

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Fforde.

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Feb. 10.

GHAMANDI LAL-NARAIN DAS (DEFENDANT)

Appellant,

versus

CHURANJI LAL-POKHAR MAL (PLAINTIFF)

Respondent.

Civil Appeal No. 210 of 1920.

Arbitration—agreement to refer all disputes arising out of a contract to arbitration—whether it includes a claim for damages for short delivery of goods.

Under a contract between the parties any claim or dispute of any sort whatever in connection therewith had to be referred to arbitration. Upon a claim for non-delivery of a portion of the goods contracted for, the defendants referred the matter to arbitration. Plaintiffs refused to attend the arbitration, and an award was made in their absence by which plaintiffs' claim was dismissed. The plaintiffs then brought the present suit upon the same causes of action and the defendants set up the award in defence. The lower Courts held that the award was no bar to the action as the arbitration clause did not apply to a case of non-delivery.

Held, that the words in the contract "any claim or dispute arising in connection with this contract" includes a claim for damages for short delivery of goods as made by the plaintiffs and the reason given by the lower Courts for holding that the award was no bar to the plaintiffs' suit was therefore incorrect.

Ganesh Das-Ishar Das v. Durga Dat-Jagan Nath (1), followed.

Dreyfus v. Jai Chand (2) and *Ohkajru Mal and Co. v. Gurmukh Singh-Bhagwan Das* (3), disapproved.

Second appeal from the decree of Lt.-Colonel R. W. F. Knollys, District Judge, Delhi, dated the 18th September 1919, affirming that of Khwaja Aldus Samad, Subordinate Judge, 2nd Class, Delhi, dated the 18th October 1918, and decreeing the plaintiffs' claim.

M. L. PURI, for Appellant.

NAIAZ MAHOMED, for Respondent.

The judgment of the Court was delivered by—
FFORDE J.—The action out of which this appeal

(1) (1920) I. L. R. 2 Lah. 19.

(2) 54 P. W. R. 1918.

(3) 72 P. R. 1917.

has arisen was brought to recover damages for breach of a contract to deliver certain goods. The contract in question was in writing and contained a clause providing that any claim or dispute of any sort whatever in connection therewith, unless an amicable settlement could be arrived at, must be referred to arbitration.

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Upon a claim being made for non-delivery of a portion of the goods contracted for the defendants referred the matter to arbitration under provisions of this clause. The plaintiffs, however, refused to attend the arbitration, and alleged as their reason for such refusal that arbitrators are invariably a prejudiced tribunal and that such proceedings are always subject to much delay.

The arbitration, thereupon, proceeded in the absence of the plaintiffs and ultimately an award was made dismissing the claim.

The plaintiffs then brought their suit before the Sub-Judge at Delhi upon the same cause of action as had already been disposed of by the award. The defendants set up the award in defence, but the learned Subordinate Judge held that the award was no bar to the action as the arbitration clause did not apply to a case of non-delivery and gave judgment for the plaintiffs. Upon appeal to the District Judge the decree was affirmed.

The plaintiffs have, at no time, attacked the award upon any of the grounds upon which such a document may be impeached but have throughout rested their case against its validity solely upon the contention that the arbitration clause does not apply in the case of non-delivery.

In support of this contention counsel for the plaintiffs has referred to the decision of Kensington J. in *Dreyfus v. Jai Chand* (1), which was approved of by Broadway J. in *Chajju Mal and Company v. Gurmukh Singh-Bhagwan Das* (2). Both these cases, however were discussed in *Ganesh Das-Ishar Das v. Durga Das-Jagan Nath* (3) where the applicability of this identical clause in the case of a short delivery of goods was the subject of decision.

(1) 54 P. W. R. 1918.

(2) 72 P. R. 1917.

(3) (1920) I. L. R. 2 Lah. 19.

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The Court in this last mentioned case refused to follow these decisions and held that the reason given in the Court below for refusing to stay the suit, namely, that such an arbitration clause did not apply to short delivery of goods was incorrect. We can see no difference in principle, so far as the question at issue is concerned, between the case of short delivery and non-delivery. The plaintiffs' claim in the present suit was for damages arising out of the failure of the defendants to fulfil their contract to supply the goods in question. We fail to see how it can be seriously contended that such a clause does not come within the meaning of the words "any claim or dispute arising in connection with this contract."

We are satisfied that in the events which have happened the arbitration clause in question is clearly applicable.

The parties have, by agreement, selected their own tribunal and must be bound by its decision unless it can be impeached upon any of the well-known grounds upon which such a decision can be challenged.

The plaintiffs having failed to establish any plea against the award set up in bar of the suit, the suit accordingly fails and the appeal must be allowed with costs throughout.

C. H. O.

Appeal accepted.