
(1982) 05 DEL CK 0020

In the Delhi High Court

Case No : First Appeal No. 178 of 1980

Hukam Chand and Sons

APPELLANT

Vs

Sagar Silk and Sarees and Others

RESPONDENT

Date of Decision : 18-05-1982

Acts Referred:

Citation : (1982) 22 DLT 196

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : R.L. Pal, G.L. Rawal, Sunil Agrawal, for the Appellant;

Judgement

Sultan Singh, J.

(1) This appeal u/s 39(1)(vi) of the Arbitration Act, 1940 is directed against the judgment and order of the Subordinate Judge 1st Class, Delhi dated 30.1.1980 setting aside the award dated 18.8.1977 made by Delhi Hindustani Mercantile Association (Regd.) (hereinafter referred to as "the Association") awarding a total sum of Rs.15,999.80 on account of the balance price of goods, costs of proceedings and interest up to 21.2.1977 besides future interest at 1.25 per cent per month to the appellants against respondents No. 1 to 4.

(2) Briefly the facts are that the appellant firm a registered partnership concern, carrying on cloth business at Delhi, is a member of Delhi Hindustani Mercantile Association (Regd.), Chandni Chowk, Delhi. Respondents 1 to 4 purchased cloth on credit and a sum of Rs. 12,404.55 on account of balance of price of the goods besides interest and expenses remained due to the appellants. The goods were being sold on the credit memo issued by the appellants containing the following Note :

"The goods have been sold according to the rules and regulations of Delhi Hindustani Mercantile Association and all disputes will be settled in accordance with the arbitration rules of Delhi Hindustani Mercantile Association. The decision of the arbitrator shall be final."

(3) The appellants demanded payment from the respondents and on their failure to do so, they referred their claim to the Association for settlement in accordance with the Rules and Regulations of the said association. Respondents No. 1 to 4 admittedly are not the members of the Association. Clause 36 of the rules of the Association provides the various categories of the claims which are adjudicated upon by the Association. Sub-rule (5) of rule 36 provides for settlement of claims by members of the Association against non-members. The notice of the appellants' claim was served upon respondents No. 1 to 4. Onkar Nath, respondent Partner of the firm appeared before the Arbitrator appointed by the said Association on 13.7.1977 and made a statement that there was difference in the statement of account of the appellants, that he be granted time to file the written statement on behalf of the respondents. The arbitrator adjourned the proceedings to 20th July, 1977, but the respondents thereafter absented themselves. After several adjournments the arbitrator gave his award as stated earlier.

(4) The appellants on 5.9.1977 made an application under Sections 14 and 17 of the Arbitration Act for making the said award a rule of the Court. The arbitrator filed the award in Court. Notice of the filing of the award was given to the respondents who filed their objections dated 8.1.1978 alleging that there was neither any arbitration agreement, nor any valid reference was made to the arbitrator, that the award was not made within the prescribed period, that they were not liable to pay interest, that there existed no dispute, that the arbitrator mis-conducted the proceedings, that they were not members of the Association and the said Association had no authority to adjudicate against persons who were not its members, that they were not served with any notice by the arbitrator and that the claim was barred by time. The trial Court framed the issue whether the award was liable to be set aside in view of the objections to the award made by the respondents. Kanwal Krishan partner of the respondent firm appeared as a witness in support of the objections. He stated that he was not aware if his brother Onkar Nath ever appeared before the arbitrator in the said proceedings. He denied the arbitration agreement. He stated that they never agreed to arbitration or to refer any dispute to arbitration, that there was no dispute, that respondent No. 1 was not the member of the Association, that there were no transactions with the appellants. In cross-examination he identified his signatures on some of the papers but did not identify the signatures of other partner Onkar Nath who had appeared before the arbitrator. On behalf of the appellants Ch. Hukam Chand appeared. He stated that the appellants supplied goods as per various credit memos which contain the said arbitration clause, that the claim against the respondents who were not members of the Association was maintainable, that Onkar Nath partner of the respondents in response to the notice issued by the arbitrator appointed by the said Association appeared before him, that the arbitrator did not misconduct himself or the proceedings. The trial Court held that there was no arbitration agreement, and as the respondents were not members of the said Association they were not governed by the rules of the

said Association and consequently the trial Court set aside the award dated 18.8.1977. Hence this appeal.

(5) Learned counsel for the appellants submits that under Rules and Regulations of the Association it has power to arbitrate the claims of its members against persons who were not members of the said Association. Here refers to rule 36(5) of the Rules and Regulations of the said Association which provides that the Association has power to adjudicate upon claims of members against non-members. Thus the trial Court was not correct in observing that the Association had no jurisdiction to adjudicate the claim of the appellants against the respondents.

