FAR EAST INTERNATIONAL IMPORT and EXPORT CORPORATION, plaintiff-appellee, vs. NANKAI KOGYO CO. LTD., ET AL., defendants, NANKAI KOGYO CO., LTD., defendant-appellant

FACTS:

Plaintiff Far East entered into a contract with herein appellant Nankai for the sale of steel scrap. Only 1,058.6 metric tons were delivered upon the expiration of the export license of Far East.

Far East later on wrote to Everett Steamship Corporation, requesting the issuance of a complete set of the Bill of Lading for the shipment, in order that payment thereof be effected against the letter of credit opened by Nankai.

For failure of Nankai and the shipping agent to comply, Far East filed a complaint for specific performance.

Nankai filed a motion to dismiss, on the ground of lack of jurisdiction over its person and the subject matter, which was denied.

ISSUES:

1) WON the trial court acquired jurisdiction over the subject matter and over the person of the defendant-appellant through the proper service of summons?

2) WON the single act done in this case can be considered as doing business in the Philippines?

HELD:

1) Yes. Defendant contends that Philippine Courts have no jurisdiction to take cognizance of the case because the Nankai is not doing business in the islands; and that while it has entered into the transaction in question, same, however, does not constitute "doing business", so as to make it amenable to summons and subject it to the Court's jurisdiction. It bolstered this claim by a provision in the contract which provides that "In case of disputes, Board of Arbitration may be formed in Japan. Decision of the Board of Arbitration shall be final and binding on both BUYER and SELLER".

The rule pertinent to the questions in issue provides —

SEC. 14. Service upon private foreign corporations. — If the defendant is a foreign corporation, or a non-resident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any officer or agent within the Philipines. (Rule 7).

The above rule indicates three modes of effecting service of summons upon a private, foreign corporation, viz: (1) by serving upon the agent designated in accordance with law to accept service of summons; (2) if there is no resident agent, by service on the government cial designated by law to that effect; and (3) by serving on any officer or agent of said corporation with Philippines. The plaintiff complied with the third stated above, for it has been shown that Mr. Ishida, who personally signed the contract for the purchase of the scrap in question in behalf of the Nankai Kogyo, the Trade Manager of said Company, Mr. Tominaga the Chief of the Petroleum Section of the same company and Mr. Yoshida was the man-in-charge of the Import Section of the company's Tokyo Branch. All these three, including the first two who were served with Summons, were officers of the defendant company.

Not only did appellant allege non-jurisdictional grounds in its pleadings to have the complaint dismissed, but it also went into trial on the merits and presented evidence destined to resist appellee's claim. Verily, there could not be a better situation of acquired jurisdiction based on consent. Consequently, the provision of the contract wherein it was agreed that disputes should be submitted to a Board of Arbitration which may be formed in Japan (in the supposition that it can apply to the matter in dispute - payment of the scrap), seems to have been waived with appellant's voluntary submission. Apart from the fact that the clause employs the word "may".

From the proven facts obtaining in this particular case, the appellant's defense of lack of jurisdiction appears unavailing. The case of Pacific Micronesian Line, Inc. v. Baens del Rosario, et al., G.R. No. L-7154, October 23, 1954, relied upon in the Motion to Dismiss and other pleadings presented by defendant-appellant, stand on a different footing. Therein, We made the following pronouncements:

. . . . And the only act it did here was to secure the services of Luceno Pelingon to act as cook and chief steward in one of its vessels authorizing to that effect the Luzon Stevedoring Co., Inc., a domestic corporation, and the contract of employment was entered into on July 18, 1951. It further appears that petitioner has never sent its ships to the Philippines nor has it transported nor even solicited the transportation passengers and cargoes to and from the Philippines. In words, petitioner engaged the services of Pelingon not as part of the operation of its business but merely to employ him as member of the crew in one of its ships. That act apparently is an isolated one, incidental, or casual, and "not of a character to indicate a purpose to engage in business" within the meaning of the rule. (Emphasis ours.)