

(1992) 06 KL CK 0078

In the High Court Of Kerala

Case No : C.R.P. No's. 1624 and 2011 of 1091

M/s. Vanaja Textiles Ltd.

APPELLANT

Vs

M/s. C.S. Galiakotwala and Co. Ltd.

RESPONDENT

Date of Decision : 26-06-1992

Acts Referred:

Arbitration Act, 1940 — Section 33

Citation : (1992) 2 KLJ 175

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : P.F. Thomas, for the Appellant; P.V. Narayanan Nambiar, for the Respondent

Judgement

G.H. Guttal, J.—These two petitions Impugn the order of the learned 1st Additional Sub Judge, Trichur, in Arbitration O.P. No. 157 of 1989 filed by M/s. Vanaja Textiles Ltd. By this judgment I will dispose of both the petitions. M/S. C.A. Gallakotwala & Co. Ltd., hereinafter referred to as the seller, contracted to sell 500 bales of F-414 S/G Cotton and 400 bales of F-414 S/G Cotton to Vanaja Textiles Ltd., the buyer. The contracts are embodied in confirmation Notes dated 21-4-1988 and 3-8-1988 produced as Exts. A1 and A2 respectively. When the seller submitted a bill for Rs. 3,38,415.95, the buyer repudiated the claim and returned the bill. The seller by their letter dated 13-7-1989 proposed to refer the dispute to the arbitration of East India Cotton Association Ltd., Bombay, hereinafter referred to as the Association. The buyer disputed the existence of any agreement to refer the dispute to arbitration. The seller then appointed their arbitrator and requested the buyer to appoint theirs. After waiting 15 days the seller intimated the buyer that they had appointed Chimanlal K. Dani and Jitendra G. Shah as arbitrators under Article 38B of the bye laws of the Association. The buyer who disputed the existence of an agreement to refer the disputes to arbitration instituted Arbitration O.P. No. 157 of 1989 and sought a declaration u/s 33 of the Arbitration Act that there was no arbitration agreement.

2. The learned trial Judge made these findings:

(i) Exts. A1 and A2 refer to the settlement of "quality and other disputes". The settlement of disputes is stipulated "subject to the rules and regulations" of the Association. Admittedly the Association has framed only byelaws and not "rules and regulations". Consequently there is no agreement to refer disputes to arbitration.

(ii) The transaction in question was ready transaction and not -a forward trading transaction. The Forward Contracts (Regulation) Act, 1952 hereinafter referred to as the Act under which the Association is registered has no application to ready transactions. Therefore, the byelaws of the Association framed in exercise of the powers under the Act have no application to the case.

(iii) There is, no doubt, a contract to refer the disputes to arbitration. However, since the byelaws of the Association have no application to ready transactions, the buyer is not entitled to the declaration sought in the petition.

3. The buyer is aggrieved by the finding that there is an agreement of arbitration. He has filed C.R.P. No. 1624 of 1991. The seller is aggrieved by dismissal of the petition. He has filed C.R.P. No. 2011 of 1991.

4. The first question is whether the confirmation notes Ext. A1 and Ext. A2 spell out a forward transaction. Certain features of the contract emerging from these documents are significant.

(i) The contracts were made on 21-4-1988.

(ii) The payment was to be made against "R/R through Central Bank of India Trlehur to be retired on arrival of bales at destination.

(iii) The despatch of the goods, was to be PROMPT. But the seller was entitled to carrying charges at 2% per month from 6-5-1988 till the date of despatch.

(emphasis supplied)

These terms signify that duration or time of delivery was not agreed. The R/R were to be retired "on arrival of bales". Which means an unspecified time for delivery of goods. Secondly, despatch was contemplated sometime after 6-5-1988. That is why the words "from 6-5-1988 till the date of despatch" were chosen by the parties. Against these facts the meaning of "forward contract" may be considered.

5. A contract for the delivery of goods which is not "a ready delivery contract", is known as "forward contract" in the case under consideration the contract is for delivery of good viz. bales of cotton. It follows that the contract will be a forward contract if the parties did not intend "ready delivery" of cotton bales.

"Ready delivery contract" must embody an agreement to deliver goods and pay the price therefor, not at any unspecified time, but (a) either Immediately or (b) within such period not exceeding 11 days after the date of the contract.

The date of the contract embodied in Ext. A1 and Ext. A2 is 21st April, 1988. In order to fall within (a) or (b) there ought to be stipulation that delivery would be immediate or within any period not exceeding 11 days. If it does, the contract becomes a ready delivery contract and therefore stands excluded from the definition of "forward contract". It should be noted that in order that the contract is a ready delivery contract, both delivery and payment must satisfy the "immediate" or "not exceeding 11 days" stipulations. This is the significance of the use of the conjunctive "and" used between these phrases.

