

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Arbitration Act

FAO No. 150/2007

Date of Decision : December 02, 2008

M/s Madan Lal Khanna and Company .Appellant
Through Mr. Manoj Ahuja, Advocate

Versus

M/s Hans Apparels . Respondent.
Through None.

SUDERSHAN KUMAR MISRA, J., (Oral)

1. There is no appearance on behalf of the respondents despite service. The appellant had brought a claim before the Arbitrator against the respondent for recovery of dues payable against two bills namely, bill No. 751 dated 25.3.2003 pertaining to Challan No. 11682 and Bill No. 865 dated 20.5.2003 pertaining to Challan No. 11827. The Arbitrator allowed these claims. The respondent filed objections to the Award under Section 34 of the Arbitration Act before the Trial Court. The trial court allowed the objections and set aside the Award after concluding that there is no arbitration agreement between the parties. Aggrieved by that order, the appellant has approached this court.

2. Before the trial court two main objections were taken by the respondent. The first was with regard to the service of notice of proceedings before the Arbitrator, on the respondent. He claimed that no notice had been served on him. The second objection was that there was no arbitration agreement between the parties. As regards the first objection, the learned trial court held that this objection had no force and that in fact notices were sent by the Arbitrator at the correct address and that the respondent was duly served. However, with regard to his second objection, the Trial Court agreed with the respondent. The Trial Court has dealt with this objection in para 7 onwards in the impugned decision. Learned counsel submits that the trial court has failed to appreciate the submission of the counsel and also overlooked the documents on the record of the Arbitrator while dealing with this aspect of the matter. He submits that the Trial Court has erroneously noted the submission of counsel for the appellant to the effect that the terms and conditions are printed at the back of the bill that contained the Arbitration Clause whereas, the fact is that the relevant arbitration clause is on the face of the bill itself and that it is prominently printed on the top of the bill. There, the following words are used:- As regarding the bill be decided by the arbitrator or Delhi Hindustani Marcantile Association, Chandni Chowk, Delhi.

3. At the same time, on the face of the Challan also, the following is prominently printed:- ARBITRATION AGREEMENT In case of any dispute regarding this bill, the same shall be referred total sale arbitration of Delhi Hindustani Mercantile Association, Chandni Chowk, Delhi and whose decision shall be final and binding on the both parties.

4. Despite the obvious mistakes in the wording of this clause, the intent of the clause is clear which is to refer all disputes arising with regard to the bills/challans to arbitration. This endorsement clearly constitutes an arbitration agreement. In addition, learned Trial Court has also concluded that no bill pertaining to the appellant or its carbon copy has been produced before the learned Arbitrator to conclude that an arbitration agreement exists between the parties. This conclusion is also erroneous for the reason that the award of the arbitrator itself notes that the original bill book and challan book were produced before him and that they have been returned. In this context, the Arbitrator has noted as follows:- The petitioner in support of his case appeared on 20.4.2006 and produced the bill book and challan book of his firm. The respondent has been delivered the goods and on the basis of these challans, the bills are prepared. On bills and challans the arbitration of disputes by DELHI HINDUSTANI MERCHANTILE ASSOCIATION (REGD.) CHANDNI CHOWK, DELHI-110006 is printed. Copies of bills and challans have been filed along with the petition, the originals of which have been seen and returned. Thus, it is clear that there is a valid arbitration agreement between the petitioner and the respondent.

5. It is therefore, obvious that the conclusion of the learned trial court to the effect that no arbitration agreement exists between the parties is erroneous as also the finding that copies of the bills evidencing any such arbitration agreement has not been produced before the Arbitrator.

6. Perusal of the record from the learned Arbitrator which has been requisitioned by this Court shows that a photocopy of Challan No. 11682 forms part of the said record. It contains the arbitration agreement. The record also contains a photocopy of Challan No. 11827 which also contains the same arbitration agreement. However, copies of the corresponding Bill Nos. 751 and 865 that were taken on record by the Arbitrator are carbon copies on plain paper and consequently, the printed portion of the original bill does not appear on this copy. Normally the original, printed bill containing all the particulars would have been handed over to the respondent and not the carbon copy, which has been retained by the appellant. At the same time, I find that the appellant has also placed a sample copy of the bill before the Arbitrator. This contains the arbitration clause on the top. This material is sufficient for concluding that even on the bills in question, there was an arbitration clause. Even otherwise, in view of the fact that the challans and their corresponding bills form part of the same transaction, the clear and unambiguous arbitration agreement on the face of each challan is by itself sufficient to conclude that the transaction is subject to an agreement to refer any dispute in that connection to arbitration. It is obvious that these documents escaped the attention of the learned Additional District judge and the finding returned by learned District Judge to the effect that there is no arbitration agreement between the parties, cannot be sustained.

7. In view of the above, the appeal is allowed and the impugned order dated 28th February, 2007 passed by the learned Additional District Judge is set aside and the Award dated 12th September, 2006 passed by the Arbitrator is restored.

Sd./-
SUDERSHAN KUMAR MISRA, J.

December 02, 2008