Supreme Court of India
Jaikishan Dass Mull vs Luchhiminarain Kanoria And Co. on 3 May, 1974
Equivalent citations: AIR 1974 SC 1579, (1974) 2 SCC 521
Bench: P Goswami, P Bhagwati
JUDGMENT

1. This appeal, by special leave, is directed against a judgment of a single Judge of the Calcutta High Court declaring arbitration agreement contained in certain contracts between the parties to be invalid on the ground that the contracts were illegal under Section 15, Sub-section (3A) of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as the Forward Contracts Act).

2. The appellants and the respondents were both at all material times members of the East India Jute & Hessian Exchange Ltd. (hereinafter referred to as the Exchange). On 13th June, 1969, the appellants entered into two contracts with the respondents agreeing to purchase 12,00,000 yards of hessian cloth at the price of Rupees 70.50P. per hundred yards and 6,00,000 yards of hessian cloth at the price of Rs. 70/ - per hundred yards on the terms and condition's set out in the respective contract notes which were in the printed contract form prescribed in Appendix IV to . the bye-laws of the Exchange. These two contracts were transferable specific delivery contracts, for jute goods in the city of Calcutta. It was stated in the body of each of the two contract notes within the cage that the contract was one for delivery alongside export vessel in the port of Calcutta. The other terms and conditions set out in the two contract notes were identical but it is not necessary to refer to all of them. We may reproduce only a few which are material:

3. Goods to be packed folded, well pressed, marked and snipped by sellers in covered cargo boats in iron bound bales of 2000 yards or 1829 metres each.

4. Delivery of the said goods in to be given and taken as follows:

September 1969 (Payment against P.D.O.) Each delivery under this contract shall be treated as a distinct and separate contract.

5. Arbitration: The Bengal Chamber of Commerce & Industry/The Indian Chamber of Commerce.

The printed contract form prescribed in Appendix 17 to the bye-laws of the Exchange contained Clause 2, which was as follows:

2. Buyers to give...clear working days' notice to place goods alongside.

But this clause was scored out and cancelled in the contract notes in respect of these two contracts. There was accordingly no provision made in either of these two contracts for the buyers to give a particular number of clear working days' notice to the sellers to place goods alongside export vessel in the port of Calcutta.

3. Though the period of delivery specified in each of the two contracts dated 13th June, 1969 was September, 1969, it was by mutual agreement arrived at between the appellants and respondents on 18th June, 1969, extended to October/ December, 1969 at a discount of Re. 1/- per hundred yards on the contract price. The result was that in these two contracts, as modified, the period of delivery was changed to October/ December, 1969 and the price was reduced to Rs. 69.50 per hundred yards in the case of the first contract and Rs. 69/- per hundred yards in case of the other contract.

4. On 4th November, 1969, the appellants entered into three contracts with the respondents and under each of these three contracts the appellants agreed to sell to the respondents 6,00,000 yards of hessian cloth at the price of Rs. 87/- per hundred yards. Rs. 84.50 per hundred yards and Rs. 82.50 per hundred yards respectively. The terms and conditions on which these three contracts were entered into between the appellants and the respondents were set out in contract notes in the printed contract form prescribed in Appendix II to the bye-laws of the Exchange. These three contracts were also transferable specific delivery contracts in jute goods in the city of Calcutta. The terms and conditions of these three contracts were identical with those of the earlier two contracts dated 13th June, 1969 save and except that the provision in regard to delivery in Clause (4) of the terms and conditions was "October, 1969 (Due Date P.D.O.)" in respect of the first contract, "November, 1969 (Due Date P.D.O.)" in respect of the second contract and "December, 1969 (Due Date P.D.O.)" 'in respect of the third contract. Here also Clause 2, of the printed contract form was scored out and cancelled and the contract notes in respect of these three contracts did not contain any provision requiring the buyers to give any particular number of clear working days' notice to the seller to place goods alongside export vessel in the port of Calcutta.

