

(2012) 09 GUJ CK 0141

In the Gujarat High Court

Case No : Special Civil Application No. 12883 of 2012

MMTC Limited

APPELLANT

Vs

Shakti Clearing Agency Pvt. Ltd.

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 45, 54, 8
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 09 GUJ CK 0141

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : K.G. Sukhwani for Mr. Narendra Khare, for the Appellant;

Final Decision : Dismissed

Judgement

Anant S. Dave

1. This petition under Articles 226 and 227 of the Constitution of India is filed by the petitioner, original defendant, challenging the order dated 6th July 2012 passed by the learned 14th Additional Senior Civil Judge, Jamnagar, below Exh. 6, by which, application preferred by the petitioner u/s 8 read with Sections 45 and of the Arbitration and Conciliation Act, 1996 [for short, "the Act"] came to be rejected. It is the case of the petitioner, a Government of India Enterprise, that the original plaintiff, respondent herein, filed Special Civil Suit No. 123 of 2007 for recovery of Rs. 2,41,75,514/- towards licence fees on the basis of agreement dated 19.11.1997 and the above agreement was reached for use of godown.

1.1 Earlier, the contract was awarded to the petitioner for transportation of consignments from railway-head/FCI godowns for onward journey by agreement dated 4.6.1996. In view of a dispute having been arisen between the parties, the petitioner initiated arbitration proceeding against the respondent, original plaintiff, which was conducted by a panel of three arbitrators and an award was

passed on 30.8.2007 at New Delhi in which the respondent also filed a counter claim and the counter claim was dismissed by the panel of arbitrators. The above dispute has no nexus with the present proceeding as such.

1.2 The original plaintiff filed the present suit for recovery of alleged godown licence fee from December 1999 to 31.10.2007 @ Rs. 1,55,344/- per month and the petitioner moved Exh. 6 application as per the provisions of Section 8 read with Sections 45 and 54 of the Act along with an attested copy of agreement dated 19.11.1997.

2. In view of the above, it is submitted by Mr. K.G. Sukhwani, learned counsel for the petitioner that the trial court has erred in rejecting the above application on the ground that the agreement between the parties, namely, the plaintiff and the defendant, did not subsist and that by conduct i.e. by virtue of occupying the godown by the defendant, the above agreement remains in force and clause 15 [arbitration clause] contained in the agreement is also effective. It is submitted that, since recovery sought to be initiated by the plaintiff is beyond the period of validity of the agreement, but clause 15 will continue to remain in operation and will govern the relationship between the parties and, therefore, it was incumbent upon the trial court to refer the matter to the Arbitrator as prayed for in Exh. 6 application. Having heard the learned counsel for the petitioner and on perusal of the record of the case including agreement dated 19.11.1997 between the plaintiff and the defendant along with the order impugned, it remains undisputed that agreement dated 19.11.1997 was to remain valid upto 9.11.1998 and, by no other term or condition or even by implication, it could be extended beyond the above period. Recovery of the amount sought to be initiated by the plaintiff is beyond the term of the above agreement dated 19.11.1997. In the above circumstances, in my view, while rejecting Exh. 6 application, the trial court has not committed any error of law or jurisdictional error, which calls for any interference by this Court in exercise of power under Articles 226 and 227 of the Constitution of India. Hence, this petition is rejected summarily with no order as to costs.