
(1983) 03 P&H CK 0079
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 154 of 1974

Punjab State Co Operative Supply and Marketing Federation
Ltd, Sector-17, Chandigarh

APPELLANT

Vs

M/s Steel Plant Pvt. Ltd.

RESPONDENT

Date of Decision : 01-03-1983

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : (1983) 03 P&H CK 0079

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : R.K. Mittal, for the Appellant; S.C. Sibal, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This appeal is directed against the order of the trial Court whereby the application u/s 34 of the Indian Arbitration Act (hereinafter called the Act), filed on behalf of the defendant-respondent was accepted, the proceedings in the suit were stayed and the matter was directed to be referred to the arbitrator.

2. The plaintiff-appellant, the Punjab State Co-Operative supply and Marketing Federation, filed the suit for the recovery of Rs. 10,11,265 25, by way of damages In the said suit, the defendant-respondent made the application u/s 34 of the Act, for staying the proceedings. It was alleged that on or about October 19, 1959, the plaintiff invited sealed tenders for the supply of a boiler. The defendant offered to sell the requisite boiler at the price and other terms and conditions as contained in letters dated October 29, 1968, Exhibit A, 3. November 1, 1969, Exhibit A, 4 and November 17, 1963, Exhibit A, 6. Further correspondence was exchanged between the parties and the plaintiff vide letter dated December 30, 1969, Exhibit A, 9 and letter dated January 15, 1970, Exhibit A, 10 placed the order for the supply of the boiler. The said order was accepted by the defendant vide letter dated January 22, 1970, Exhibit A, 12.

That communication was accepted by the plaintiff vide letter dated February 4, 1970, Exhibit A, 14, wherein the plaintiff only objected to the date of the acceptance of its order, but did not raise any objection to the other terms and conditions. According to the defendant, there was subsequent correspondence between the parties to show that they acted in furtherance of the contract concluded as aforesaid. In the general conditions of sale, the printed copy of which is mark A on the record, one of the clauses is as follows:

If at any time any question, dispute or difference whatever shall arise between the purchaser and the seller, upon any relation to, or in connection with, either of the party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to arbitration in Bombay in accordance with the Indian Arbitration Act.

Thus, according to the defendant, in view of the said terms of arbitration, the dispute, if any, between the parties, is to be referred to the arbitrator and, therefore, the proceedings in the suit are to be stayed u/s 34 of the Act. The application was contested by the plaintiff on the ground that there was no agreement between the parties for referring the matter to the arbitrator concerned and, therefore, there was no reason to stay the proceedings because no terms and conditions as contained in mark A were ever accepted by it. On the pleadings of the parties, the trial Court framed the following issue:

1. Whether the suit is liable to be stayed u/s 34 of the Arbitration Act?

The trial Court came to the conclusion that the plaintiff had placed the order accepting the conditions as mentioned in the general condition of sale, mark A, and as the plaintiff had accepted those conditions, there being an arbitration clause therein, as reproduced above, the suit could not proceed and the same was liable to be stayed u/s 34 of the Act. Consequently, the proceedings in the suit were stayed and the matter was referred to the arbitrator. Dissatisfied with the same, it has come up in appeal to this Court.

3. The learned counsel for the appellant contended that the plaintiff never agreed to the arbitration at any stage. As a matter of fact, according to the learned counsel, the defendant's conditions given in mark A title as "general conditions of sale" are altogether different from the one mentioned in the letter accepting the tender. In any case, there was no intention at any stage to accept the condition of arbitration as contained in mark A. Thus, argued the learned counsel, the approach of the trial court that the plaintiff never raised any objection to the arbitration clause is wrong and illegal. The defendant in order to succeed in his application u/s 34 of the Act, must show that the said clause was duly accepted by the plaintiff. In other words, there must be clear acceptance of the terms on behalf of the plaintiff before the suit could be stayed u/s 34 of the Act. In support of his contentions, the learned counsel placed reliance on *C. Satyanarayana and Others Vs. Kanumarlapudi Lakshmi Narasimham*, and *Amritsar Transport Co. Ltd. Vs. S. Sohanlal*. On the other hand, the learned counsel for the respondent

contended that since the plaintiff never raised any objection to the "general conditions of sale", as contained in mark A, including the term of arbitration, the trial Court rightly came to the conclusion that it would be deemed that the plaintiff accepted the same. In support of his contention, the learned counsel placed reliance on *Lal Chand v. Des Raj* AIR 1951 P&H 115.

4. I have heard the learned counsel for the parties and have also gone through the relevant documents on the record.

5. There is no document on the record, wherefrom it could be held that the plaintiff accepted the general conditions of sale as contained in mark A including the terms of arbitration. The defendant vide letter dated October 29, 1969, Exhibit A 3, written to the plaintiff, for the first time referred "for further terms and conditions regarding delivery period etc please refer to our sheet attached". Though according to the plaintiff, no sheet as such was attached to the said letter, but in any case, even if it be taken that a copy of the general conditions of sale as contained in mark A was sent along with the said letter, there is no letter on behalf of the plaintiff written to the defendant that they ever agreed to these conditions. The trial Court relied upon the letter dated October 29, 1969, Exhibit A 3, and the letter dated January 22, 1970, Exhibit A 12, which is the letter of acceptance. It has been written therein in the ink that "the acceptance is as per general conditions of sale enclosed herewith and all terms and conditions in your P. O not conforming to these terms are expressly repudiated hereby " In these circumstances, I am afraid the defendant could not bind the plaintiff at the time of the acceptance of the order by inserting this clause in the letter dated January 22, 1970, Exhibit A 12. At any stage, the plaintiff never agreed to these terms as such. The approach of the trial Court in this respect is wholly wrong. It was not the question whether the plaintiff objected to the said arbitration clause and the general conditions of sale or not but in order to succeed u/s 34 of the Act, the defendant must show and prove that the plaintiff accepted those terms including the arbitration clause. This, the defendant has failed to prove on the record. In *C. Satyanaravana's* case (supra) the Andhra Pradesh High Court held that merely because the defendant had written the letter on the top of which subject to Madras jurisdiction" was printed, it could not become part of contract unless it was agreed to by the plaintiff. Similarly, in *S Sohanlal's* case (supra) it was held by the Jammu and Kashmir High Court that where a receipt executed by A for the price of articles entrusted at him at X and to be returned at Y contained a printed note that all disputes were subject to the jurisdiction of the Courts at Z but the acceptance of that terms by B was not proved or even alleged by A, the agreement as to jurisdiction was not binding on B. As observed earlier, in the present case, the plaintiff at no stage accepted the general conditions of sale including the arbitration clause. The defendant could not bind the plaintiff unilaterally. An agreement is a bilateral act to which both the parties to the agreement must agree and accept the terms in order to bind themselves. In the absence of any cogent and acceptable evidence on the record, the finding of the trial Court on the issue, in dispute, is liable to be reversed. *Lal Chand's* case

(supra), relied upon by the learned counsel for the defendant is fully distinguishable and has no applicability to the facts of the present case

6. Consequently, this appeal succeeds and is allowed. The order of the trial Court is set aside and the application u/s 34 of the Act, filed on behalf of the defendant is dismissed with costs. The trial Court will proceed with the suit expeditiously in accordance with law. The records of the case be sent back forthwith. Parties are directed to appear in the trial Court on 23-3-1983.