



O.S.A.(CAD) No.35 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

O.S.A. (CAD) No.35 of 2022

Amco Traders,
rep. by its Proprietor,
No.12, Bonfield Lane,
Kolkata-700 001.

.. Appellant

Vs

Union of India,
rep. by the Controller of Stores,
Southern Railway,
Office of the Controller of Stores,
Ayanavaram,
Chennai-600 023.

.. Respondent

Prayer: Appeal filed under under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the fair and decretal order dated 3.10.2019 passed in O.P.No.548 of 2019.



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For the Appellant : Mr.K.Balaji

For the Respondent : Mr.P.T.Ramkumar

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

The present appeal has been directed against the fair and decreetal order dated 3.10.2019 passed in O.P.No.548 of 2019.

2. The facts leading to the filing of the appeal are as under:
The appellant supplied materials to the respondent under three purchase orders of the year 1994. Admittedly, the supplies were effected during 1994 and 1995. The respondent paid the cost of materials that were supplied. The only dispute between the parties is relating to non-payment of freight charges and interest thereon.

3. The appellant initiated arbitration proceedings during May, 2014 and filed a claim petition before the Sole Arbitrator on



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29.4.2015. The Sole Arbitrator passed an award on 28.4.2017 in favour of the appellant, holding it to be entitled to receive the freight charges for the supplies effected to the respondent. Assailing the arbitral award dated 28.4.2017, the respondent filed O.P.No.548 of 2019.

4. Learned Single Judge, by order dated 3.10.2019 impugned in this appeal, allowed the original petition holding that the arbitral award has been passed in total disregard to the law of limitation. Inasmuch as the legal aspect of limitation was not examined by the Sole Arbitrator, the learned Single Judge set aside the arbitral award. Hence, the present appeal.

5. We have heard learned counsel for the parties and perused the documents available on record.

6. It is beyond any demur that supplies were effected by the appellant to the respondent during the years 1994 and 1995. The respondent paid the cost of the materials. The entire dispute



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between the parties is relating to non-payment of freight charges and interest thereon.

7. A bare perusal of the order under challenge reveals that the last correspondence exchanged between the parties was on 26.6.2008. Even if the period of limitation is reckoned from 26.6.2008 with reference to Article 18, Article 55, or Article 137 of the Limitation Act, 1963, it would be for a maximum of three years from the aforesaid date. However, the arbitration clause was invoked by the appellant only on 15.5.2014. Therefore, the claim made by the appellant before the Sole Arbitrator is clearly barred by limitation.

8. As per Section 43 of the Arbitration and Conciliation Act, 1996, the Limitation Act, 1963 shall apply to arbitration proceedings as it applies to proceedings in court. Therefore, the Sole Arbitrator ought to have examined the legal aspect of limitation, more so when the arbitration clause has been invoked almost after twenty years from the date of the transaction between the parties.



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9. For the foregoing reasons, we do not find any error or infirmity in the order passed by the learned Single Judge. The appeal fails and is, accordingly, dismissed. There will be no order as to costs.

(T.R., ACJ.) (D.K.K., J.)
14.10.2022

Index : No
sasi

To:

The Sub Assistant Registrar
Original Side
High Court, Madras.



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T.RAJA, ACJ
AND
D.KRISHNAKUMAR,J.

(sasi)

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