

(1930) 02 CAL CK 0027
In the Calcutta High Court

Haji Vali Mahomed Ayoob

APPELLANT

Vs

Shamdeo Gopiram

RESPONDENT

Date of Decision : 10-02-1930

Acts Referred:

Citation : 128 Ind. Cas. 333

Hon'ble Judges : George Claus Rankin, C.J;Charu Chunder Ghose, J

Bench : Division Bench

Judgement

Charu Chunder Ghose, J.—The only question which arises in this appeal is whether an arbitration clause to be found in a contract between the Japan Cotton Trading Company, Ltd, and Messrs. Shamdeo Gopiram was imported into the contract under which the plaintiff in this case bought the goods referred to in the plaint from the defendants--Messrs. Shamdeo Gopiram.

2. On or about the 7th September, 1927, the plaintiff purchased from the defendants 100 bales of grey cotton yarn at the rate of Rs. 5 per bundle. The plaintiff alleged that it was a verbal contract and that the defendants in breach of the contract failed and neglected to deliver the goods. The defendants alleged that it was a written contract and was duly entered in the Sowda Book of the defendants and that the plaintiff had signed the same. They also stated that they were ready and willing to deliver the goods to the plaintiffs at all material times.

3. The Sowda entry referred to above was in these terms: "'100 sold to Haji Wali Mahomed Ayub, through Gajananda, yarn No. 32 football ticket, bales 100, in words (one hundred) at 5th August shipment. We had purchased (the same) from the Japan Cotton Trading Company, which same we have sold to you, all terms (being) according to those obtaining in importing firms. Delivery at the Jetty Miti Bhado Sudi 11th Sambat 1984, dated 7th September 1927," The words in the vernacular are "Bahar Muja" which, literally translated, would mean "according to importing firm," or in other words, all terms according to the contract between us (the defendants) and the importing firm. The defendants alleged that the arbitration clause in the contract between the importing firm and

themselves was imported into the present contract between the defendants and the plaintiff. The arbitration clause in question is Clause 23 on page 20 of the paper-book. Disputes having arisen between the parties, the matter went to the Bengal Chamber of Commerce for arbitration. The arbitrators held that one of the terms of the contract between the defendants and the plaintiff was a clause to refer to arbitration, being the said Clause 23. They awarded to the defendants Rs. 6,784-2-6. Thereupon the plaintiff instituted the present suit for a declaration that the award was not binding on him and as indicated above, the main question was whether the said arbitration clause had been imported into the present contract by reason of the words used in the said Sowda entry. The trial Judge held that the said arbitration clause, had been imported into the contract between the parties. He referred to the case of *Chatturbhuj Chandan Mull v. Basdeodas Daga* 60 Ind. Cas. 909 : 47 C. 799 : 33 C.L.J. 145 decided by the Court of Appeal, consisting of Mr. Justice Mookerjee and Mr. Justice Fletcher, and, for the reasons given by him, he distinguished that case from the present case and held that that case was no authority for the contention put forward on behalf of the plaintiff in this case that the arbitration clause in question referred to above was not imported into the contract between the parties. In my opinion, it is not necessary for the purposes of his judgment to go into any discussion as to whether or not the decision in the case referred to above was right on the particular facts appearing therein. So far as the present case is concerned, I am content to put it on this footing. Mr. A.K. Roy, who appeared for the plaintiff-appellant, argues that from the Sowda entry no conclusion can be drawn as to whether or not the contract between the Japan Trading Company, Ltd., and the defendants was to be found in the document printed on pages 17-21 of the paper-book. In the Court below, there was no specific question raised on this point, but as far as I can make out from the record before us, both sides proceeded on the footing that the contract between the importing firm, i. e., the Japan Cotton Trading Co., Ltd., and the defendants was the contract embodied in the document printed on pages 17-21 of the paper-book. That being so, the only question is--what is the interpretation of the Sowda entry referred to above? As I read the Sowda entry, it means this. The defendants make it clear that the goods they were selling to the plaintiff had been purchased by them from the Japan Trading Co, Ltd. and that the terms which will regulate the sale and purchase of the goods under the present contract between the parties, are the terms entered into by the defendants and the Japan Trading Co., Ltd. Now the terms of the contract relating to the purchase of these goods by the defendants from the Japan Cotton Trading Co., Ltd. were reduced into writing--the document in question being the one which was printed on pages 17-21 of the paper-book. The defendants were selling these goods or at any rate part of these goods to the plaintiff under those terms. Now, it is quite true that there are several clauses in the document printed on pages 17-21 of the paper-book which are not applicable to the transaction between the defendants and the plaintiff. That may be so. But what the parties did really intend was this--that so far as the terms between the defendants and the Japan Cotton Trading Co., Ltd, could and did apply, they were

made applicable to the transaction between the defendants and the plaintiff. If I am right in this view of the Sowda entry, then it follows that Clause 23, which is the materiel clause to be considered in the present case, was a clause which did form one of the terms of the contract between the defendants and the plaintiff. If that is so there is no substance, in my opinion, in this appeal and I would, therefore, affirm the judgment appealed against and dismiss the present appeal with costs.

George Claus Rankin, C.J.

4. I agree. I have some difficulty whether the words "Bahar Muja" in the Sowda in this case should be taken as referring to the specific written contract of the 25 clauses upon which the sellers bought from the Japan Cotton Trading Co., Ltd. Assuming that they do however, I see no reason why Clause 23 of that contract should not be taken to be incorporated into the contract in question. With reference to the case of *Chatturbhuj v. Basdeo Das* 60 Ind. Cas. 909 : 47 C. 799 : 33 C.L.J. 145 and the observations at page 804 of that report, I agree with the learned Judge in the present case that "the terms of any other contract must, as a general rule, be intended only to apply between the parties thereto, yet that has never been suggested in the English cases as being in itself any difficulty, for the parties to the second contract in cases of this description agree that the terms made between other persons shall apply to their own contract." It is, it seems to me, a different matter, if such words as "under this charter" are sought to be read into a bill of lading, though even that is a very liberal interpretation. I agree in the judgment proposed.