5. Since the three contracts dated 4th November, 1969 were cross-contracts by way of settlement of the earlier two contracts dated 13th June, 1969, the deliveries under the two sets of contracts were set off against each other and differences in price became due and payable by the respondents to the appellants. The appellants accordingly submitted five bills for an aggregate amount of Rupees 2,76,000/- to the respondents and called upon the respondents to make payment of this amount to the appellants. The respondents, however, failed to pay any amount to the appellants under the said five bills and the appellants, therefore, relying on the arbitration clause contained in each of these several contracts, referred their claims under the said five bills to the arbitration of the Bengal Chamber of Commerce and Industry, Calcutta. These references were numbered as Case Nos. 58, 59, 61, 62 and 64 of 1970. The notices of these references were given to the respondents and they were called upon to file written statements in answer to the claims preferred by the appellants. The respondents from time to time applied to the arbitration tribunal of the Bengal Chamber of Commerce and Industry, Calcutta for extension of time for filing their written statements and, though extension of time was granted, the respondents did not ultimately file their written statements but instead preferred an application under Section 23 of the Arbitration Act challenging the existence and validity of the arbitration clause contained in each of these several contracts entered into between the parties. The main ground on which the existence and validity of the arbitration clauses was challenged was that though the contracts giving rise to the disputes between the parties were forward contracts entered into between members of a recognised association, they were in contravention of bye-laws l(b) and 15 read with bye-law 17 contained in Chapter V of the Bye-Laws of the Exchange and were, therefore, illegal and void under Section 15, Sub-section (3A) of

the Forward Contracts Act. This ground appealed to Mr. Justice S.C. Ghose, who heard the application, and he allowed the plea of the respondents holding that since Clause 2 of the printed contract form was scored out and cancelled in the contract notes in respect of all these contracts, they could not be said to be in the prescribed form as required by bye-law 1(b) nor could they be said to be entered into on the terms and conditions prescribed under the bye-laws as mandated by Bye-law 15 and consequently, they were illegal and void by reason of Section 15, Sub-section (3A) of the Forward Contracts Act and the arbitration clauses contained in these contracts must also, therefore, fall along with the contracts of which they formed part. This decision of Mr. Justice S.C. Ghose is impugned in "the present appeal preferred by the appellants with special leave obtained from this Court.

6. Now, there can be no doubt that 'if a contract is illegal and void, an arbitration clause, which is one of the terms thereof must also perish along with it. As pointed out by Viscount Simon, L. C. in Heyman v. Darwins Ltd. 1942 AC 356. "..if One party to the alleged contract is contending that it is void ab initio (because, for example, the making of such a contract is illegal), the arbitration clause cannot operate, for on this view the clause itself also is void." The arbitration clause being an integral part of the contract cannot stand, if the contract itself is held to be illegal. Logically speaking, it is difficult to conceive how when a contract, is found to be bad, any portion of it can be held to be good. When the whole perishes, its parts must also perish. 'Ex nihilo nil fit'. On principle, therefore, it must be held that when a contract is invalid, every part of it, including the clause as to arbitration contained therein, must also be invalid. That is also the view taken by this Court in at least two decisions, namely, Khardah Company Ltd. v. Raymon & Co. (India) Pvt. Ltd. and Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) Pvt. Ltd. . The question which, therefore, arises for consideration is whether the two earlier contracts dated 13th June, 1969 and the three contracts dated 4th November, 1969--which are the contracts giving rise to the disputes between the parties - could be branded illegal and void under Section 15, Sub-section (3A) of the Forward Contracts Act. If they could be, the arbitration clauses which form an integral part of them would be invalid: otherwise the arbitration clauses would have to be held to be valid.

7. In order to arrive at a proper determination of this question, it is necessary to refer to some of the relevant provisions of the Forward Contracts Act and the bye-laws for trading in Transferable Specific Delivery Contracts made by the Exchange. The Forward Contracts Act, as its long title shows, is enacted to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith. Section 6 deals with the subject of grant of recognition to an association and provides that where the Central Government is satisfied that it would be in the interest of trade and also in the public interest to do so, it may grant recognition to an association and when it does so, it shall specify in such recognition the goods or classes of goods with respect to which forward contracts may be entered into between members of such association or through or with any such member. It was under this section that the Central Government issued a notification dated 29th March, 1958 granting recognition to the ' Exchange "in respect of forward contracts in jute goods... in the city of Calcutta". Section 11 Sub-section (1) empowers a recognised association to make bye-laws for the regulation and control of forward contracts and in exercise of the power conferred under this section, the Exchange, with the previous approval of the Central Government, made bye-laws for trading in transferable specific delivery

contracts in raw jute and jute goods. Sub-section (3) of Section 11 provides in Clause (aa) that the .bye-laws made under that section may "specify the bye-laws the contravention of any of which shall make a forward contract entered into otherwise than in accordance with the bye-laws illegal under Sub-section (3A) of Section 15". Then follows Section 15 which enacts a prohibition on forward contracts in certain circumstances. Sub-sections (1) and (3A) of that section are material and they read as follows:

15(1) The Central Government may, by notification in the Official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in Section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal.

x x x x (3A) Any forward contract in goods entered into in pursuance of Sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under Clause (aa) of Sub-section (3) of Section 11 shall be illegal.

