
(1981) 12 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 116 of 1977

Manilal Chandulal Cotton Seed Merchant, Baroda and Others	APPELLANT
Vs	
M.P. State Industries Corporation Ltd., Bhopal	RESPONDENT

Date of Decision : 15-12-1981

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : AIR 1982 MP 111

Hon'ble Judges : K.N. Shukla, J;G.G.Sohani, J

Bench : Division Bench

Advocate : C.M. Mehta, for the Appellant; A.K. Chitale, for the Respondent

Final Decision : Partly Allowed

Judgement

Sohani, J.—This appeal is directed against the order dated 10-4-1974 passed by the learned IIIrd Additional District Judge, Ujjain. The appeal arises out of an application submitted by the respondent u/s 20 of the Arbitration Act, 1940 (hereinafter referred to as the Act). The applicant's case was that the non-applicants had entered into eight contracts with the applicant for supply of cotton seeds and that out of the eight contracts so entered into, the non-applicants had failed to perform their part of the contract in respect of contracts Nos. 150 and 151. It was further averred that as the non-applicants had committed breach of contract, the applicant was entitled to recover damages from the non-applicants, but that liability was disputed by the non-applicants. It was, therefore, contended that a dispute had arisen between the applicant and the non-applicants out of the contracts Nos. 150 and 151 entered into between the parties and that as one of the terms of these contracts was to refer the disputes to arbitration, the applicant had filed an application u/s 20 of the Act.

2. The application was resisted by the non-applicants inter alia on the ground that there was no agreement between the parties to refer disputes for arbitration, that the person, who had signed contract No. 150 on behalf of the non-applicants, was not authorised to do so and that in any event, those

contracts were substituted by the latter contract entered into between the parties on 27-9-1968 at Bhopal which did not contain any arbitration clause. The trial Court found, after appreciating the material on record, that there was a subsisting valid arbitration agreement between the parties. In this view of the matter, the trial Court allowed the application. Aggrieved by that order, the non-applicants have filed this appeal.

3. Shri Mehta, learned counsel for the appellants, raised two contentions before us. It was urged that the contracts Nos. 150 and 151 alleged to have been executed by the non-applicants were in fact signed by one J. B. Shah, who was not authorised to enter into those contracts, It was further urged that the trial court erred in holding that there was a subsisting valid arbitration agreement between the parties. Lastly, it was urged that the direction given by the trial court regarding filing of the award within three months was not warranted, Shri Chitale, learned counsel for the respondent, conceded that the direction given by the trial court regarding the filing of the Award was unwarranted but contended that the trial Court was justified in directing that the agreement be filed,

4. The first question, that arises for our consideration, is whether the parties had entered into any arbitration agreement. The case of the applicant in this behalf was that in the contract No. 150 (Ex. P-1) and contract No. 151 (Ex. P-2) entered into between the parties for supply of cotton seed, one of the conditions was that disputes arising out of the contract would be referred to arbitration. Exs. P-1 and P-2 are in the form of letters written by the applicant to the non-applicants confirming that they had purchased from the non-applicants" cotton seed on terms and conditions specified in those letters. The applicant sent these contract forms in duplicate to the non-applicants requesting them to return one copy duly signed by them, for record. It was further stated in the letter Ex. D-1 accompanying Ex. P-1 and Ex. P-2 that the contracts would not be deemed to have been entered into till the non-applicants had duly signed the contracts. Exs. P-1 and P-2 were signed by Jayantilal Shah as Manager of non-applicant No. 1 firm. The contention advanced on behalf of the non-applicants was that Jayantilal Shah, who had signed those contracts, was not authorised to execute any contract on behalf of the non-applicants. DW-2 Jayantilal Shah examined by the non-applicants admitted his signatures on Exs. P-1 and P-2. He further stated that he was looking after the Ratlam shop of the non-applicants, but he was a mere servant of the non-applicants and had no authority to execute any contract. He further deposed that he was made to sign the contract forms Exs. P-1 and P-2 under coercion. DW-2 Jayantilal, however, admitted that he had not complained to anyone about the coercion. He also admitted that no action was taken against him by his employers for having signed Exs. P-1 and P-2. He initially deposed that he had not signed any other contract on behalf of the non-applicants, but when confronted with his signatures on Exs. P-6 and P-7, he admitted his signatures on those documents. Ex. P-6 is contract No. 59 entered into by the applicant with the non-applicants. Ex P-7 is a letter dated 7-7-1967 written by DW-2 Jayantilal to the applicant stating that he was sending contract

form No. 59, i.e. Ex. P-6 duly signed. Moreover, the plea that DW-2 Jayantilal Shah was forcibly made to sign the contract forms P-1 and P-2 or had no authority to sign those contracts was not raised in the reply Ex. P-4 sent to the notice Ex. P-3 by the applicant. The plea about coercion is not taken even in the reply to the application u/s 20 of the Act submitted by the non-applicants. The story put forward by DW-2 Jayantilal that signatures on the contract forms Exs. P-1 and P-2 were obtained under coercion cannot therefore, be believed. He had signed contract form Ex. P-6 on behalf of non-applicants and had also sent the letter Ex. P-7 to the applicant, on behalf of the non-applicants, conveying their acceptance. The contract Ex. P-6 was not repudiated by the non-applicants. Moreover, the non-applicants have not denied in the reply to the application u/s 20 of the Act, the averment made in para 4 of the application that the non-applicants had partly performed the contracts Exs. P-1 and P-2. In these circumstances, it must be held that contracts Exs. P-1 and P-2 were executed by DW-2 Jayantilal on behalf of the non-applicants.

