ORIGINAL CIVIL.

Before R. C. Mitter J.

1936

Sep. 22, 25.

BRINDABAN CHANDRA DATTA & CO.

v.

BISHWESHWAR LAL*.

Contract—Arbitration—Words "with regard to this indent or to relative goods", if includes case of non-delivery—Stay of suit—"Submission"—Indian Arbitration Act (IX of 1899), ss. 4, 19.

A contract for sale of goods contained the following arbitration clauses :—

"If any dispute arises with regard to this indent or to any relative goods "it shall be optional to you (seller) to release me/us from the contract and "take the goods back or to refer the dispute in respect of Japanese goods to "the arbitration of Japanese Commercial Museum and in respect of other "goods to the arbitration of the Bengal Chamber of Commerce or to two "merchants, one to be nominated by each party, and I/we agree to accept "the decision of the arbitration as final".

In spite of the said clause, a purchaser, without referring the dispute to arbitration, filed a suit claiming *inter alia* damages for breach of contract for non-delivery, upon which the sellers applied for stay of the suit under s. 19 of the Indian Arbitration Act of 1899.

Held (*a*) that the words " with regard to this indent or to relative goods" in the arbitration clause include the case for claim for non-delivery ; and

(*b*) that the arbitration clause fulfilled the definition of "submission" under the Indian Arbitration Act.

The suit was consequently stayed.

Ghamandi Lal-Narain Das v. *Churanji Lal-Pokhar Mal* (1) followed.

APPLICATION.

Motion by the defendants for stay of suit under s. 19 of the Indian Arbitration Act of 1899.

The material facts and the argument appear in the judgment.

B. S. Sinha for the defendant applicant.

N. C. Chatterjee for the plaintiff.

Cur. adv. vult.

*Application in Original Suit, No. 1163 of 1936.

(1) (1923) I. L. R. 4 Lah. 168.

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R. C. MITTER J. This is an application by Messrs. Brindaban Chandra Datta & Co. under s. 19 of the Indian Arbitration Act for stay of the aforesaid suit, which has been instituted on July 6, 1936, by the opposite party, Bishweshwar Lal, on his own behalf and as *kartâ* of a joint family against the applicant. In the said suit Bishweshwar Lal claims damages for breach of contract. The contract is contained in indent No. 0460, dated February 20, 1936, by which the opposite party agreed to buy from the applicant waterproof rain-coat cloth described in three items. According to the applicant he offered delivery of the goods described in the third item, but the opposite party refused to accept delivery on the pretext that they were not of the quality contracted for. The rest of the articles were not tendered to the opposite party.

The plaint proceeds on the footing that the articles, which were tendered for delivery by the applicant, was not of the contract quality and that the defendant failed to deliver the rest. There is a provision in the said indent for arbitration. It runs thus :—

Clause 6. If any dispute arises with regard to this indent or to relative goods, it shall be optional to you (seller) to release me/us from the contract and take the goods back or to refer the dispute in respect of Japanese goods to the arbitration of Japanese Commercial Museum and in respect of other goods to the arbitration of the Bengal Chamber of Commerce or to two merchants, one to be nominated by each party, and I/we agree to accept the decision of the arbitration as final.

Although there is nothing specific in the said indent, it is clear from the correspondence that the goods contracted for are of Japanese make.

On the receipt of the invoice (No. 3395, dated April 22, 1936) in respect of three cases, the applicant presented the same to the opposite party. The goods covered by the said invoice had not arrived then. The plaintiff refused to accept the same, taking up the position that the said invoice did not relate to the goods contracted for by him. An invoice relating to

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five other cases was also presented, but the same objection was taken. After the arrival of the goods the applicant on May 22, 1936, wrote a letter to the opposite party indicating his intention to refer the matter to the arbitration of the Japanese Commercial Museum. That letter was replied to on May 26, 1936. The opposite party maintained that there was no organisation as "Japanese Commercial Museum", and offered to refer the dispute to the arbitration of two merchants of the city. The applicant, in reply, pointed out that "Japanese Commercial Museum" is an abbreviation of the Indo-Japanese Commercial Museum, which was located at No. 135, Canning Street.

On the materials on the record, especially the letter of the President of the Indo-Japanese Commercial Museum, dated May 28, 1936, I have no doubt that by cl. 6 of the contract, that body was meant, and by the said clause the parties agreed to the arbitration by that body. I am also of opinion that H. K. Datta, who is connected with the Indo-Japanese Museum, is not a relation of Manik Lal Datta, the sole proprietor of "Brindaban Chandra Datta & Co." This disposes of one of the three points raised by Mr. Chatterjee, counsel for the opposite party.

Mr. Chatterjee raises two other points, namely—

(*i*) that cl. 6 of the contract does not amount to a " submission " within the meaning of the Indian Arbitration Act, and

(*ii*) that the scope of the suit instituted by his client is wider than the scope of the submission.

I do not see any point in the second contention.

The words "with regard to this indent or to "relative goods" occurring in cl. 6, in my judgment, are sufficiently comprehensive to cover the subject matter of the suit. The case of non-delivery would

be included therein. If any authority is needed, the case of *Ghamandi Lal-Narain Das* v. *Churanji Lal-Pokhar Mal* (1) is such an authority.

I cannot also accept the first contention of Mr. Chatterjee. The applicant had under cl. 6 the option of either releasing the opposite party from the contract or to proceed by way of arbitration if there was any dispute. When he elected not to release the opposite party from the contract he was bound to refer the matter in dispute to arbitration. The opposite party had agreed to refer disputes covered by cl. 6 to arbitration. The contract binds him. That clause fulfils the definition of "submission" as given in the Indian Arbitration Act. The test is, in my opinion, whether both parties are bound by that clause and not whether a *right* had also been expressly given to the opposite party to initiate arbitration proceedings. The case cited by Mr. Chatterjee, namely, *Marittima Italiana Steamship Co.* v. *Burjor Framroze* (2) has no application to this case.

I, accordingly, grant the application made before me by Brindaban Chandra Datta & Co. The result is that the opposite party's suit and all proceedings thereunder are stayed. The applicant must have the costs of this application from the opposite party.

Suit stayed.

Attorneys for defendants: *Leslie & Hinds.*

Attorneys for plaintiff: *P. D. Himatsingka & Co.*

A. K. D.

(1) (1923) I. L. R. 4 Lah. 168.

(2) (1929) I. L. R. 54 Bom. 278, 281.