It was common ground between the parties that a notification dated 29th March, 1958 was issued by the Central Government under Section 15, Sub-section (1) declaring that "the said section shall apply to jute goods...in the city of Calcutta". No forward contract for sale or purchase of jute goods could, therefore, be entered into in the city of Calcutta otherwise than between members of the Exchange or through or with any such member. Vide Section 15, Sub-section (1). There was, however, no difficulty on this score in the present case because both the appellants as well as the respondents were members of the Exchange and the contracts in question were, therefore, forward contracts entered into between members of the Exchange. But the question is whether these contracts were "in contravention of any of the bye-laws specified in this behalf under Clause (aa) of Sub-section (3) of Section 11" so as to be rendered illegal under Section 15, Sub-section (3 A). That requires consideration of the bye-laws for trading in transferable specific delivery contracts made by the Exchange.

8. These bye-laws are to be found in a printed booklet entitled "Working Manual Volume III". They are divided into several chapters. The first Chapter, which is relevant, is Chapter V which contains General Trading Provisions. Bye-law l(a) in that Chapter merely reiterates the requirement of Section 15, Sub-section (1). Its bye-law l(b), which is very material, says : "All Transferable Specific Delivery Contracts shall be in writing in the prescribed forms (Appendix II for jute goods and Appendix IV for raw jute) serially numbered and supplied by the Association on payment." We are concerned in this appeal with transferable specific delivery contracts in jute goods, and therefore, the printed form, which is applicable, is that given in Appendix II. If the requirement of bye-law l(b) is to be satisfied, the contracts in question must be in the printed form prescribed in Appendix II. Bye-law; l(g) provides that all transferable specific delivery contracts shall be subject to the provisions of the bye-laws. Then follows bye-law 15 which enjoins that "No member shall enter into any transferable specific delivery contracts in raw jute and/or jute goods otherwise than on the terms and conditions prescribed under these Bye-laws.' Bye-law 17 specifies the bye-laws the

contravention of any of which shall make a forward contract illegal under Section 15, Sub-section (3A). It says : "Any transferable specific delivery contract entered into in raw jute and/or jute goods which at the date of the contract is in contravention of the provisions of any of the bye-laws l(i), 13, 14, 15 and 16 of Chapter V shall be illegal under the provisions of Section 15(3A) of the Forward Contracts (Regulation) Act, 1952." The last bye-law in this Chapter to which reference may be made is bye-law 23 which runs as follows: "In the case of T.S.D. contracts in Jute Goods for inland delivery it shall be in order to substitute the words 'Free Alongside Export Vessel in the Port of Calcutta' mentioned on the body of the Contract in the second column within the cage by such words as for (Free on Railway), or C. & F. (Cost and Freight), or C.I.F. (Cost, Insurance, Freight), or F.O.B. (Free on Board) as the case may be."

9. We then go on to Chapter VII which deals with terms, tenders and deliveries under transferable specific delivery contracts in jute goods. Bye-law 4(a) of this Chapter was most strongly relied upon on behalf of the appellants and it reads as follows : "Payment is to be made in cash in exchange for Pucca Delivery Order/s on sellers, or for Dock Receipt/s or for Mate's Receipt/s (which Dock Receipt/s or Mate's Receipt/s is/are to be handed by Dock or Ships' Officer to the sellers' representatives). Provided always that in case of sales to inland buyers/clients, the payment term shall be cash or as otherwise agreed upon between sellers and buyers/clients". A Pucca Delivery Order, according to bye-law 5, means a delivery order issued by a Mill Company relating to jute goods covered by a contract, the terms and conditions of which are given in detail in Chapter VIII. Bye-law l(a) of Chapter VIII requires that all Pucca Delivery Orders of jute goods shall be in writing in the prescribed form set out in Appendix HI. Bye-law 3 provides for registration of the holder of a Pucca Delivery Order in the books of the Mill Company. The rights and obligations of the registered holder of a Pucca Delivery Order vis-a-vis the Mill Company are set out in bye-laws 5 to 10. Of these, only bye-laws 5 and 6 are material and they may be reproduced as follows:

