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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: August 17, 2016*

+ **FAO(OS) 614/2010**

INDIAN OIL CORPORATION LTD Appellant

Represented by: Mr.Tushar Roy, Advocate

versus

KTL MAYFAIR INC & ANR Respondents

Represented by: Mr.Prashant S.Pratap,
Sr.Advocate instructed by
Mr.O.P.Gaggar, Mr.Rukashree
Saikia, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.(ORAL)

1. The only issue required to be considered in the instant appeal relates to the applicability of Section 28 of the Indian Contract Act 1872, post amendment vide Act No.1 of 1997 with effect from January 08, 1997.
2. Clause 24 of the charter party provided that any claim towards demurrage has to be within 45 days upon completion of discharge and if not laid within said time the charter would not be liable for demurrage.
3. The learned Single Judge has held the clause to be violative of Section 28 of the Indian Contract Act, 1872.
4. The year of the agreement is 2004.
5. The clause in question extinguishes the claim of the demurrage if not made within 45 days.

6. With effect from January 08, 1997, as amended by Act No.1 of 1997, Section 28 of The Indian Contract Act, 1872 reads as under:-

***“28. Agreements in restraint of legal proceedings, void –
Every agreement,–***

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.”

7. Hitherto i.e. prior to January 08, 1997, Section 28 of the Indian Contract Act, as interpreted by the Supreme Court in the decision reported as AIR 1997 SC 2049 National Insurance Co. Ltd. vs. Sujir Ganesh Nayak and Co. Ltd. declared void only such agreements which curtailed the period of limitation within which claims could be preferred and not such agreements which had the effect of forfeiture of the right to initiate action. It may be highlighted that though the decision was pronounced on March 21, 1997, probably for the reason nobody brought to the notice of the Supreme Court the amendment made to Section 28 of the Contract Act vide Act No.1 of 1997, the Supreme Court gave its opinion with reference to the un-amended section.

8. A perusal of the amended Section 28 of the Contract would reveal that both kinds of agreements i.e. which restrict the right, by providing a period within which claims could be preferred, as also agreement which extinguish

the right of a party to prefer a claim or discharges any party from any liability under a contract on the expiry of a specified period are void.

9. The fact to be noted would be that the voyage under the charter party commenced on October 03, 2004. The discharge was contemplated on November 06, 2004. The ship owners raised claim for demurrage on December 27, 2004.

10. On the issue of interest the learned Single Judge has given good reasons as to why denial of pendente-lite interest @ 4% per annum was illegal. We concur with the reasoning. Indeed in view of the law declared by the Supreme Court in the decision reported as (2009) 7 SCC 372 Tahazhathe Purayil Sarabi & Ors. vs. Union of India & Anr, pendente-lite interest was warranted.

11. The appeal is dismissed.

12. Decretal amount deposited in this Court pursuant to interim order passed in the appeal are directed to be released by the Registry to the decree-holder together with accumulated interest thereon.

13. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 17, 2016
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