
(1950) 09 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 46-C of 1950

Gokal Chand Gian Chand

APPELLANT

Vs

Ishar Dass Durga Dass

RESPONDENT

Date of Decision : 26-09-1950

Acts Referred:

Arbitration Act, 1940 — Section 33
Civil Procedure Code, 1908 (CPC) — Section 109

Citation : (1950) 09 P&H CK 0015

Hon'ble Judges : Khosla, J;Kapur, J

Bench : Division Bench

Advocate : Bhagirath Das, for the Appellant; A.N. Grover, for the Respondent

Judgement

Kapur, J.—This order will dispose of two petns. for leave to appeal to the S.C. filed by M/s. Gokal Chand-Gian Chand against two parties and directed against two orders of this Ct.

2. The facts are given in our order dated 28.12.1949. It may perhaps be necessary briefly to state them here again. On 16-1-1947 the resps. entered into a contract with M/s. Gokal Chand-Gian Chand of Amritsar for the purchase of some goods. There was in this contract a clause providing for arbitration in the following terms:

Any dispute or claim of whatever nature relating to or arising out of this contract, shall be referred to arbitration of two European merchants engaged in the piece goods trade at Karachi, one to be appointed by each party and in accordance with the provisions of the Arbitration Act X [10] of 1940.

In pursuance of this agreement, M/s. Gokal Chand-Gian Chand served a notice on the resp. on various dates informing them that as a breach of contract had occurred because of their default, they, the petnrs. had appointed an arbitrator in Karachi and called upon the buyers to nominate their arbitrator. The resps on 26-10-1948 filed an appln. u/s 33, Arbitration Act praying that the arbitration

agreement should be declared ineffectual and unenforceable and be set aside and that the resps. be ordered to refrain from acting thereon or be restrained from acting on arbitration proceedings. Their plea, in other words was that there was an implied agreement in the contract that the arbitration will only be carried out if the same circumstances as existed at the date of the contract continued to exist at the date of the arbitration, and as Karachi had now become part of Pakistan Dominion the contract with regard to arbitration had been frustrated. The original petnrs. failed in the Subordinate Judge's Ct., but in this Ct. it was held that there was such an implied condition. It is against this order that the firm Gokal Chand-Gian Chand have asked for leave to appeal to the S.C.

3. Several objections were taken to the grant of such leave by Mr. Mahajan on behalf of M/s Ishar Das Durga Das and by Mr. Grover on behalf of M/s. Rama Nand-Vijay Parkash. It was submitted that the present case was one for leave to appeal to the S.C. under u/s 109(c) Civil P.C. leave should be given sparingly under that section Reliance was placed on several cases which have discussed in *Batala Engineering Co. Ltd. v. Custodian of Evacuee Property* Civil Mis No. 21-C of 1950 and for reasons given there I agree with this contention.

4. The second contention was that a matter must be of importance to both parties. This also I have discussed in the other case mentioned above and I need not repeat what I have said there

5. The nest contention was that the order under appeal does not prejudice the rights either of the parties, and reliance was again placed on *Govind Das v. Indraw?ti* ILR 1940 ALL. 17 and on *Binoy Krishna v. Satish Chandra* 31 C.W.N. 540 at p. 549, and also on *Mahomad Musaji v. Ahmed Musaji* 10 I.C. 439 (cal(sic) The contention raised was that as a result of a order of this Court all that has happened that instead of the matter being decided by some arbitrator in Karachi the matter will now decided by the Ct. in Amritsar, and this contention of Mr. Mahajan seems to be right that the order of this Ct. does not in any manner prejudice the right of M/s. Gokal Chand- Gian Chand to recover on the contract. Reliance was further sought to be placed on *Annamalai Chettiar Vs. S. Rm. Ar. Ramanathan Chettiar and Others*, and on *Annamal Chettiar v. Ramanathan Chettiar* AIR 1936 Mad. 311 at p. 313 where it was held that where substantial rights are in no way affected by an order there is prima facie no reason an issuing a certificate that the case is a fit one of appeal to His Majesty in Council. I am therefore of the opinion that in this case the mere for the seller will be deprived of the right of having his dispute decided by an arbitrator does not prejudice any substantial right, and this objection of Mr. Mahajan is well founded and must be given effect to.

6. In the case of M/s. Rama Nand-Vijay Prakash (C. Misc. No. 45-C of 1950), there is a further point that the claim is only of Rs. 1708-(17(sic) and Mr. Grover strongly contended that there no reason why he should be forced to go to S.C. and spend such a large amount of money on (sic)ghting out a litigation mercy because the petnr. thinks that his right to get the matter referred to arbitration

has not been accepted in this Ct. He relied on Kalianasundaram Pillai Vs. Karuppa Muppanar and Others and Ratnasabapathy Pillai and Others, That is an additional factor which must be taken into consideration in his case.

7. Mr. Bhagirath Das replied by referring to a judgment of the Ct. of Appeal in re Comptcior Commercial Anversoys and Power, Son and Co.'s Arbitration, (1920) 1 K.B. 868 where it was held that whether a term can be implied to dissolve a contract is a question of law. But even if it was a question of law, it will still have to be shown that it is a question of law which is far- reaching and is a matter of "dominant public importance". I do not think that this a case of that kind. The resps. in these petns. also submitted that the question was one of great importance to the whole of the commercial community whether the principle of frustration is implied in contracts of this kind. There are two objections to this submission one, there are not likely to be many cases of this kind and, secondly, the doctrine of frustration has been applied in India see Hurnandrai Fulchand v. Pragdas Dudhsen 47 Bom. 344. I am therefore of the opinion that neither of these two cases are fit cases for leave to appeal to the S.C. and I would dismiss the petns. with costs.

Khosla, J.

8. I agree.