
(1978) 12 AP CK 0015
In the Andhra Pradesh High Court
Case No : CMA No. 589 of 1977

M/s. Arun Corporation, Bombay	Vs	APPELLANT
M/s. Hyderabad Plastics, Hyderabad and another		RESPONDENT

Date of Decision : 28-12-1978

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : (1978) 12 AP CK 0015

Hon'ble Judges : Seetharam Reddy, J; Alladi Kurppuswami, J

Bench : Division Bench

Advocate : M.L. Ganu, for the Appellant; A. Satyanarayana Rao, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Alladi Kurppuswami, J.—The appellant herein is a registered firm doing business as distributors of several products. They entered into an agreement with the respondents herein on 20th March 1974 whereby the respondents appointed the appellant as distributors for their product known as "Air Bubble Film Airplast" for the State of Maharashtra. The respondents, by their letter dated 26th October, 1974, terminated the distributor-ship. At the time of appointing the appellant as distributors, the respondents had taken a deposit of Rs. 7,000/- and again another deposit of Rs. 2,500/- totalling Rs. 9,500/-. The respondents had also, according to the appellant, stocked with them goods worth Rs. 55,267.74 for which the appellant had paid the full amount. After the termination of the distributorship, the appellant filed a suit, O.S. 34/75 on the file of the II Addl. Judge, City Civil Court, Hyderabad, for the recovery of a sum of Rs. 82,860/-. This was made up of Rs. 9,500/- together with interest thereon till the date of suit and Rs. 55,267.74 together with interest on that amount till the date of suit. The appellant claimed also Rs. 4,282.25 with interest thereon being the amount said to have been the value of the goods delivered by them to the respondents' representative, Mr. V.J. Rao. The respondents therein filed I.A.

No. 203/76 stating that under the agreement dated 20th March, 1974, it was expressly stipulated that in the event of any dispute or difference arising between the parties in connection with the agreement or with respect to its interpretation, construction of any of its clauses or with respect to the rights and liabilities of parties or with regard to any amount payable to or recoverable from either party, the same shall be decided by reference to arbitration and the decision of the arbitrator shall be final and binding on the parties, and, therefore, the suit should be stayed under Sec. 34 of the Arbitration Act (hereinafter referred to as the Act). The respondents also averred in that petition that they were always ready and willing and are still ready and willing to do all things necessary for the proper conduct of arbitration and to refer the dispute to an arbitrator for adjudication.

2. The appellant here in opposed the application for stay contending that the petition was not maintainable as the respondents had already taken steps in the proceedings and had submitted to the jurisdiction of the court. Secondly, it was contended that there was no dispute whatsoever as to the claim, as the amounts had been admitted by the respondents to be due to the appellant on 27th May, 1975. The suit amount having been admitted to be due from the respondents, the appellant was entitled to file the suit. It was further contended that the respondents were never ready and willing to refer the matter to arbitration and that the application was mala fide and was made with a view to delay the proceedings.

3. The learned II Addl. Judge City Civil Court, held that the suit should be stayed under Sec.34 of the Act. He negated the contention of the appellant that there was no dispute whatsoever between them and the respondents regarding the amount due to the appellant. He also held that the respondents were ready and willing to refer to arbitration.

4. The appellant has preferred this appeal as against the said judgement and decree. The first contention that is urged by Sri Ganu, learned counsel for the appellant, is that the arbitration clause in the agreement between the parties has no application as there is no dispute between the parties regarding the amount due to the appellant. This contention cannot be accepted. It is admitted that there was correspondence between the parties and ultimately the parties met on 27th May, 1975 as is seen from the minutes of the meeting, Ex. B-3. It is stated in the minutes that the claim of the appellant under the heading "Material given to Mr. Rao" valued at Rs. 4,282.25 and under "deposit and cash" of Rs. 9,500/- was accepted. It is then stated as follows:

"Regarding "stock of M/s Hyderabad Plastics"(Airplast for a total value of Rs. 55,267.74 plus octroi, transport, total amount of Rs. 46,635/- was finally agreed to, in full and final settlement, for stocks. The amount i. e. Rs. 9,500/- is to be remitted immediately, Rs. 4,282.25 a little later, but before the end of June, 1975.

The amount of Rs. 46,635/- arrived at as final settlement towards payment against stocks, is to be paid in three equal instalments of Rs.15,545/- each and completed before the end of July, 1975."

This would clearly show that there was a dispute regarding the amount payable under the heading "Stock of M/s. Hyderabad Plastic's and as against a sum of Rs. 55,267.74, a sum of Rs. 46,635/- was finally agreed in full and final settlement. Sri Ganu tried to submit that there was no dispute about the amount due, and the true effect of the agreement arrived at the meeting was that the appellant should receive Rs. 46,635/- because it was agreed to be paid before the end of July, 1975. We are not inclined to accept this interpretation of the agreement, It is already seen that it is specifically stated with reference to the agreement under the heading "Material given to Mr. Rao" valued at Rs. 4,282.25 and deposit of Rs. 9,500/- that the respondents accepted that claim, whereas in respect of the claim of 55,267.74 there is no such statement that the respondents accepted that claim. On the other hand, it is stated that a sum of Rs. 46,635/- was finally agreed to in full and final settlement of stocks. The expression "full and final settlement" it self shows that there was a dispute and in the course of the meeting it was agreed that the appellant should accept a lesser figure. It may be that the appellant felt that it was advisable to settle at a lower figure in view of the promise to pay the amount before the end of July, 1975 even though they felt that they were entitled to larger sum. But there cannot be any doubt that there was a dispute with reference to the amount due and payment thereof. The arbitration clause is in very wide terms and it says:- "In the event of any dispute or difference arising between the parties out of or in connection with the agreement or with respect to the interpretation, construction of any of the clauses thereof, or in respect of rights and obligations of the parties here to or with regard to any amount (s.) payable to or recoverable from either posts the same shall be decide (sic)rence to an arbitrator". We are, therefore unable to accept the con(sic) that there is no dispute between the parties and hence this clause has no application.

