryptic and unintelligible. In any case the burden of the issue was on the petitioner which the petitioner has failed to discharge. The issue is accordingly held against the petitioner.

13. Learned counsel placed reliance on the sentence in the above passage which reads. ""The averments in question are cryptic and unintelligible.

According to learned counsel, the affidavit in the present case filed in support of the application are also cryptic and unintelligible and they do not

specify the dispute which are said to have arisen between the parties. We are unable to accept this contention. We have already pointed out that

the averments in the affidavit are sufficient to show that certain disputes do exist between the parties and we are also able to understand there from

what exactly and the disputes between the Parties.

14. In such circumstances, there is no merit whatever in this appeal and it is dismissed. There will be no order as to costs.