5. Learned counsel for the appellant-non-applicants, contended that u/s 19 of the Partnership Act if a partner has no implied authority to submit a dispute relating to the business of the firm to arbitration, how can an agent of the firm have that authority. This contention has to be stated to be rejected. No provision of law has been brought to our notice to show that an agent of a firm has no authority to enter into an arbitration agreement on behalf of the firm. Moreover, as we have already observed, in the instant case, DW-2 Jayantilal had entered into a contract with the applicant, as evidenced by Ex. P-6, on behalf of the non-applicants. The contract Ex. P-6 also contained an arbitration clause. It must, therefore, be held that contracts Exs. P-1 and P-2 were entered into by the non-applicants with the applicant. Under the terms of Exs. P-1 and P-2, the disputes arising out of the contracts are to be decided by arbitration. Hence it must be held that there is an arbitration agreement between the parties governing the disputes arising out of Exs. P-1 and P-2.

6. The next contention advanced on behalf of the non-applicants was that the contracts Exs. P-1 and P-2 were superseded by a subsequent agreement dated 27-9-1968 entered into between the parties. The contention has no force. The question as to whether the settlement, alleged to have taken place on 27-9-1968 between the parties, had the effect of modifying the original contracts or substituting the original contract, does not arise for consideration because that settlement was not acted upon, as averred by the non-applicants in their written statement. On 27-9-1968, when disputes arose between the parties with regard to the failure of the non-applicants to decide the contracted quantity of goods, the non-applicants wrote a letter to the applicant proposing as follows :

vc ge lkSns ds fuiVkjS ds flyflys esa fuEufyf[kr nks "krsZ izLrqr djrs gSaA tks Jheku dks ekU; gks muls ?" fnu esa voxr djkus dh ?ik djsa- rkfd bls vuqlkj dk;Z fd;k tk ldrk gS-

gekjk HkkM+k o C;kt esa tks ?2]""?@"? vkt fnukad 2"&?&"" dks ysuk fudyrk gS]

ge mldk NksM+dj u uQk u uqdlkj ij lkSnk r; djus dks rS;kj gSA ge ckjkerh ykbu dk ?sic? "" ds Hkko esa ftruk "ks"k jg x;k gS ;kuh ???&?" fdaOVy ckjkerh ykbZuij nsus dks rS;kj gS! blds vfrfjDr gekjk [kpkZ C;kt o HkkM+k ds ckc n ftdh jde ?2]""?&"" vkt fnukad 2"&?&"" dks gksrh gSa bldk Hkqxrku vkids djuk iM+sxxA vkt dh rkjh[k ls vkids tokc dh izkIr rd ;kuh ?" fnu dk dksbZ [kpkZ blesa ugha tksM+k tkosxk vkSj eky tc Hkh vki dgsaxs "" ds Hkkoij fMyhojh ckjkerh ykbu ij ns nh tkosxh blesa vxj dksbZ Hkwy gksxh rks ge gtkZ ,oae [kpZ ds ftEesnkj gksaxsA vxk vkus eky ysus dk fu"p; fd;k gks rks eky dh fMyhojh ,d efgus esa vkt dh rkjh[k ls ysuh gksxh blds ?ijkar lkSnk dsauly gks tkosxkA blds vykok gekjs [kkrs esa tks cdk;k fudyrk gS mldk Hkqxrku dj fn;k tkosaxk vkSj rsy ds ckcr tks chy cuok;k Fkk mlesa vxj rsy ns lds rks bldk iSlk ns fn;k tk;s-**

The applicant was requested to elect either of the terms till 20-12-1968. The applicant had sent a telegram to the non-applicants on 19-10-1968 accepting the second option given to it but the non-applicants pleaded in their written statement that the applicant had failed to communicate its acceptance to the aforesaid proposal made by the non-applicants. In view of this stand taken by the non-applicants in their written statement, they cannot be permitted to contend that a new agreement was entered into between the parties substituting the contracts in question. The trial Court, was, therefore, right in holding that, there was a subsisting valid arbitration agreement in force. We, therefore, see no reason to interfere with the order passed by the trial Court with regard to the filing of the arbitration agreement. The trial Court, however, was not required to give a direction regarding the filing of the award within three months. Therefore, that direction deserves to be set aside. Subject to this modification, the order passed by the trial Court is affirmed.

7. For all these reasons, this appeal is partly allowed. The order passed by the trial Court is modified to this extent that the direction given by the trial court that the arbitrator shall file the Award within three months is set aside. The rest of the order passed by the trial Court is confirmed. Parties shall bear their own costs of this appeal.