(6) The crucial question however is whether there was arbitration agreement. The appellants used to sell the goods to the respondents. They used to issue credit memos containing the above mentioned note. Some of the credit memos are signed on behalf of the respondents. The note above stated in the credit memo amounts to an arbitration clause. It states that the sale was governed by the Rules and Regulations of the Delhi Hindustani Mercantile Association and that the decision of the arbitrator shall be final. In other words, the Rules and Regulations of the said Association were incorporated bodily in every credit memo/bill issued by the appellants to the respondents. No particular form of arbitration agreement is obligatory. To constitute an arbitration agreement all that is required is that there must be an agreement in writing to get their dispute settled. u/s 2(a) of the Arbitration Act it is not necessary that the written agreement must be signed. In the instant case there is a written agreement. On some of the credit memos proved by the appellants before the arbitrator and the trial Court there are signatures on behalf of the respondents although signatures were not required. The respondents on receipt of the goods along with the credit memos agreed to be bound by the Rules and Regulations of the said Association which agreement is in writing. Such agreement arises by incorporation of the Rules and Regulations which contain title arbitration clause and under which the disputes are referred to arbitration. The doctrine of "Incorporation by reference" means that terms of one document containing an arbitration clause are incorporated in another document under which the dispute arises (See Russell on Arbitration, Nineteenth Edition page 49-50). In the instant case when the credit memo refers to the Rules and Regulations of the Association it means that the Rules and Regulations of that Association containing the arbitration clause became part and parcel of the credit memo, and must be read into the bargain as though written in the credit memo. In *Chhajjmal Sumer Chand and another v. Firm sohan Lal Kanhaiyu Lal and Others*, 1971(2) 2nd Delhi 416 the bills contained a clause to the effect that the dispute between the parties to the transaction would be referred to the Association for arbitration. It was held that though the bills were not signed by the parties it amounted to arbitration agreement within the meaning of Section 2(a) of the Arbitration Act. It must therefore be held that the trial court was not correct in holding that there was no arbitration agreement between the parties. I may mention that the appellants had made an application u/s 28 of the

Arbitration Act for extension of time for themaking and signing of the award by the arbitrator which application was alsodecided by the same Subordinate Judge. He, in his order dated 13.3.1979held that as per the said note on the credit memo there was an arbitrationagreement under which all disputes were referred to arbitrator appointed bythe Association. It is not clear how the Subordinate Judge changed his viewson the same set of facts in the impugned order, on the basis of the creditmemos in question pertaining to the goods sold to the respondents. LearnedCounsel for the respondents submits that mere non-payment is not a disputereferrable to the arbitration. It is not correct to say so. The appellantssupplied the goods, they demanded payment, the respondents failed to payand Therefore disputes arose and the appellants were entitled to refer to thearbitrator. Next it is submitted on behalf of the respondents that it was aunilateral reference on behalf of the appellants to the Association and Therefore it was bad. It is also not correct to say so. When the claim was placedbefore the arbitrator of the said association notices were issued to the respondents who were served. The respondents through Onkar Nath partner on13.7.1977 submitted to the jurisdiction of the arbitrator and sought time tofile the written statement with a view to explain the difference in the statement of accounts of the appellants but subsequently the respondents absentedthemselves. The appearance of the respondents before the arbitrator amounted submission to the jurisdiction of the arbitrator and taking part in theproceedings, thus availing chance to have a decision in their favor. If therespondents had submitted to the jurisdiction of the arbitrator and had takenchance to have a decision in their favor the award given by the arbitratorcannot be said to be invalid and set aside on the ground that the arbitratorentered upon the reference, having been moved by only one of the parties.In Dewan Amolak Singh v. Lajpal 1966 D.L.T. 100 it has been held that theparty submitting to the jurisdiction of the arbitrator cannot later on object tothe illegality of reference.

(7) Learned counsel for the respondents next submits that the appellants" firm is not registered under the Indian Partnership Act and therefore the proceedings before the trial Court were barred u/s 69 of theIndian Partnership Act. The appellant firm is registered under the IndianPartnership Act. The certified copy of form "A" from Registrar of Firms,Delhi is Ex. P.W.1/1 which shows that the appellants" firm was registered on5.10.1974 under the said Act.

(8) The appeal is Therefore accepted. The judgment and order ofthe trial Court are set aside. The award dated 18.8.1977 of Mr. O.P. Jain)Arbitrator of Delhi Hindustani Mercantile Association (Regd.) ChandniChowk, Delhi is made a rule of the Court. Accordingly a decree for Rs.15,999.80 with interest at 1.25 per cent per mensum from the date of awardi.e. 18.8.1977, till realisation is passed in favor of the appellants againstrespondents 1 to 4. Respondents 1 to 4 shall also be liable to pay costs ofthis appeal to the appellants.