



IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AT BHARUCH
--

Ld. Advocate Mr. M.S. Solanki for the Applicants.

Order below Exhibit-20 in Special Civil Suit No. 98/2006

(1) Heard Learned Advocate for the Defendant No. 1, perused an application as moved by the Defendant No. 1 vide Exh. 20. Before discussing the contents of Exh. 20, it is desirable to briefly discuss the averments of the plaint in a nutshell.

(2) The present Suit has been instituted for damages by the plaintiff IFFCO Tokio General Insurance Company against the Defendant No. 1, BSI Inspectorate India Private Ltd. (Now Inspectorate Griffith India Private Ltd.) No. 2 Om Carriers and No. 3 Gujarat Narmada Valley Fertilizers Co. Ltd. on date 09, October 2006.

(2.1) It is a case of the plaintiff that the Defendant No. 1 and the Defendant No. 2 were highly negligent in their respective job of getting a clean tanker to carry “Ammonium Nitrate” and in inspecting the incident, tanker of any residues of previous Cargos in spite of being aware that the tankers are being used to carry “Ammonium Nitrate”, which is highly explosive, even when contaminated to a small degree. The negligence of the Defendant No. 1 and 2 lead the explosion of the tanker, which not only resulted in serious material

loss and damage to the Defendant No. 3 but also **Loss of Lives**. It is say of the plaintiff that the plaintiff has clear the claim of the Defendant No. 3 of the extent of Rs. 45.55 crores. Hence, the plaintiff has instituted the present suit for damages and incidental expenses.

- (3) In view of the premise, the Defendant No. 1, before filing his defense statement, has moved the present application on 2nd January, 2007 under Section 8 of the Arbitration and Conciliation Act, 1996. It is a say of the Defendant No. 1 that the Defendant No. 3 awarded annual contract for inspection of empty tankers at GNFC works on certain agreed terms and conditions. Clause 10.0.0 of the Mini General conditions is about Arbitration and accordingly any dispute whatsoever relating to the contract or the rights, duties, obligation or liabilities of the parties to contract shall be resolved only by Arbitration. It is say of the Defendant No. 1 that the alleged claim of the plaintiff is squarely covered by the arbitration stipulation and the plaintiff having stepped into the shoe of the Defendant No. 3 has bounded itself with arbitration agreement. It is say of the Defendant No. 1 that the plaintiff is precluded from filing or proceeding with the suit. The plaintiff has also raised a claim against the Defendant No. 2 (Transporter) but any such claim against the Defendant No. 2 is independent of the contract and the plaintiffs alleged claim against the Defendant No. 1 can only be determined through arbitration. Hence, in view of the above stated premise, the Defendant No. 1 has prayed this court through present application to direct the parties to refer the disputes to the arbitration.
- (4) The Defendant No. 1 in support of present application has submitted following judgments as delivered by the Hon'ble Apex Court and by different Hon'ble High Courts.

(A) P. ANAND GAJAPATHI RAJU AND OTHERS

Versus

**P.V.G. RAJU (DEAD) AND OTHERS
(2000) 4 Supreme Court Chases 539**

(B) AMEET LALCHAND SHAH AND OTHERS

Versus

**RISHABH ENTERPRISES AND ANOTHER
(2018) 15 Supreme Court Chases 678**

**(C) KRISHAN GOPAL Versus PRAVEEN RAJPUT
(2019) SCC Online Del 8330**

(D) BHARAT HEAVY ELECTRICALS LTD.

Versus

**ASSAM STATE ELECTRICITY BOARD
(1990) 2 Gauhati Law Reports 130**

(E) HINDUSTAN PETROLEUM CORPN. LTD.

Versus

**PINKCITY MIDWAY PETROLEUMS
(2003) 6 Supreme Court Chases 503**

- (5) The plaintiff has filed its response to the application of the Defendant No. 1 vide Exh. 59 in which the plaintiff has denied the authenticity of the application as moved by the Defendant No.1.
- (6) Having perused the application of the Defendant No. 1, the Judgments of the Hon'ble Apex Court and different Hon'ble High Courts as submitted by the Defendant No. 1 and the reply given by the plaintiffs vide Exh. 59 and having gone through the provisions of Section 8 of the Arbitration and

Conciliation Act, 1996; I am of the view that the Section 8 provides for limited judicial intervention and furthers the objective by directing the parties to get involved in arbitration on the basis of arbitration agreement. Having considered the different judgments of the Hon'ble Apex Court and the different Hon'ble High Courts, I am of the humble view that before making a reference as per the provisions of Section 8, following conditions are required to be satisfied:-

- a) There is an arbitration agreement.*
- b) A party to the agreement brings an action in the court against the **Other party.***
- c) The subject matter of the action is the same as the subject matter of the arbitration agreement.*
- d) The other party moves to the court for referring the parties to arbitration before it submits its statement on substance of the disputes.*

(7) In my humble view, an application under Section 8 of the Act, must accompany the original arbitration agreement or a certified copy thereof. As far as documents on record of present case are concerned, the defendant has not filed the original arbitration agreement.

(8) In my view there are three basic reasons for which an application of the Defendant No. 1 would not be allowed. The first and the foremost reason is that the incident alleged to have occurred has not only resulted into the material loss and damages but also **Loss of Lives**. Secondly, the Defendant No. 2 (Transporter) is a party to the arbitration agreement and hence unless and until the Defendant No. 2 expressly and explicitly agrees to refer the matter for arbitration, the present suit could not be referred for the arbitration. It is pertinent to note at this juncture that the Defendant No. 1 challenged the order Dated 20/02/2009 of the Civil Judge, Senior Division, Bharuch rejecting the Application of the Defendant No. 1 to separate trial of present suit as between the Defendant No. 1 and 2 vide Sp.CA No. 6419 of

2009 which came to Rejected by the Hon'ble High Court vide order Dated 22/06/2017. Third, and the last but not the least, the Defendant No. 1 has not produced the original arbitration agreement nor duly certified copy of the arbitration agreement has been produced.

(9) In view of the matter and under the above stated facts and circumstances, I am also of the view that because of the seriousness and gravity of allegations and the complex issue involved in the matter and considering the complications of the case, it is essential that such a complex and complicated issue must be decided only by the Civil Court on appreciation of evidence.

(10) In view of the matter, I am of the opinion that the application as moved by the Defendant No. 1 does not deserve to be allowed as it is devoid of any merit. Hence, following Order:-

(11)

Order:-

- The present application as moved by the Defendant No. 1 is hereby rejected.
- No order as to Cost.
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Signed and Pronounced in the open court on dated 30th, Jan. 2021.

**Dated: 30/01/2021
Bharuch.**

**Naresh RoshanLal Jain
Principal Senior Civil Judge
Bharuch
Code No.00582**