Consider the contracts Exts. A1 and A2. The buyer was to wait for the arrival of bales, and thereafter retire the R/R. No time limit, no duration, was in the contemplation of the parties to the contract, so far as delivery of goods was concerned. Secondly, the contract stipulated despatch of the goods by the seller after 6th May, 1988, which is beyond 11 days from the date of the contract. This is clear from the seller's right to carrying charges "from 6-5-1988 till the date of despatch." I have therefore no doubt that the parties to the contract did not intend the delivery of goods immediately or within 11 days from the date of contract.

No doubt, as urged by counsel for the buyer, the word "PROMPT" has been used to describe the nature of the delivery of goods. In the circumstances of this case, it means that the seller should deliver the goods without delay. But the seller and buyer have, in unmistakable terms, stipulated that the seller would be entitled to charge 2% per month "from 6-5-1988 till the date of despatch." These words mean that till 6-5-1988 delivery of the goods was not contemplated. The parties to the contract chose to stipulate elaborately and specifically that delivery would not be before 6-5-1988. This deliberate expression of their specific intention cannot be neutralized by the generalised expression "PROMPT". In the context of Exts. A1 and A2 the word "PROMPT" means that the delivery of goods should not be unreasonably delayed after 6th May, 1988. In any event, it cannot be held that "PROMPT" means immediately or within 11 days after the contract.

6. The retirement of documents after arrival, the schedule of delivery and the date from which carrying charges shall be payable are specific expressions which exclude ready delivery of goods, Therefore, the contracts exhibited as Exts. A1 and A2 are not ready delivery contracts. They are therefore forward contracts.

7. The parties to the contract made settlement of their disputes subject to the "rules and regulations" of the Association. They must be taken to be aware that the only body of prescriptions governing the Association were the "byelaws" and that another code of prescriptions did not exist. Since the "byelaws" admittedly prescribe a provision and machinery of arbitration it stands to reason that the contract refers to the only body of rules that is in existence. There are no "rules and regulations". But there a machinery of arbitration comprised in a body of prescriptions described as "byelaws". In view of the absence of "rules and regulations" the only rules to which the parties subjected their disputes are those in the "byelaws". The distinction sought to be made between "rules and

regulations" on the one hand and the "byelaws" on the other is imaginary, and does not exist. If there were in existence two sets of prescriptions such as "byelaws" and "rules and regulations" the distinction would have acquired a meaning.

8. "Rules" is a word which in common parlance embraces all prescriptions for the conduct of affairs of individuals, or groups of individuals. However, since counsel have urged a distinction, between Rules, Regulations and Byelaws, a brief reference to their meaning may be made.

9. The Act employs the words "Rules" and "Byelaws" in Section 9A and 11 with reference to different groups of subjects respectively enumerated therein. Association may make "Rules" in regard to matters enumerated in Section 9A. Settlement of disputes by arbitration is not such a matter. The Act expressly empowers the Association to make "byelaws" relating to the matters specified in subsection (2) of Section 11 of the Act. One of the matters so specified in subsection (2) of Section 11 of the Act is: "The method and procedure for the settlement of claims or disputes including the settlement thereof by arbitration". The byelaws of the Association are made in exercise of this power. The byelaws made in exercise of the express statutory authority are statutory rules.

10. Generally speaking "Rules" "Byelaws" and "Regulations" are different species of subordinate legislation governing legal relationships between persons, their conduct or action.

The etymological origin of "byelaws" suggests that they are a law for the regulation of a "by" which means township. The township as the subject of "byelaws" implies that byelaws are made for a smaller unit. For instance, corporation, "societies and Associations regulate their internal affairs by the "bylaws." The significant difference between "byelaws" and other rules is that byelaws are not part of the public law. Byelaws are laws made by members of a body for themselves. The fact that bodies like the Associations make their byelaws under the authority of the Act, does not alter their "byelaw" character. When a body like an Association makes "byelaws", it legislates for itself.

When Rules which regulate the rights, duties and conduct of members of an Association, Corporation or similar body are made, they take the label, "byelaw". By whatever label they are displayed they are rules governing the conduct, rights and duties of the members of the Association.

11. In my opinion, the "byelaws" of the Association govern the dispute between the parties to this case. The parties to the contract had in their mind the "byelaws" of the Association. In their contemplation byelaws of Association are the rules and regulations which govern their contract.

12. There is a clear agreement to refer the dispute between the parties to arbitration in accordance with "byelaws" of the Association. In view of my conclusions, C.R.P. No. 1624 of 1991 by the buyer is dismissed. The seller's

C.R.P. No. 2011 of 1991 is allowed.