

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

+ Civil Revision Petition No.3022 of 2017

% 10-7-2017

M/s. Chemipack (India) Pvt. Ltd.,
Having Regd. Office at 8-2-293/174/3,
Beside B.N. Reddy Colony, Road No.14,
Banjara Hills, Hyderabad-34, Telangana, India,
Rep. by its Director Mr. B.V. Satyanarayana

... Petitioner/
Respondent/Plaintiff

Vs.

\$ 1. M/s. Arch Pharma Labs Ltd.,
Rep. by its Managing Director
Ajit Annu Kamath, H Wing, 4th Floor,
Tex Center, Off Saki Vihar Road,
Chandivali, Andheri (East), Mumbai,
Maharashtra-400 072, India; & another

... Respondents

! Counsel for the Petitioner: Mr. S.Ravi, Senior Counsel,
Rep. Mr. S.Appadhara Reddy

Counsel for Respondents 1&2: ---

< Gist:

> Head Note:

? Cases referred:

1. AIR 2004 MADRAS 127

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Order: (per V.Ramasubramanian, J.)

Aggrieved by an order passed by the trial Court allowing an application under Section 8 of the Arbitration and Conciliation Act, 1996, the plaintiff in the suit for recovery of money has come up with the above revision.

2. Heard Mr. S.Ravi, learned Senior Counsel for the petitioner.

3. The petitioner filed a suit praying for recovery of money on the ground that they sold and delivered poly bags and HDPF bottles to the respondents over a period of time from June, 2012 to June, 2013 and that the cheques issued by the respondents towards repayment, dishonoured when presented for payment.

4. Upon receipt of the summons, the respondents filed a written statement taking various pleas. Along with the written statement, the respondents also filed an application in I.A.No.948 of 2015 to refer the dispute to arbitration on the ground that there was an arbitration agreement. This application was allowed by the trial Court forcing the plaintiff to come up with the above revision.

5. The application under Section 8 is opposed by the petitioner primarily on two grounds, namely, (a) that a mere provision in the purchase order for reference of disputes to

arbitration, will not fall within the definition of the term “arbitration agreement” under the Act and (b) that in any case there is no arbitrable dispute.

6. Drawing our attention to the provisions of Section 7 of the Arbitration Act, it is contended by Mr. S.Ravi, learned Senior Counsel for the petitioner, that the invoices raised by the petitioner did not contain any arbitration clause and that since the invoices were subsequent to the purchase orders, the clause contained in the purchase order could not constitute a valid arbitration agreement.

7. But we do not agree. After the advent of the Arbitration and Conciliation Act, 1996, an arbitration agreement will be deemed to be in writing under Section 7(3), if it is contained in any document signed by the parties or if it is contained in any exchange of letters, telex, telegrams or other means of communication or it is contained in an exchange of statements of claim etc. This is by virtue of sub-section (4) of Section 7.

8. It is seen from the pleadings that the respondents placed purchase orders upon the petitioner herein for the sale and delivery of polly bags and HDPF bottles. This purchase order contained a provision in Clause 12 which reads as follows:

“12. Arbitration: Any disputes or differences whatsoever arising between the parties shall be resolved through Arbitration in accordance with the rules of Arbitration of the Indian Council of Arbitration at Mumbai.

The Arbitrators shall be appointed with the mutual consent of both the parties.”

9. It is on the basis of the above purchase order, invoices were raised. Therefore, unless there is any material to show that some of the terms and conditions of the purchase orders were not accepted by the petitioner, it is not possible to overlook the arbitration clauses. Hence, the first contention is rejected.

10. Insofar as the second contention is concerned, it is contended by Mr. S.Ravi, learned Senior Counsel for the petitioner, that the written statement filed by the respondents did not contain any valid defence worth considering and that except raising a smokescreen of a defence, the respondents did not raise any defence worth consideration. The respondents, according to the learned Senior Counsel, have admitted the sale and delivery but claimed that the cheques were issued only as security. In such an event, the learned Senior Counsel contended that as per the decision of the Madras High Court in *Sankar Sealing Systems P. Ltd. v. Jain Motor Trading Co.*¹, there was no arbitrable dispute between the parties.

11. To find out whether there is an arbitrable dispute between the parties or not, the test is to see whether in response to a plaint, the defendants admit liability or dispute it, with a weak or strong defence. However, weak a defence

¹ AIR 2004 MADRAS 127

may be, if the defendants in a suit refuse to admit to the suit claim, then there is a dispute. Such a dispute is an arbitrable dispute. The decision of the Madras High Court referred to by the learned Senior Counsel appears to have arisen under very peculiar circumstances. In that case, a suit was filed for recovery of money along with an application for attachment before judgment. An order was passed in the application. Thereafter, an application was taken out under Section 8 for invoking the arbitration clause under Section 23A.

12. Finding that the procedural requirement for referring the parties to arbitration were not satisfied, the Madras High Court held in para-29 that the object of the Court had to do justice between the parties and that the Court will refer the matter to the arbitration only if there was a clear intention borne out to refer the matter to arbitration.

13. Therefore, the decision of the Madras High Court is not applicable to the facts of the case.

14. In the result, both the contentions raised by the petitioner are not capable of being sustained. Hence, the revision is dismissed. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

N.BALAYOGI, J.

10th July, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

Civil Revision Petition No.3022 of 2017
(per VRS, J.)



10th July, 2017.
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