

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL Nos.826-827 of 2008

M/S.SUNDARBAN MARINE PRODUCTS PVT.LTD.& ANR. . . . .APPELLANTS

VERSUS

M/S. WATERBASE LTD. & ANR. . . . .RESPONDENTS

O R D E R

Jagdish Singh Khehar, CJI

1. Heard learned counsel for the rival parties.
2. Based on a Distributorship Agreement, dated 01.02.1994, M/s Waterbase Ltd. (respondent No.1 herein) commenced to supply prawn feed to M/s Sundarban Marine Products Pvt.Ltd. (appellant No.1 herein). Consequent upon disputes having arisen between the parties, the respondent issued a legal notice dated 27.09.2000, raising a claim of Rs.95,99,569/-, with 24% interest. The respondent called upon the appellant, to refer the dispute to arbitration, under clause 15 of the Distributorship Agreement dated 01.02.1994.
3. During the course of hearing, it emerges, that clauses 14 and 15 of the Distributorship Agreement, dated 01.02.1994, are relevant to the determination of the present controversy. Accordingly, clauses 14 and 15 of the Distributorship Agreement dated 01.02.1994 are extracted hereunder:

"14. All disputes arising out of or in any way connected with this Agreement shall be deemed to have arisen in MADRAS and only courts in MADRAS SHALL HAVE jurisdiction to determine the same.

15. Arbitration

15.1 In the event of any dispute or difference between the parties hereto as to the operation of this agreement, the Distributor may refer the matter to arbitration, such demand for arbitration shall specify the matters which are in question, dispute or difference and only such dispute or difference, other than excepted matters, for which the demand has been made and no other dispute or difference shall be referred for the arbitration by an officer of TWL/employee to be nominated by TWL and the provisions of the Indian Arbitration Act, 1940 for the time being in force or of any other Act of the Legislature passed in substitution thereof or modifications thereof and for the time being in force, apply to such arbitration.

15.2 The act of Distribution and the responsibilities of the Distributor shall not be suspended or delayed because of the existence of any such dispute. TWL's decision on such dispute or difference shall be conclusive until reversed by the Arbitrator."

4. Since the appellant did not refer the dispute, raised by the respondent, for adjudication to an arbitrator, the respondent approached the High Court of Judicature at Madras (hereinafter referred to as 'the High Court'), for appointment of an arbitrator, under Section 11 of the Arbitration and Conciliation Act, 1996. The High Court accepted, that clause 15.1 of the Distributorship Agreement, dated 01.02.1994, was indeed an arbitration clause, for settlement of disputes between the parties, and accordingly, appointed Justice (Retd.) A Abdul Hadi, a former Judge of the Madras High Court, as the sole arbitrator, vide an order dated 07.01.2005.

5. The impugned order passed by the High Court on 07.01.2005 was first assailed by the appellant by invoking the writ jurisdiction of the High Court itself, by preferring W.P.No.24094 of 2005. The High Court while entertaining the above writ petition, by an interim order dated 27.07.2005, *inter alia*, stayed the order passed by the High Court on 07.01.2005 (nominating the arbitrator). Eventually, by an order dated 07.08.2006, the above writ petition, preferred by the appellant, was dismissed by the High Court, as not maintainable. Liberty was however granted to the appellant to assail the order dated 07.01.2005, before this court. It is in the above circumstances, that the appellant has approached this Court, to assail the impugned order passed by the High Court, on 07.01.2005.

6. The solitary contention of the learned counsel for the appellant was that clause 15.1 relied upon by the High Court, to refer the dispute for arbitration, could not have been invoked at the behest of the respondent. It was submitted, that in terms of the aforestated Distributorship Agreement dated 01.02.1994 only the distributor, namely, appellant No.1 herein, could refer the dispute for arbitration. No such liberty was extended to the respondent, under the Distributorship Agreement dated 01.02.1994, to seek adjudication of a dispute raised by it. It is in the aforesaid circumstances, that it becomes imperative for us to determine whether or not a reference to arbitration could be made on the basis of a dispute raised, by either of the parties to the agreement.

7. Having given our thoughtful consideration to clause 15.1, extracted hereinabove, we are of the view that the aforesaid clause only vested the distributor (appellant No.1 herein - M/s Sundarban Marine Products Pvt.Ltd.) the right of making a reference of a dispute between the parties to an arbitrator. This is based on the express words, adopted in the said clause, namely, "... the distributor may refer the matter to arbitration...". It is also necessary to indicate here, that even though the distributor had the right to make a reference of a dispute between the parties to an arbitrator, the right to nominate an arbitrator from amongst its employees rested with the respondent. Not only that, the respondent was also entitled to nominate one of its own employees, as the arbitrator.

