

A.H. Bhiwindiwala And Co. vs R.B. Lakshman Dass Mohan Lal And Sons ... on 29 January, 1954

Equivalent citations: AIR 1954 ALLAHABAD 750

JUDGMENT

Malik, C.J.

1. This is an appeal against an order passed by the lower Court under Section 34 of the Arbitration Act.
2. The plaintiff and the defendants entered into a contract on 18-2-1949, the relevant portion of which is as follows:

"We confirm having bought from you through your sole selling agents M/s Charan Company of Kanpur on the terms and conditions of the Indian Sugar Syndicate Contract Form, the following sugar."

A copy of the printed form of contract issued by the Indian Sugar Syndicate Ltd. was filed on behalf of the defendants and it was urged that the parties had agreed to the matter being referred to arbitration and the suit should, therefore, be stayed in accordance with the provisions of Section 34 of the Arbitration Act. The question, therefore, arose what the parties meant by the words "on the terms and conditions of the Indian Sugar Syndicate Contract Form." In that printed form the relevant words are:

"AN AGREEMENT made this.....day of....

19.. between..... (Seller) and..... (Buyer) for the sale of the following goods by the Seller to the Buyer upon the following terms a'nd conditions"

Then the terms and conditions are set out in a number of paragraphs.

3. In paragraph 17 of the agreement it is set out that in the case of a dispute the matter shall be referred to arbitration, that if the parties agreed there will be a sole arbitrator and that if they did not agree each would nominate his own arbitrator and the arbitrators would appoint an umpire. In case, however, the arbitrators did not agree to the appointment of an umpire or the umpire or the arbitrators did not give their award within thirty days the dispute shall be referred to arbitration "under the Rules of the Tribunal of Arbitration of.....Chamber of Commerce applicable for the time being for decision and such decision shall be accepted as final and binding on both parties to this

Contract. The Buyer and Seller agree that all such disputes are to be settled at....."

4. The blanks within the inverted commas were not filled in and the question is whether by reason, of those blanks not having been filled in it could be said that the parties had not agreed to the arbitration clause. A reference, however, to this part of the agreement would show that it was not necessary to fill in the blanks inasmuch as the Arbitration Act contains provisions about the appointment of an umpire if the arbitrators do not appoint an umpire or if the umpire or the arbitrators do not give their award within time. In the circumstances the lower Court came to the conclusion that the parties must be deemed to have agreed to the arbitration clause excluding the portion where the blanks were not filled in as that portion was really unnecessary in view of the provisions of the Arbitration Act. In our view the decision of the lower Court is correct.

5. Learned counsel has referred us to certain cases that relate to charter-parties and bills of lading and to the special rules regarding interpretation of such documents. Even these cases are not really helpful to the appellant. In --'Chatturbhuj v. Easdeo', AIR 1921 Cal 767 (A), Mookerjee, J. in the body of the judgment quoted with approval the decision of Lord Esher, Master of the Rolls, in --'Hamilton & Co. v. Mackie and Sons', (1889) 5 TLR 677 (B). That was also a case relating to charter-party and a bill of lading and Lord Esher, Master of the Rolls, says that "Where in a bill of lading there was such a condition as all other conditions as per charter-party, the conditions of the charter-party must be read verbatim into the bill of lading as though they were there 'in extenso'. Then if it was that any one of the conditions of the charter-party on being so read, was inconsistent with the bill of lading, they were insensible and must be disregarded."

We respectfully agree with this general proposition,

5. There has nothing been shown to us to indicate that the contract entered into on 18-2-1949 (on the terms and conditions of the Indian Sugar Syndicate Contract Form) contained anything which can be said to go contrary to the provisions of Clause 17 of the Form of Agreement relating to arbitration.

6. The appeal has, therefore, no force and is dismissed with costs.