5. The holder of the Pucca Delivery Order having put in a request for registration or the registered holder thereof shall be entitled to give instruction to the Mill Company in writing accompanied by the Pucca Delivery Order, to place the goods alongside a specified export vessel or wharf or jetty in the Port of Calcutta. The Mill Company shall return to the said registered holder within three working days of receipt, the said Pucca delivery Order endorsing thereon the words "Received shipping instructions" under its signature and subject to the provisions of Paragraphs 7 and 8 hereof the said Mill Company shall place the goods alongside a specified export vessel or wharf or jetty in the Port of Calcutta not later than the 10th working day after the day on which the shipping instructions as mentioned in this paragraph were delivered to its registered office. The Mill Company shall deliver the relative Mate's Receipt, Dock Receipts. Railway Receipt or Ghat Delivery Order in accordance with the Shipping Instructions, as the case may be, to the holder of the aforesaid P.D.O. in exchange thereof.

6. In the event of the said Mill Company failing to bring down the goods by the aforesaid 10th working day (hereinafter called "the delivery order due date") the registered holder shall subject to the provisions of Paragraph 5 hereof be entitled within 3 working days after the delivery order due date to receive from the Mill Company on demand payment for the goods at the market rate prevailing on the delivery order due date in exchange for the Pucca Delivery Order. "These are some

of the relevant bye-laws which are required to be considered in deciding the main point in controversy between the parties.

10. The argument of the respondents was - and that is the argument which find favour with the learned single Judge of the Calcutta High Court - that Clause (2) of the printed contract form having been scored out in the contract notes in respect of all the contracts between the parties, these contracts were not in the prescribed form as required by bye-law l(b) and hence they are entered into otherwise than on the terms and conditions prescribed under the bye-laws and since that was in contravention of bye-law 15, these contracts were illegal under Section 15, Sub-section (3A) read with bye-law 17. The appellants attempted to rebut this argument by a two-fold contention. The first contention was that even if the contracts were not in the prescribed form and there was contravention of bye-law l(b), that did not have the effect of rendering the contracts illegal because bye-law 1(b) was not one of the bye-laws specified in bye-law 17. But this contention is without force. It. stands concluded by the decision of this Court in Megna Mills Co. Ltd. v. Ashoka Marketing Co. There also the contracts were not in the prescribed form as required by bye-law 1(b) and the question was whether that rendered the contracts illegal under Section 15, Sub-section (3A) read with bye-law 17. This Court, speaking through Grover, J., answered the question in the affirmative saying: "In our opinion, the High Court was right in holding that the contracts in question were not in the prescribed form and thus they did not comply with the requirement of bye-law 1(b) of Chapter V. There can be no manner of doubt that that bye-law is mandatory when read with bye-laws 15 and 17. It must be remembered that under bye-law 15 no member shall enter into any transferable specific delivery contract otherwise than on terms and conditions prescribed under the bye-laws and under by-law 17 if there is a contravention, inter alia, of bye-law 15 the contract shall be rendered illegal by virtue of the provisions contained in Section 15(3A) of the Act. Section 11(3)(aa) specifically empowers the Exchange to make bye-laws, the contravention of any of which shall make a forward contract entered into otherwise than in accordance with such bye-laws illegal. If, therefore, the contracts in question did not comply with the requirement of bye-law 1(b) of Chapter V they would be rendered illegal and void." It can, therefore, BO longer be disputed that if a contract is not in the prescribed form as enjoined by bye-law 1(b), it would be in contravention of bye-law 15 and hence under Section 15, Sub-section (3A) read with bye-law 17, it would be illegal and void. That means that the appellants ran succeed only if they can show that the contracts in the present case were in the prescribed form as required by bye-law 1(b). This was attempted to be done and that constituted the second contention of the appellants.