8. In order to canvass his proposition, namely, that either of the parties could seek reference to arbitration, learned counsel appearing on behalf of the respondent, while interpreting clause 15.1, submitted that a reciprocal arrangement can also emerge from clause 15.1, which would permit the respondent also, to raise a similar dispute. This position has been adopted by the learned counsel for the respondent, on the basis of the opening words, contained in clause 15.1, which provide, that "...In the event of any dispute or difference between the parties hereto...", the matter could be referred to an arbitrator. It is not possible for us to accept the interpretation placed by the learned counsel for the respondent, on clause 15.1, for the simple reason, that in case the position adopted by the respondent is accepted, then the respondent would have not only the liberty to make a reference of a

dispute to an arbitrator, but also the right to nominate an arbitrator, who could be one of the employees of the respondent itself. This position cannot be a valid manner of understanding of the arbitral clause. The instant interpretation, placed on clause 15.1 would confer absolute powers on the respondent, with no involvement of the appellant. By such interpretation, whereas, the clause while extending the right to the "Distributor" to refer a dispute to an arbitrator, provides that everything else would rest in the hands of the respondent - M/s Waterbase Ltd., no such reciprocal obligation was vested with the appellant - distributor, if the clause is read in the manner suggested by the learned counsel for the respondent.

9. We also hereby accept the contention advanced at the hands of the learned counsel for the appellant, namely, that the respondent had not been left remediless, inasmuch as, clause 14 of the Distributorship Agreement, dated 01.02.1994, allows the parties i.e. the respondent as well as the appellant, to have their disputes adjudicated before the courts at Madras (now Chennai).

10. The interpretation placed by us on clauses 14 and 15.1 hereinabove, can be logically understood if clauses 15.1 and 15.2 are read together. We say so because, clause 15.2 allows the distributor to make a choice to refer a dispute to an arbitrator, and in case he exercises the above choice, the distributor is obliged under clause 15.2, not to suspend or delay the responsibilities which the distributor has to shoulder under the Distributorship Agreement, dated 01.02.1994. It is in the above view of the matter, that it is also apparent from a close

examination of clause 14, that the same is truly not a jurisdiction clause, for purposes of arbitration. Had it been so, the same would have been part of clause 15, which, in our view, is the exclusive arbitration clause.

11. For the reasons recorded hereinabove, since we have arrived at the conclusion, that a reference of a dispute at the behest of the respondent, could not be made for adjudication to an arbitrator, the impugned order passed by the High Court dated 07.01.2005, appointing an arbitrator, is liable to set aside. The same is accordingly hereby set aside.

12. As a matter of clarification, it is also necessary for us to record, that the respondent has been pursuing its claim, based on the Distributorship Agreement, dated 01.02.1994, ever since the issuance of the legal notice dated 27.09.2000. Thereupon, consequent upon the appellant having not appointed an arbitrator, the respondent sought the appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, and the High Court ruled in favour of the respondent, by an order dated 07.01.2005. It is only now, through the instant civil appeals, that we have set aside the order dated 07.01.2005 by which an arbitrator came to be appointed by the High Court. It shall now be open to the respondent, to raise a claim, if the respondent is so advised, in terms of clause 14 of the Distributorship Agreement, dated 01.02.1994, before an appropriate court at Madras (now Chennai). In case, the respondent makes such a choice, the respondent shall have the right to seek the benefits extendible to it under Section 14 of the Limitation Act.

13. The instant appeals are disposed of, in the above terms.

.....CJI.  
(JAGDISH SINGH KHEHAR)

.....J.  
(Dr.D.Y.CHANDRACHUD)

.....J.  
(SANJAY KISHAN KAUL)

NEW DELHI;  
APRIL 27, 2017.

ITEM NO.101

COURT NO.1

SECTION XII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s).826-827/2008

M/S.SUNDARBAN MARINE PRODT. PVT.LTD.&amp;ANR

Appellant(s)

VERSUS

M/S. WATERBASE LTD. &amp; ANR.

Respondent(s)

(With office report)

Date : 27/04/2017 These appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE SANJAY KISHAN KAULFor Appellant(s) Mr. Nikhil Nayyar, Adv.  
Mr.N.Sai Vinod, Adv.  
Ms.Smriti Shah, Adv.  
Mr.Divyanshu Rai, Adv.For Respondent(s) Mr. Sudarsh Menon, Adv.  
Ms.Yogamaya M.G., Adv.  
  
Mr. V. G. Pragasam, Adv.Upon hearing the counsel the Court made the following  
O R D E RThe instant appeals are disposed of in terms of the  
signed order.(SATISH KUMAR YADAV)  
AR-CUM-PS(RENUKA SADANA)  
ASSISTANT REGISTRAR  
(Signed order is placed on the file)