M/S Caravel Shipping Services Pvt. Ltd. vs M/S Premier Sea Foods Exim Pvt. Ltd. on 29 October, 2018

Equivalent citations: AIRONLINE 2018 SC 706, 2019 (11) SCC 461, (2018) 14 SCALE 743, (2019) 127 CUT LT 925, 2019 (137) ALR SOC 21 (SC), (2019) 1 MAD LW 876, (2019) 1 ORISSA LR 151, (2019) 1 WLC(SC)CVL 183, (2019) 201 ALLINDCAS 113

Author: R.F. Nariman

Bench: Navin Sinha, Rohinton Fali Nariman

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REPO

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10800-10801 OF 2018
(Arising out of SLP (C) Nos. 31101-31102/2016)

M/S CARAVEL SHIPPING SERVICES PVT. LTD. Appella

VERSUS

M/S PREMIER SEA FOODS EXIM PVT. LTD. Respond

J U D G M E N T

R.F. Nariman, J.

1) Leave granted.

2) The present appeals arise out of a document styled as "Multimodal Transport Document/Bill of Lading" 25.10.2008. This Bill of Lading states that Consignor/Shipper is one M/s Premier Seafoods Exim

Limited of Kerala, and that Caravel Shipping Services Private Limited, who is the appellant before us, is the agent who facilitates transport. The very opening Clause of the Bill of Lading specifies:

> "In accepting this Bill of Lading the Merchant expressly agrees to be bound by all the terms, conditions, clauses and exceptions on both sides of the Bill of Lading whether typed, printed or otherwise."

3) The Respondent filed a Suit being O.S. No. 9 of 2009 before the Sub-Judge's Court in Kochi to recover a sum of Rs. 26,53,593/- in which the Bill of Lading was expressly stated to be a part of cause of action. Soon after the Suit was filed, an I.A. being I.A. No. 486 of 2009 was filed by the appellant under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") in which it was pointed out to the Court that an arbitration clause was included in the printed terms annexed to the Bill of Lading. The I.A. also pointed out that a Section 11 petition to appoint an Arbitrator in accordance with Clause 25, being the printed term in question, has also been filed in Chennai. The Sub-Court, Kochi, by its judgment dated 08.01.2013 dismissed the I.A., stating that printed conditions annexed to the Bill of Lading would not be binding upon the parties, and also that as no part of the cause of action arose in Chennai, the I.A. would have to be dismissed.

4) In the Original Petition filed under Article 227 of the Constitution of India, the High Court referred to certain provisions of the Multimodal Transportation of Goods Act, 1993, and also stated that the arbitration clause, being in a printed condition, there being no intention to arbitrate and nothing to show that Clause 25 was brought to the notice of the respondent, agreed with the learned Sub-Judge and dismissed the Original Petition. A Review filed against the said judgment was also dismissed by a judgment dated 14.06.2016.

5) Ms. Liz Mathew, learned counsel appearing on behalf of the appellant pointed out that printed conditions of the Bill of Lading were expressly referred to in the Bill of Lading and both parties were stated to be bound by the same. This being so, in accordance with Section 7(5) of the Arbitration Act read with this Court's judgment in M.R. Engineers and Contractors Private Limited vs. Som Datt Builders Limited, (2009) 7 SCC 696 would make it clear that there was a reference in the contract to the arbitration clause, and since it is in writing and the reference is such that the arbitration clause formed part of the contract, according to her, both the courts were in error. She also pointed out to us that, in the meanwhile, the Madras High Court, by order dated 09.01.2015, has referred to the Kerala proceeding, but nonetheless applied the arbitration clause and appointed a Senior Advocate to arbitrate between the parties in that proceeding.

6) On the other hand, Mr. P.A. Noor Muhamed, learned counsel for the respondent, invited our attention to Section 7(4) of the Act and argued that Section 7(4)(a) requires an arbitration agreement to be in a document that is signed by the parties. Since the Bill of Lading was not signed by his client, according to him, he is, therefore, not bound by the arbitration clause contained in that document. Further, he has also argued that at present the stage of the suit is that issues have been struck and one witness is being examined.

7) Having heard learned counsel for both parties, we are of the view that the Bill of Lading makes it clear that the term "Merchant" (which is defined in the Standard Conditions Governing Multimodal Transport Documents - Clause (1) (e) as meaning shipper, consigner or consignee) expressly agrees to be bound by all the terms, conditions, clauses and exceptions on both sides of the Bill of Lading whether typed, printed or otherwise. The arbitration clause, which is Clause 25 being a printed condition annexed to the Bill of Lading, reads as under:

> "25. Jurisdiction/Arbitration:
>
> The contract evidenced by the Bill of Lading shall be governed by the laws of India, and subject to the exclusive jurisdiction of court in Chennai only. Disputes/difference arising out of this contract and/or connection with the interpretation of any of its clauses shall be settled by arbitration in India in accordance with the Arbitration & Conciliation Act, 1996.
>
> The No. of Arbitrators shall be three, the Arbitrators shall be commercial persons the venue for arbitration shall be Chennai."

8) A perusal of the same shows that the respondent has expressly agreed to be bound by the arbitration clause despite the fact that it is a printed condition annexed to the Bill of Lading. Secondly, it must be remembered that the respondent has itself relied upon the Bill of Lading as part of its cause of action to recover the sum of Rs.26,53,593/- in the suit filed by it. The respondent, therefore, cannot blow hot and cold and argue that for the purpose of its suit, it will rely upon the Bill of Lading (though unsigned) but for the purpose of arbitration, the requirement of the Arbitration Act is that the arbitration clause should be signed.

9) In addition, we may indicate that the law in this behalf, in Jugal Kishore Rameshwardas vs. Mrs. Goolbai Hormusji, AIR 1955 SC 812, is that an arbitration agreement needs to be in writing though it need not be signed. The fact that the arbitration agreement shall be in writing is continued in the 1996 Act in Section 7(3) thereof. Section 7(4) only further adds that an arbitration agreement would be found in the circumstances mentioned in the three sub-clauses that make up Section 7(4). This does not mean that in all cases an arbitration agreement needs to be signed. The only pre-

requisite is that it be in writing, as has been pointed out in Section 7(3).

10) This being the case, the present is a clear case where, under Section 7(5) of the Act read with M.R. Engineers and Contractors Pvt. Ltd. (supra) (paras 22 & 24), the reference in the Bill of Lading is such as to make the arbitration clause part of the contract between the parties.

11) The fact that the stage of the present suit is that a particular witness is being examined would not come in the way of the Section 8(3) application being allowed inasmuch as the Section 8(3) application was filed in the same year as that of the suit. We may also add that we have not gone into the Multimodal Transportation of Goods Act, 1993 for the reason that whether the present Bill of Lading is governed by the provisions of the Act (Section 26 in particular) or not would not make any difference to the position that an arbitration clause forms part of an agreement between the parties, and would, therefore, be governed by Section 7 of the Arbitration Act.

12) We, therefore, allow the appeals and set aside the judgments of the High Court.

..... J.

(ROHINTON FALI NARIMAN) ..... J.

(NAVIN SINHA) New Delhi;

October 29, 2018.