

Brief Note on the judgment dated 29th October, 2018 of the Supreme Court of India in

Carvel Shipping Services Private Limited v Premier Sea Foods Exim Private Limited

Civil Appeal No. 10800-801 of 2018

Appellant Carvel Shipping Services, an agent arranged for transportation of containerized cargo of frozen seafood belonging to the Respondent Premier Sea Foods from Alappuzha, Kerala to Bandar Abbas, Iran. A Bill of Lading dated 25.10.2008 was issued which contained various terms and conditions including an arbitration clause contained in printed terms annexed to the B/L. During transportation, the container got damaged and the cargo perished, as a result the buyer rejected the goods. Respondent filed a civil suit seeking to recover the damages from the Appellant and referred to the B/L as part of cause of action. Appellant appeared and moved an application under section 8 of Arbitration & Conciliation Act seeking to refer the dispute to arbitration in terms of arbitration clause contained in the printed terms annexed to the B/L as jurisdiction of civil courts was ousted in terms of section 26 of the Multi-modal Transportation of Goods Act under which the B/L was issued. Besides this, the Appellant also sought appointment of arbitrators under section 11 of the act. The Respondent opposed the said application on the grounds that the B/L was a unilateral receipt and was not a multi-modal transportation document and there was no agreement between the parties to enter into an agreement to arbitrate. The application was dismissed by the Ld. Civil Court by holding that the B/L was not a Multimodal Transport Document and section 26 of the Multimodal Transportation of Goods Act and the Arbitration Act have no application in the present case.

Appellant challenged the order initially under article 227 of Constitution of India before the Hon`ble Kerala High Court which was dismissed, followed by a Review petition which was also dismissed by the Hon`ble High Court. Finally appellant moved the Supreme Court and contended that printed terms and conditions were expressly referred to in the B/L and both the parties were bound by the same. Further the appellants contended that section 7(4) of the Arbitration & Conciliation Act and the judgment of the Supreme Court in *M.R Engineers & Contractors (P) Ltd v Som Dutt Builders Ltd. (2009) 7 SCC 696* makes it clear that there was a reference in the contract to the arbitration clause which is in writing and arbitration clause formed part of the contract. On the other hand, the Respondents contended that the section 7(4)(a) of the 1996 act requires the arbitration agreement to be in a document that is signed by the parties and; since B/L was not signed by the Respondents and the respondents therefore were not bound by the arbitration clause contained in the document. It was further contended that issues had been framed in the suit and a witness stood examined.

Supreme Court set aside the concurrent findings recorded by the courts below and held that “*present is a clear case where under section 7(5) of the act, read with M.R Engineers & Contractors (P) Ltd, SCC para 22 and 24, the reference in the bill of lading is such as to make the arbitration clause part of the contract between the parties*”. It was further held as follows;

- a. Supreme Court referred to the term “Merchant” as defined in Standard Conditions Governing Multimodal Transport Documents which includes shipper, consignor or consignee and the opening lines of B/L which reads as “*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.*” Further while referring to clause 25, it was observed that this clause being a printed condition was annexed to the B/L. Clause 25 reads as “**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 and Conciliation Act, 1996. The number of arbitrators shall be three, the arbitrators shall be commercial persons, the venue for arbitration shall be Chennai.*”
- b. Referring to the above clauses, the court held that the Respondent had expressly agreed to be bound by the arbitration clause despite the fact the same being in a printed condition annexed to the B/L. It was further held that though the Respondent had relied upon the unsigned B/L in the suit for recovery against the Appellant but the Respondent could not contend that for the purposes of arbitration, the arbitration clause should be signed.
- c. Supreme Court referred to the law regarding requirement of arbitration agreement to be in writing though it need not be signed, as laid down in *Jugal Kishore Rameshwardas v. Goolbai Hormusji* AIR 1955 SC 812. Referring to sections 7(3) & (4) of the Arbitration & Conciliation Act, it was held that there is no need for the arbitration clause to be signed in all cases and the only prerequisite as per section 7(3) was that the arbitration agreement should be in writing.
- d. On the stage of proceedings in the suit, it was held that proceedings would not come in way of the application under section 8 (3) of Arbitration & Conciliation Act, as the application was filed in the same year as the suit. Lastly it was held that the question of whether the B/L is governed by the Multimodal Transport of Goods Act or not, would not make much difference, as the arbitration agreement would be governed by section 7 of Arbitration Act.

Practical Insight

Court has once again reiterated that it is not necessary that the agreement to arbitrate should be signed but what is required is that the agreement should be in writing. However every case will turn on its own facts. It is to be noted that the B/L is to be read as a whole document. Most B/Ls used are on standard forms and as such use standard terms, organizations such as BIMCO etc. or; as in the present case, where the court referred to the Standard Conditions Governing Multimodal Transport Documents. Parties should always endeavor to use clear terms so as to avoid any confusion including expressly incorporating the relevant clauses or details of additional terms and conditions including details of charter party etc. A clear reference always helps in avoiding disputes particularly in cases of international carriage and more particularly in cases where goods are transported by more than one means of transport and involves more than one carrier who may be operating in different jurisdictions.

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