11. Now there can be no doubt that, Clause (2) of the prescribed form was scored out and omitted from the contracts notes in respect of the contracts between the parties. There was no provision included in any of these contracts requiring the buyers to give any particular number of clear working days notice to. the sellers to place goods alongside export vessel in the port of Calcutta. The contracts thus clearly departed from the prescribed form in respect of this particular provision. The question is whether on this account it could be said that the contracts were not in the prescribed form in accordance with the requirement of bye-law 1(b). Now, when can a contract be said to be in the prescribed form and when not is no longer a question which presents any serious difficulty It is settled by the high authority of the Judicial Committee of the Privy Council and there is also a pronouncement of this Court on the point We may first refer to the decision of the Privy Council in

Radhakisson Gopikisson v. Balmukund Ramchandra. . The question which arose for determination in this ease was whether certain contracts entered into between the parties contravened any of . the bye-laws made by the Board of Directors of the East India Cotton Association Ltd. and were, therefore, void under Section 5 of the Bombay Cotton Contracts Act 1922. Bye-law 8.1 provided that "contracts...shall be in writing in the form given in the Appendix". The contracts in question were admittedly inconsistent with the terms and conditions set out in the prescribed form in at least two respects and yet the contention of the appellants was that the contracts were in the prescribed form and there was no contravention of bye-law 81 so as to render the contracts void under Section 5. The Judicial Committee of the Privy Council negatived this contention. Lord Thankerton, delivering the opinion of the Judicial Committee. pointed out at page 70 of the Report:

Their Lordships are of opinion that the form prescribed is, in its terms, applicable to contracts between a commission agent and his constituent, and that the parties in the present case were bound to comply with the by-law and its form. They are unable, however, to agree with the view that the form is a streotyped one and that literal compliance with it is essential; in their opinion, the contract must contain all the terms and conditions set out in the form in order to comply with it. For instance, in the" prescribed form the main terras and conditions are contained in the memorandum of contract...sent by the agent to his constituent, in which the former reports the fulfilling of the order by a purchase or a sale, as the case may be, in Bombay. If identical ierass and conditions, instead of being in the memorandum sent by the agent, were contained in the initial order by the constituent, their Lordships are of opinion that there would be pro tanto sufficient compliance with the by-law. But that is clearly not found in the present case, for the initial orders are inconsistent with the terms and conditions set out in the prescribed form in at least two respects .... It follows that the contracts having failed to comply with the by-laws they are rendered void under the provisions of Section 5 of the Act.of the Act.

The same view was reaffirmed by this Court in where Grover, J., speaking on behalf of the Court, said with reference to the same bye-law 1(b) with which, we are concerned in the present appeal - and what was said there is binding upon us;

Literal compliance with the prescribed form may not be essential but if the contract does not contain all the terms and conditions set out in the form the contract will be void under the provisions set out before; See the ratio of the decision in .

It is, therefore, clear that in order that a contract may be in the prescribed form, literal compliance is not essential; what is necessary is that the contract must contain all the terms and conditions set out in the prescribed form. If this test is applied, as it ought to be, there can be no doubt that the contracts in the present case were not in the prescribed form as they did not contain any term or condition corresponding to Clause (2) of the printed form requiring the buyers to give a particular number of clear working days' notice to place goods alongside export vessel in the port of Calcutta.

12. The appellants, however, contended that the prescribed form was given merely as an example and was only to be followed so far as circumstances of the case may admit. If there was any term or condition in the prescribed form which was inapplicable in a given case, it could be omitted without

imperilling the validity of the contract. Here, contended the appellants, the mode of performance contemplated in each of the contracts was delivery of Pucca Delivery Orders against payment of price, and therefore, Clause (2) of the printed form which provided for giving of notice by the buyers to place goods alongside was inapplicable and could not have any place in these contracts. It did not fit in with this mode of performance and was, therefore, rightly omitted from these contracts. This contention of the appellants, plausible though it may seem at first blush, does not survive close scrutiny. There are two answers to it which are conclusive.

