

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3040 2005

M/S. ARDY INTERNATIONAL (P) LTD. & ANR.

... APPELLANTS

VERSUS

M/S. INSPIRATION CLOTHES & U. & ANR.

...RESPONDENTS

O R D E R

The Respondent filed a suit for money claim against the appellant and

two other parties before the City Civil Court in Calcutta. It is the case of the appellant

that goods were supplied to the Respondent under certain invoices which contained

an arbitration clause and, therefore, any dispute touching the said transaction was

required to be subject to arbitration. The Respondent, however, denies that there is

an arbitration agreement so as to amount to an impediment to its money suit pending

before the City Civil Court at Calcutta.

When the Bharat Merchants Chamber issued a notice to the respondent

calling upon it to appoint its arbitrator and indicated its intention to commence

arbitral proceedings, the Respondent moved an application for interim relief before

the Civil Court in the pending suit under Order 39 Rules 1 and 2 of the C.P.C. The

interim relief sought therein was an injunction restraining the respondents to the suit

(the present appellants) from taking any steps or further steps in terms of the notice dated 5 December, 2003, which had been issued by the Bharat Merchants Chamber.

The Civil Court declined to grant any ad interim relief. An appeal was moved

thereagainst by the Respondent in which the Appeal Court took the view that the

application made by the respondent under Order 39 Rules 1 and 2 should be treated

as one made under Section 8 of the Arbitration and Conciliation Act, 1996

(hereinafter referred to as '1996 Act') and be disposed of within a specific time frame.

After the application came back, the Civil Court made an order dismissing the

application holding that there existed a valid arbitration agreement under Section 7 of

the 1996 Act and that the parties were required to go for arbitration by reason of

Sections 5 and 8 of the 1996 Act. The Respondent once again appealed against the said

order which has resulted in the impugned judgment of the High Court.

By the impugned judgment the High Court allowed the appeal of the

Respondent by holding that the endorsement at the foot of the invoice could not have

been construed to be an arbitration agreement within the meaning of 1996 Act. Since

the appeal has been allowed, it would mean that the interim relief sought for in the

application under Order 39 Rules 1 and 2 was granted, this judgment has been

impugned before us.

We have extensively heard the learned counsel for both the sides and at

the end of the day we are satisfied that the whole proceedings were started, continued

and concluded under misconception of law. In the first place, Section 8 is not

3

intended to restrain arbitration proceedings before an arbitral tribunal. The situation contemplated by Section 8 can arise only at the first instance of an opponent and defendant in a judicial proceeding, or, at the highest, suo moto at the instance of the judicial authority, when the judicial authority comes to know of the existence of an arbitration agreement. In either event, there is no question of the court under Section 8 of the 1996 Act restraining the arbitral proceedings from commencing or continuing. In fact, Section 8 is intended to achieve, so to say, the converse result. Unfortunately, in this case the application for interim relief was made by the Respondent who was plaintiff before the Civil Court. The relief sought therein is the restraint of arbitral proceedings. It could only have been decided as an application under Order 39 Rules 1 and 2 for whatever it was worth. Once the objection to this application was filed by the Appellant bringing to the notice of the court the existence of an arbitration agreement, thereafter the proceedings could have been continued only within the parameters of Section 8 of the 1996 Act. A proceeding under Section 8 could never result in an order restraining the arbitral proceedings, which is what finally the impugned order before us does.

Considering all the complications that have arisen in this Act because of an erroneous order, and keeping in mind the fact that no prejudice should be caused

to any of the parties before us, we propose to dispose of this appeal by the following order :

The impugned judgment of the High Court is set aside. Mr . Mukul

4

Rohtagi, learned senior counsel, appearing for the Appellants requests that the

Appellant would make an application under Section 8 invoking the provisions of the

1996 Act seeking an order of reference for arbitration. Such an application shall be

filed within a period of two weeks from today. It shall be open to the Respondent to oppose

such application on whatever grounds that are available in law including the ones

urged and noticed in the impugned judgment. The Civil Court shall thereafter hear

the parties and dispose of such application in accordance with law, preferably within a

period of six weeks from the day such an application is made. In the fairness of

things, no further steps will be taken by the Bharat Merchants Chamber till the order of the City Civil Court.

The appeal is allowed in the above terms with no order as to costs.

.....J.

(H.K. SEMA)

NEW DELHI,
DECEMBER 08, 2005.

5

ITEM NO.101

COURT NO.8

SECTION XVI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3040 OF 2005

M/S. ARDY INTERNATIONAL (P) LTD. & ANR.

Appellant (s)

VERSUS

M/S. INSPIRATION CLOTHES & U. & ANR.

Respondent(s)

(With prayer for interim relief)

Date: 08/12/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s)

Mr. Mukul Rohtagi, Sr.Adv.

Mr. J.P. Sharma, Adv.

Mr. A.P. Dhamija, Adv.

Mr. Sarad Singhania, Adv.

Ms. Pratibha Jain,Adv.

For Respondent(s)

Mr. Jaideep Gupta, Sr.Adv.

For R.1

Ms. Radha Rangaswamy,Adv.

Mr. Pradeep Kumar Malik, Adv.

For R.2

Mr. R. Rahim,Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. Mukul Rohtagi, learned senior counsel started his arguments at 10.35 a.m. and concluded at 11.10 a.m.

Thereafter, Mr. Jaideep Gupta, learned senior counsel

6

started his arguments and concluded at 12.15 p.m. Hearing conceded.

The appeal is allowed in terms of the signed order with no order as to costs.

(PAWAN KUMAR)
COURT MASTER

(PREM PRAKASH)
COURT MASTER

(signed order is placed on the file)