

**(1928) 02 CAL CK 0008**  
**In the Calcutta High Court**

Radha Kanta Dass

APPELLANT

Vs

Baerlein Bros. Ltd.

RESPONDENT

---

**Date of Decision :** 16-02-1928

**Acts Referred:**

Arbitration Act, 1940 — Section 19

**Citation :** AIR 1929 Cal 97 : 117 Ind. Cas. 540

**Hon'ble Judges :** Rankin, C.J;C.C. Ghose, J

**Bench :** Full Bench

---

**Judgement**

Rankin, C.J.—This is an appeal from an order made by a learned Judge on the original side whereby he stayed the plaintiff's suit u/s 19, Arbitration Act. It appears that the suit was brought by the plaintiff for breach of an agreement to supply certain goods, one term of the agreement being that the goods which the plaintiff was to receive were to be goods of which he would have in some sense a monopoly so far as India was concerned, and the plaintiff's suit was for damages for the defendant's wrongful conduct in sending other goods of the same kind to other ports in India in breach of their agreement. The defendants are a limited Company, Baerlein Bros. Ltd., incorporated in the United Kingdom and carrying on business at Manchester in England.

2. The plaintiff Radha Kanta Dass who carries on business in Calcutta being minded to get goods from England approached a person called M.N. Dutta and signed what is called an indent form. This is a common method of doing business when purchase of goods from abroad is desired and in all these forms, which are very badly drafted as a rule, one gets complicated questions as to whether the person to whom the indent is addressed is an agent for the buyer, an agent for the seller or whether the seller is his agent and so on.

3. The first step was that the plaintiff signed and sent to Dutta an indent, in one case on 15th February 1927. That indent refers to Messrs. Baerlein Bros. Ltd. It begins:

I we request your agents suppliers principals Messrs Baerlein Bros. Ltd., to buy for me us and ship on my our account and risk.

and so forth. There are great many clauses of the indent which refer to how the goods are to be paid for, the liability of M.N. Dutta, the rights of M.N. Dutta and, indeed, other matters.

4. The arbitration clause is the seventh clause:

In case of any dispute with regard to this order, you or your agents are to have the option of canceling this order or submitting the matter to the Bengal Chamber of Commerce or to one or two European merchants resident in Calcutta for arbitration as between us and your agents and his their decision or that of his their referee shall be binding upon both parties.

5. This clause after further provisions ends up by saying:

It is hereby expressly agreed that you will in no way be held responsible for the payment; of any allowance etc. that may be awarded at the survey or that may otherwise be due to us until fully realized from your agents or suppliers and that the provisions made in this para, shall in no way affect the relation between us as between principal and principals and shall in no way affect any of the terms herein stated.

6. These are in all 16 clauses containing somewhat elaborate terms and these indents having been signed by the plaintiff, it would appear that Dutta telegraphed to Manchester and that Baerlein Brothers accordingly sent certain sale-notes to the plaintiff. Those safe-notes are as follows:

We are in receipt of your esteemed order sent by Mr. M.N. Dutta and have booked the same with thanks as specified hereunder.

7. Accordingly a description of the goods is given and a reference to the monopoly arrangement is included and the terms of payment are set out. Upon that the plaintiff replied to Messrs. Baerlein Brothers at Manchester as follows:

We duly received your favour of the 16th February confirming our order for 120 bales 60/1 Turkey Red John Orr Ewing & Co. Sun & Lion quality at 46id. per lb. shipment 10 B/s monthly commencing September 1927 to August 1928 which we find correct.

8. Now, the first thing to consider is whether the contract between the plaintiff and the defendants is a contract of which Clause 7 of the indent is a part or whether, as is contended by Mr. Langford James, the contract between the plaintiff and the defendants does not include that term at all. Mr. Langford James contends that as Dutta merely telegraphed the effect of the plaintiff's order to Manchester and as the sale-note contains no express reference to the indent which the plaintiff signed, it is not shown that Clause 7 of the indent was any part of the contract between the plaintiff and the defendants. If that can be made out then of course Mr. James' client is entitled to resist this application to

stay the suit.

9. I am not, however, of opinion that it can be said that this particular clause of the indent or, indeed, any other clause of the indent was no part of the bargain between the plaintiff and the defendants. It seems to me that the mere circumstance that this man Dutta who carries on an indenting business does not repeat to Manchester the whole of the indent clauses has no effect upon the question. The plaintiff's offer was an offer upon all the terms of this indent and although the words "agents" "suppliers" and "principals" are used in a confusing and, indeed, rather absurd manner they are used in this case with reference to and are demonstrative of Messrs. Baerlein Brothers Limited. The intention was that Messrs. Baerlein Brothers Limited should have the right of Clause 7 and, in my judgment, when that order was booked by telegram it is not right to say that Baerlein Brothers were contracting with the plaintiff independently of the indent form. In my judgment the indent form signed by the plaintiff is a part of the offer which Baerlein Brothers accepted. It is the only order which the plaintiff gave and, in my judgment, it is not correct to say that the order which is referred to in the sale-note is the telegraphic order sent by Mr. M.N. Dutta. The order referred to in the sale-note "your esteemed order sent by Mr. M.N. Dutta" does not mean the telegram or cablegram of Mr. Dutta. It means the order given by Mr. Dutta which Mr. Dutta repeats to Manchester.