13. In the first place it is not correct to say that the prescribed form may foe followed only in so far as circumstances may admit. The prescribed form, as we have already pointed out above, is imperative and a contract in order to be valid must contain all the terms and conditions set out in the prescribed foam Either the contract must incorporate all those terms and conditions or no contract can be made at all. No term or condition in the prescribed form can be dispensed with on the plea that it is inapplicable., What Bankes L.J. said in Burchell v. Thompson (1920) 2 KB 80, with reference to Section 9 of the Bills of Sale Act, 1882, namely, "...a bill of sale will be void unless all the blanks which are included in the statutory form are filled up", applies equally in the present case. Nothing can be omitted from the contract which is included as a term or condition in the prescribed form. The only departure that is permissible from the prescribed form is that provided in bye-law 23 where contract is not for export but for inland delivery. The words "free alongside export vessel in the port of Calcutta" would in case of such a contract be wholly inapplicable, and therefore, bye-law 23 permits these words to be substituted by some such words as for, or C. & F. or C.I.F. or F.O.B., as the case may be. That is the only variation permissible wider the bye-laws and beyond that there can be no departure from the prescribed form. Bye-law 23 indeed, by necessary implication, clearly suggests that the prescribed form is mandatory and must be followed scrupulously in regard to all the terms and conditions therein set out except to the limited extent to which departure may be permitted under that bye-law. That is the plain intendment and effect of bye-laws 1(b), 15, 17 and 23 read with Section 15, Sub-section (3A). Vide 60 Ind App 63 - . The omission of Clause (2) of the prescribed form from the contracts in question must, therefore, be held to render these contracts illegal under Section 15, Sub-section (3A).

14. Secondly, in any event, Clause (2) of the prescribed form could not be said to be inapplicable in case of the present contracts. It is clear from the bye-laws and particularly the prescribed form and bye-law 23 that a contract which is a transferable specific delivery contract may be of one of two kinds. It may be either a contract for export or a contract for inland delivery. A contract for export would stipulate a price "free alongside export vessel in the port of Calcutta", while in a contract for inland delivery, the price would be for or C. & F. or C.I.F. or F.O.B., as the case may be. The contracts in the present case were clearly contracts for export and under these contracts the sellers were bound to deliver goods alongside export vessel in the port of Calcutta. That is why Clause (3) in each of the contracts provided that the goods shall be "packed, folded, well pressed, marked and shipped by sellers in cargo boats" in iron bound bales of 2000 yards or 1829 metres each". But then what is the effect of Clause (4) which provided that "Delivery of the goods shall be given and taken as follows": the specified month of delivery "(Due Date P.D.O.)". This clause clearly contemplated delivery of Pucca Delivery Orders on/or before due date under each of the contracts. Could this be said to be inconsistent with Clause (2) of the prescribed form so as to render that clause

inappropriate for application to these contracts? We do not think so. The question has to be examined against the background of the practice followed by traders in effecting transferable specific delivery contracts in jute goods in the city of Calcutta. There is usually a chain of contracts starting from the Mill Company and ending with the actual shipper of the goods. There are in between the Mill Company and the ultimate shipper various intermediate buyers and sellers who enter into chain contracts on the same terms and conditions as the original contract between the Mill Company and its buyer. Where the first contract between the Mill Company and its buyer provides for delivery of Pucca Delivery Orders against payment of the price - and such a provision is clearly contemplated by bye-law 4(a) in Chapter VII - a similar provision would be repeated in the entire chain of contracts and the Pucca Delivery Orders would be issued by the Mill Company to its buyer and they would then go on being transferred by the endorsement from one buyer to another along the chain until they reach the last buyer who is the shipper of the goods. The last buyer being the shipper would get himself registered as the holder of the Pucca Delivery Orders in the books of the Mill Company under bye-law 3 of Chapter VIII and he would then give shipping instructions to the Mill Company in writing accompanied by the Pucca Delivery Orders to place the goods alongside a specific export vessel or wharf or jetty in the port of Calcutta as provided in bye-law 5 of Chapter VIII. When the registered holder of the Pucca Delivery Orders gives shipping instructions to the Mill Company, the effect is as if eo instanti such shipping instructions are given by the registered holder to his seller and by such seller to his immediate seller and so on along each link of the chain until they reach the Mill Company. The process of the registered holder giving shipping instructions to his seller and each successive buyer passing on such shipping instructions to his immediate seller so as ultimately to reach the Mill Company would be cumbrous and time consuming and would impede quick movement of goods in performance of export contracts and bye-law 5 of Chapter VIII, therefore, provided that, instead of going through this tortuous process of passing on shipping instructions from one end of the chain to another through each link in the chain, the last buyer who is the registered holder may directly give shipping instructions to the Mill Company and that would be tantamount to giving shipping instructions in performance of each of the chain contracts all along the line. The presence of a clause in the chain contracts providing for delivery of Pucca Delivery Orders against payment of the price does not, therefore, exclude giving of shipping instructions by the buyers to the sellers. In fact, shipping instructions have to be given, because the contracts are export contracts providing for delivery free alongside export vessel in the port of Calcutta and, as pointed out above, bye-law 5 of Chapter VIII clearly provides for giving of shipping instructions. Now, obviously when shipping instructions are to be given, each of the chain contracts may legitimately stipulate that a particular number of clear working days' notice to place goods alongside shall be given by the buyers to the sellers and that is precisely what is provided by Clause (2) of the prescribed form. Clause (2) of the prescribed form requiring buyers to give a particular number of clear working days* notice to place goods alongside cannot, therefore, be said to be inconsistent with the provision for delivery of Pucca Delivery Orders against payment of the price.

