
(1999) 10 BOM CK 0041

In the Bombay High Court

Case No : Arbitration Petition No. 348 of 1998

Toepfer International Asia Pte. Ltd.

APPELLANT

Vs

Thapar Export Limited

RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 47
Civil Procedure Code, 1908 (CPC) — Section 20
Contract Act, 1872 — Section 10, 182

Citation : (2000) 1 BomCR 455 : (2000) 2 MhLj 331

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : N.G. Thakkar and Z.A. Jariwala instructed by Thakore Jariwala and Associates, for the Appellant; S.C. Dharmadhikari instructed by Ajay N. Khandhar, for the Respondent

Judgement

S.S. NIJJAR, J.—This is a petition u/s 47 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as "the Act", applying for enforcement of the Award dated 29th September, 1997.

2. The petitioner is a Company incorporated under the laws of Singapore carrying on business of imports and exports of, inter alia, Indian commodities and in particular import of Indian toasted soyabean extractions. The respondents are a Company carrying on business of export of Indian Commodities and in particular Indian toasted soyabean exports. The petitioners at all material times in respect of the transaction, which is the subject matter of this petition, acted through their Brokers Alfred C. Toepfer Export (India) Pvt. Ltd. The respondent in respect of the transactions acted through M/s. Reliance Brokers. After negotiations the contract was finalised and executed between the brokers. It is the admitted case of both the sides that the contract has been neither signed by the seller nor by the buyer. The contract is stated to have been executed through the brokers only. It is the case of the petitioners that the contract was finalised in Mumbai. The respondents had agreed to sell, supply and deliver to the petitioners 500

m.t. of the goods at the rates specified. These goods were to be tendered by the respondents to the petitioners during January, 1996. The petitioners made all the necessary arrangements for shipment of the material. The respondents, however, acted in breach of the contract. The contract is evidenced by a letter dated 23rd October, 1995 issued by the respondents brokers, M/s. Reliance Brokers at Bombay. By this letter it was decided that the other terms would be as per Contract No. TIA/3036-151406. This letter was received by the petitioners agents. The former contract dated 23rd October, 1995 incorporating all the terms and conditions was drawn up at Bombay. The parties acted on the contract. Letter of credit was opened by the petitioners, which is at Exhibit-C to the petition. When the respondents failed to make delivery of the goods the broker visited Ludhiana. He was assured by Mr. Anil Thapar that the matter would be amicably settled in the month of July, 1996. The contract included an arbitration Clause which as follows:

"Other Terms: All other terms and conditions as per GAFTA Contract Nos. 100 & 119/125 currently in force. Both the buyer and seller hereby acknowledges familiarity with the text of the said GAFTA contracts and agree to be bound by its terms and conditions ARBITRATION IN LONDON."

3. Since there was a breach of contract, the matter was referred to arbitration in London. Thus the arbitration Award came to be made in favour of the petitioners.

4. The respondents challenged the enforceability of this Award on three grounds viz. (i) that there is no concluded contract between the parties and, therefore, the arbitration was without jurisdiction, (ii) that the Award is liable to be set aside as it has been given in breach of rules of natural justice as the Arbitral Tribunal has proceeded ex parte. No notices had been served by the Tribunal on the respondents and (iii) that this Court has no territorial jurisdiction to entertain the enforcement petition as even if the existence of the contract is accepted, the same was neither executed in Mumbai nor has it been breached/broken in Mumbai. Thus either under Clause 12 of the Letters Patent or u/s 20 of the Code of Civil Procedure, this Court will have no territorial jurisdiction.

5. So far as the objection with regard to the breach of Rules of Natural Justice is concerned, Mr. Dharmadhikari has very fairly stated that the matter stands concluded by the judgment of this Court in Arbitration Petition No. 350 of 1998 in which it has been held that the Arbitral Tribunal has not acted in breach of the rules of natural justice. So far as the first ground with regard to the existence of the contract is concerned, I am unable to accept the submissions of Mr. Dharmadhikari on the short ground that these are matters which ought to have been raised before the Arbitral Tribunal. Having deliberately not participated in the Arbitration proceedings, this Court cannot be asked to appreciate the evidence and to come to a finding of fact which would be contrary to the finding which has been returned by the Arbitral Tribunal. Even otherwise, in view of the affidavit filed by the broker on 16th March, 1998 and the documents attached thereto it would have to be held that there was a concluded contract between the

parties. It is to be noticed that the averments made in the amended petition as also the affidavit filed by the broker has not been controverted by the respondents by filing any reply thereto. Thus the averments made in the petition as also in the affidavit of the broker have to be accepted. Relying on these averments, it is not possible for this Court to come to the conclusion that there was no concluded contract.

6. The only other submission made by Mr. Dharmadhikari is that this Court has no territorial jurisdiction. It is to be seen that both the brokers are carrying on business in Mumbai. The documents have been exchanged between the brokers in Mumbai. The contract having been executed in Mumbai, in my view, this Court will have territorial jurisdiction to entertain a suit, if one was to be filed by the petitioners. That being so, this Court will have territorial jurisdiction to entertain the enforcement petition. In view of the above, the following order.

"The Foreign Award of the Arbitral Tribunal dated 29th September, 1997 at Exhibit-M to the petition is hereby declared to be enforceable under Chapter II of the Arbitration and Conciliation Act, 1996. Petition accordingly made absolute. The respondents to pay Rs. 20,000/- as costs of this petition."

7. C.C. Expedited.

8. Petition made absolute.