5. It was then argued that at any rate, after the minutes recorded in the meeting on 27th May, 1975, there was no dispute between the parties. It is true that the amount was settled under the heading "Stock of M/s Hyderabad Plastics" at Rs. 46. 635/-. If the appellant had sued for the recovery of this amount, there would have been no answer to the contention that there was no dispute arising under the distributorship agreement of 20th March, 1974. The suit would have been based upon the agreement reached at the meeting held on 27th May, 1975 and would not be a suit on the original agreement, but the plaintiff has filed the suit not for the recovery of Rs. 46, 635/- settled at the meeting on 27th May, 1975, but for the amount of Rs. 55, 267. 74 which according to him, is the amount due as per the distributorship agreement. In para 8 of the plaint, it is stated that since the defendants have not made any payments pursuant to the mitures of the meeting dated 27th May, 1975, the plaintiff is not bound to reduce the original claim of the plaintiff. The plaintiff therefore, claims the original amount.

The cause of action for the suit is also mentioned as having arisen pursuant to the agreement in March 1974. It is, therefore, clear that the plaint is based upon the original agreement and as there is a dispute with reference to the amount due, the defendants are right in contending that the arbitration clause applies.

6. Reliance was placed upon a decision of this court in *Rai and Son (P) Ltd. Vs. Poysha Industries Co. Ltd.*, wherein it was held that where the purchaser admitted his liability throughout and only asked for postponement of encashment of the cheques by the seller, the seller will be justified in resorting to a Court for the recovery of the amounts due and it cannot under those circumstances be said that a dispute was in existence as to entitle the purchaser to ask for stay of suit u/s 34. In that case, however the court found that (he defendant had made an admission of his liability throughout and pleaded for accommodation and even expressed his gratitude for the accommodation shown to him. It was, therefore, held that there was no dispute with regard to the claim. The said decision has no application to the facts of the case, as we have held that there is no material placed before us to hold that at any time the defendants admitted their liability to the tune of Rs. 55, 267. 74. On the other hand, we have held that there was a dispute with regard to that amount and it was settled at a lesser figure in the meeting held on 27th May, 1975.

7. Sri Ganu's next contention was that the application for stay should have been dismissed as the respondents were not ready and willing to refer to arbitration. Under Sec. 34 of the Act, the court has to be satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement (sic)d that the applicant was, at the time when the proceedings were comme(sic)d, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration. It was brought to our notice that the plaintiff gave a notice dated 8-10-75 (Ex. B-4) demanding the amount payable to it and threatening to institute legal proceedings if the amount was not paid. No reply was given to that notice and the plaintiff thereupon filed the suit on 27-1-1976. It is, therefore, argued that as the defendants did not, in reply to the notice, suggest that the matter was one which had to be decided by way of arbitration, it must be held that the defendants were not ready and willing to do all things necessary to the proper for conduct of the arbitration within the meaning of Sec. 34. It was sought to be urged by Sri Satyanarayana Rao, learned Counsel for the respondents that the plaintiff threatened only to institute legal proceedings and did not specify that it would file a suit. It was, therefore, not necessary on the part of the defendants to reply that the proper remedy was by way of arbitration. We are unable to agree with this submission. The expression "legal proceedings" in the context can only refer to a suit. But even so, we are not able to see how mere silence on the part of the defendants would indicate that they were not willing and ready for arbitration. In the affidavit filed in support of the application, there is a clear averment that they were always ready and willing and still ready and willing to do all things necessary to the proper conduct of the arbitration. This is not a case where the appellant took any

steps with reference to arbitration and the respondents objected to such proceedings. In *Daulat Ram vs. Punjab State* AIR 1958 Pun 19. It was held that silence of a party before the proceedings are stated is not of any serious consequence and not resorting to arbitration or taking up a plea in support of the same, on being threatened with a suit, would not disentitle the party to take a stand on the arbitration clause as a bar to the suit.

8. Reference was made to *Padmanabhan vs. Srinivasan* AIR 1967 Mad. 201 where it was held that the applicant must satisfy the court of his readiness and willingness to do everything necessary for the proper conduct of arbitration proceedings both before the commencement of the suit and thereafter. There can be no exception to this statement of law, but in the instant case, we are not satisfied that there is anything to show that the respondents were not ready and willing to resort to arbitration before the suit. After the suit they categorically stated their readiness and willingness in the application for stay. It is, however, argued by Sri Ganu that though they made such a statement, they did not take any steps towards arbitration even till today and that even though the order of the lower court was pronounced on 20th July, 1977, the respondents have not taken any steps to have the matter referred to arbitration. Under Sec.34, all that the respondents should satisfy the court is that they are ready and willing to do all things necessary to the proper conduct of the arbitration. It does not require, that the respondents should themselves ask for a reference. It is interested in the speedy recovery of the amount due to him to take appropriate steps regarding arbitration proceedings once the suit has been stayed. From the mere fact that the respondents did not themselves move for the appointment of an arbitrator after the suit was stayed, it cannot be said that they do not remain ready and willing to do all things necessary to the proper conduct of the arbitration. In the result we see no reason to interfere with the order of the court below staying the suit under Sec.34 of the Arbitration Act. The appeal is dismissed. No costs.