15. This view finds support from the decision of this Court in Duni Chand Rataria v. Bhuwalka Brothers Ltd. . N.H. Bhagwati, J., speaking on behalf of the Court in that case, quoted with approval the following passage from the judgment of the Trial Court setting out the manner in which transferable specific delivery contracts in jute goods are effected and carried out in the city of Calcutta:

Now visualize the long chain of contracts in which the defendant's contract is one of the connecting links. The defendant buys from its immediate seller and sells to its immediate buyer. As seller it is liable to give and as buyer it is entitled to take delivery. As seller it receives and as buyer it gives shipping instructions. Similar shipping instruction is given by each link until it reaches the mills. The mills deliver the goods alongside the steamer. Such delivery is in implement, of the contract between the mills and their immediate buyer. But eo instanti it is also in implement of each of the chain contracts including the contract between the defendant and its immediate buyer and the contract between the defendant and its immediate seller. Not only does the mill give and its immediate buyer take actual delivery but eo instanti each middleman gives and takes actual delivery. Simultaneously the defendant takes actual delivery of possession of the jute goods from its immediate sellar and gives actual delivery of possession of jute goods to its immediate buyer. Prima facie at the moment of the delivery alongside the steamer there is appropriation and the passing of the property in the goods and the giving and taking of actual delivery of possession thereof all along the chain at the same moment.

The learned Judge then, on the basis of this finding, proceeded to hold:

The mate's receipts or the delivery orders as the case may be, represented the goods. The sellers handed over these documents to the buyers against cash payment, and the buyers obtained these documents in token of delivery of possession of the goods. They in turn passed these documents from hand to hand until they rested with the ultimate buyer who took physical or manual delivery of possession of those goods. The constructive delivery of possession which was obtained by the intermediate parties was thus translated into a physical analysis eliminating the unnecessary process of each of the intermediate parties taking and in his turn giving actual delivery of possession of the goods in the narrow sense of physical or manual delivery thereof.

These observations bear out what we have said in regard to the mechanics of performance of chain contracts in jute goods and show that shipping instructions can and must follow delivery and endorsement of Pucca Delivery Orders from one buyer to another in the chain and when the last buyer gives shipping instructions to the Mill Company and pursuant to such shipping instructions the Mill Company delivers the goods alongside the export vessel, the giving and taking of actual delivery of possession of the goods takes place "all along the chain at the same moment.

16. It is, therefore, clear, both on principle and authority, that in case of a transferable specific delivery contract for export, Clause (2) of the prescribed form requiring buyers to give a particular number of clear working days' notice to place goods alongside is not rendered inapplicable by a provision in the contract under Clause (4) stipulating for delivery of Pucca Delivery Orders against payment of the price. Clause (2) of the prescribed form can be appropriately incorporated in such a contract and omission to include it cannot be justified on the plea that it would be inconsistent with Clause (4) of the contract.

17. We must, therefore, hold that since the contracts in the present case did not contain any provision corresponding to Clause (2) of the prescribed form requiring buyers to give a particular number of clear working days' notice to place goods alongside, they were not in the prescribed form

and hence they were illegal under Section 15, Sub-section (3A) and the arbitration clause contained in each of these contracts was also consequently void. We accordingly affirm the decision of the Single Judge of the Callacta High Court and dismiss the appeal with costs.