

(2001) 03 SC CK 0126

In the Supreme Court Of India

Case No : Civil Appeal No"s. 2505-06 of 2001 (Arising out of SLP (C) No"s. 4334-35 of 2000)

Pyrites, Phosphates and Chemicals Ltd.

APPELLANT

Vs

Sebilan Compania and Another

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Arbitration Act, 1940 — Section 33

Citation : (2002) 2 ACR 1930

Hon'ble Judges : Ruma Pal, J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Special leave granted.

2. The only question involved in this case is whether there was an arbitration agreement between the parties or not. It appears that there was a Charter Party Contract dated 13th June, 1991 which was entered into between the parties in which clause 47 provided that in case of disputes between them the same will be referred to arbitration under the provisions of the Indian Arbitration Act, 1940. Some disputes having arisen, the Union of India appointed respondent No. 2 as arbitrator. Thereupon, respondent No. 1 filed an application in the Civil Court, Cuddalore under Section 33 of the Arbitration Act, 1940, contending that there was no arbitration agreement between the parties, inasmuch as the bill of lading did not refer to any such arbitration clause.

3. This plea was accepted by the trial Court and the application of the respondent allowed. The High Court affirmed this view. Hence, this appeal by special leave.

4. Mr. Mukul Rohtagi, the learned Addl. Solicitor General has drawn our attention to the bill of lading the opening part of which specifically provides that "all terms and conditions of the relevant charter party are deemed to have been incorporated therein". Furthermore, one of the conditions of carriage as provided

in the bill of lading further stipulates that all terms and conditions contained in the charter party would stand incorporated. Admittedly, clause 47 of the charter party contains an arbitration clause which provides that each party may appoint an arbitrator out of a panel of arbitrators maintained by the Indian Council of Arbitration and that disputes between the parties will be settled according to the provisions of the arbitration agreement. The Courts below overlooked this aspect and came to an incorrect decision. We are of the opinion that there was a binding arbitration agreement between the parties.

5. We, accordingly, allow these appeals and set aside the orders of the trial Court and of the High Court.

6. No costs.