10. In the same way when the plaintiff comes to finally close the matter he says:

We duly received your favour of the 16th February confirming our order for 120 bales

and so on. It does not seem to me possible to construe this contract by assuming that the whole of this indent is left out as between the plaintiff and the actual suppliers. The purpose of the indent would be entirely nugatory if that was so. That being so, I am of opinion that this clause is a submission clause and a part of the bargain. It is a clause in writing and, therefore, the question arises whether as it has not been signed by Baerlein Brothers it is a submission within the meaning of the Indian Arbitration Act.

11. Upon that point the case law at one time was in some confusion. The first case was the case of *In re E.D. Lewis: Ex parte Munro* [1876] 1 Q.B.D. 724 which was followed apparently in *Caerleon Tinsplate Co. Ltd. v. Hughes* [1891] 60 L.J.Q.B. 640. So far authority was in favour of the view that it was necessary that the agreement should be signed by both parties. Apparently in the case of *Bam Narain v. Liladhar Lowjee Woodroffe, J.*, assumed that to be the law though I do not gather that the exact point was relevant to the case before him. In the case of *Suhhamal Bunsidhar v. Babu Lal Kedia & Co.* [1920] 42 All. 525 that also was assumed to be the law in the judgment of Walsh, J., where he said:

We agree with the view taken by Woodroffe, J., in *Bam Narain v. Liladhar Lowjee* [1906] 33 Cal. 1237 and with the majority of the English cases on this point, particularly *Caerleon Tinsplate Co. v. Hughes* [1891] 60 L.J.Q.B. 640 that that

provision involves a submission signed by both parties or their agents.

12. Later in India the same has been laid down by my learned brother Page, J., in *John Batt and Co. (London), Ltd. Vs. Kanoolal and Co.*, : . Page, J., notices certain other English oases. He has noticed the ease of *Baker v. Yorkshire Fire and Life Assurance Co.* [1892] 1 Q.B. 144 the case of *Hickman v. Kent or Bomney Marsh Sheep-Breeders Association* [1915] 1 Ch. 881 and the case of *Anglo Newfoundland and Development Co. v. Begem* [1920] 2 K.B. 214. He says, however, that these cases are to be distinguished on the ground that the plaintiff was estopped from asserting that he had not assented to the arbitration clause.

13. In my judgment the law is the other way. The Arbitration Act of 1889 and the Indian Arbitration Act for the best of good reasons have not required that the agreement to submit should be signed by both parties. What has been required is a written agreement to submit and Baker's case, Hickman's case and the case of *Anglo Newfoundland Development Co.* show that it is illegitimate to import into the Statute the requirement of a signature by both parties.

14. This it seems to me has nothing to do with estoppels. In the case of *Baker v. Yorkshire Fire and Life Assurance Co.* [1892] 1 Q.B. 144 the plaintiff brought the suit upon a policy. No doubt he was estopped from asserting that he had not assented to an arbitration clause, but he was not estopped from asserting that he had not signed the arbitration clause. In Hickman's case Astbury, J., lays down the law in the following terms which were afterwards accepted by the Court of appeal in the *Anglo Newfoundland Development Co.* case [1920] 2 K.B. 214:

The result of these decisions is, I think, that if the submission is in writing and is binding on both parties as their agreement or as the equivalent in law to an agreement between them, the statute is satisfied

and as Bankes, L.J., pointed out following the decision in Baker's case [1892] 1 Q.B. 144 it is not necessary that both parties should have signed the written agreement. If a person has accepted the written agreement and acted upon it he is bound for "this purpose although he may not have set his hand to the document.

15. I am, therefore, of opinion that the law as laid down by Page, J., in the case cited is not accurate and in the present case I do not think that the mere fact that Baerlein Brothers have not put their signature to the indent form is a matter of any consequence. However, if I am right in thinking that the reference in the sale-note to the order of the plaintiff is a reference to the indent which the plaintiff signed this point does not really give trouble.

16. It remains only to consider whether there is in this case a good ground which would entitle us to say that the learned Judge has wrongly exercised his discretion in requiring the plaintiff to abide by the arbitration clause. I cannot help observing that such clauses are frequently signed very light heartedly ; but it is absolutely essential that people when they enter into contracts should abide

by them although no doubt there is power in Court to refuse to stay. When a person in Calcutta is buying goods from another person in Manchester, if the arbitration clause is a part of the contract it may often be exceedingly unfair to one or other of the parties if the arbitration clause is not insisted upon. I see no reason in this case to think that the learned Judge was wrong in insisting that the parties should abide by the arbitration clause. For these reasons I think that the appeal fails and must be dismissed with costs.

C.C. Ghose, J.

17. I agree.