

(1924) 04 CAL CK 0006

Calcutta High Court

Case No: None

S. and C. Nordlinger

APPELLANT

Vs

Chandmull Mulchand

RESPONDENT

Date of Decision: April 29, 1924

Citation: 82 Ind. Cas. 341

Hon'ble Judges: Lancelot Sanderson, C.J; Walmsley, J

Bench: Division Bench

Judgement

Lancelot Sanderson, C.J.

This is an appeal by the defendants S. & C. Nordlinger against the judgment of my learned brother Mr. Justice Buckland.

2. The suit was brought by the plaintiffs Chandmull Mulchand against the defendants for a declaration that a certain award, dated the 3rd of September 1921, made by the Bengal Chamber of Commerce, was invalid and inoperative; and the two grounds upon which the claim was based at the trial in this Court are first, that the award was bad on the face of it and secondly, that the Arbitrators had no jurisdiction to make the award.

3. The learned Judge held in favour of the plaintiffs on both the points and declared that the award was invalid and inoperative. Against that decision the defendants have appealed.

4. The award was in the following terms:

Contract No. Nil, dated 7th December 1920.

Goods covered by contract. Finished" Dhoties.

Basis of Sale No. 2226.

Packages available for inspection B/S 116/20, 141/5.

Packages examined.

5. Complaint--inferior quality and other defects as per buyers" statement, dated 1st March 1921. Award: We have considered the papers and as buyers Messrs. Chandmull Mulchand are unwilling to produce the bales required for inspection their claim cannot be upheld and we award that they pay for and take delivery of the goods in terms of contract.

6. Buyers to pay cost of this reference, amounting to Rs. 101."

7. The learned Judge on the first point, namely, whether there was an error of law on the face of the award, said this: "The contract related to 60 bales. There was a dispute as to quality. The mere fact that the buyers are unwilling to produce the bales required for inspection is not by itself a sufficient reason for making an award against them. I do not desire to go further than I should having regard to the strict limitation laid down by the authorities as to what may be considered in a case such as this; but ordinarily, where there is a dispute between a buyer and a seller, with reference to quality, it would be the duty of the seller to prove that the goods were of the quality contracted for."

8. It is not necessary for me to refer to the authorities because they were fully considered by this Court in the case of U.M.Ghaudhry & Co. v. Jiban Krishna Ghose & Sons 69 Ind.Cas.995 : 49. C. 646 ; A.I.R (1922) (C) 447 and because the learned Judge has himself drawn attention to the decision of the Judicial Committee in the Privy Council in Champsey Bhara & Co. v. Jivraj Ballo Spinning and Weaving Co. 73 Ind. Cas. 436 ; 47 B. 578 , 28 C.W.N. 397 : 44 M.L.J. 706 : 25 Bom. L.R. 588 ; (1923) AIR (P.C.) 66 ; (1923) M.W.N. 596 : 50 C. 130 : 33 M.L.T. 419 ; (1923) A.C. 480 : 92 L.J.P.C. 163 : 50 I.A. 324 : 129 L.T. 166 : 39 T.L.R. 253 (P.C.) and the narrow limits within which a matter like this has to be considered. The first question which I have to ask myself is whether, I am satisfied that the award does show upon the face of it an error in law, and, for the purpose of coming to that conclusion, one is entitled to consider the award itself and any documents incorporated in the award.

9. It is, therefore, legitimate to consider, in the first place, the buyers" statement dated the 1st of March 1921. That is referred to in the award as the "complaint." That statement sets out the reasons why the buyers alleged that the goods were inferior in quality to the contract quality. I need not refer to them in detail and the statement concludes in this manner:

The combined defectiveness in the out-turn has thus made the goods too much unqualified and ought to be cancelled but we leave the matter to the hands of the learned arbitrators either to award, cancellation or any other relief as they would deem fit.

10. Therefore, it is clear, in my judgment, that the buyers were contending that the goods were not in accordance with the contract by reason of their inferior quality

and that they left the decision of the question as to quality to the Arbitrators and they further left it to them to say whether the contract, should be cancelled or whether any allowance should be made to the buyers in respect of the inferiority in the quality.

11. It appears to me that it was for the buyers to prove the case which they were alleging before the Arbitrators.

12. The Arbitrators said in their award: "We have considered the papers and as buyers Messrs. Chandmull Mulchand are unwilling to produce the bales required for inspection, their claim cannot be upheld. The learned Counsel for the respondents, as I understood his argument, did not find fault with that part of the award because it must be obvious that when the buyers were the complainants and were alleging the inferior quality of the goods and they were asked by the Arbitrators to produce the goods so that they might be inspected by the Arbitrators, and when they failed to produce any of the goods in question, the buyers cannot now complain of the Arbitrators coming to the conclusion that the buyers did not prove their case.

13. The learned Judge seems to have thought that the Arbitrators had decided against the buyers relying upon the mere fact that the buyers were unwilling to produce the bales. In my judgment, with great respect to the learned Judge, that is not a legitimate inference to be drawn from the terms of the award. The Arbitrators said that they had certain papers. I am not in a position to say what those papers were or to speculate what their contents were. They certainly had some materials before them which were contained in the papers referred to in the award.

14. But the learned Counsel for the respondents presented a further argument and contended that the second part of the award should not be upheld even though the first part, to which I have already referred, was held to be correct. The second part of the award, to which the learned Counsel referred, was that the buyers should pay for and take delivery of the goods in terms of the contract.

15. The argument was that the only question that the Arbitrators had to decide was whether the goods were of the contract quality or not; and if they did not decide that, then they ought not to have made the award. I cannot accept that contention. In the first place, the buyers' statement, to which I have referred, makes it clear that the question as to what was to be done with regard to the dhhoties was left to the arbitration of the Bengal Chamber of Commerce. The Arbitrators were to say whether the goods were in accordance with the contract. If they found that they were not then they were to say whether the contract was to be cancelled or whether any allowance should be made. It seems to me that when the Arbitrators, as they obviously did, came to the conclusion that the complainants did not satisfy them that the goods were not in accordance with the contract quality it follows, as a matter of course, that they should award that the buyers should pay for and take delivery of the goods. In my judgment it was within their jurisdiction so to do. In

short, on this part of the case, on the materials which we are entitled to consider upon the question as to whether there was an error of law on the face of the contract, I am by no means satisfied that the Arbitrators have been guilty of an error of law.

16. The second point depends upon the question of survey. The learned Counsel for the respondents argued that it was a part of the submission that there should be a survey by the Arbitrators and that if no survey took place, there should be no award.

17. The learned Advocate-General, who appeared for the appellants, on the other hand, argued that no doubt it was contemplated by both parties that there should be a survey and that if there was a survey it should be carried out in a particular manner which was specified by the sellers but that it was not agreed upon by the parties and was not contemplated by the parties" that a survey should be the only method of obtaining evidence as regards the quality of the goods. I think that the learned Advocate-General"s argument in this respect is correct. The Arbitrators were not merely surveyors. We do not know the names of the gentlemen who acted in this case. I believe that it is the practice of the Bengal Chamber of Commerce not to disclose the names of gentlemen who acted as Arbitrators. But it is clear on a reference to the arbitration and the statement of buyers that it was intended that the gentlemen, who would act in accordance with the Rules of the Bengal Chamber of Commerce, should act as Arbitrators and should finally decide the question in dispute between the parties.

18. One method of deciding as to the quality of the goods was contemplated to be a survey, but in my judgment, it was not contemplated that that should be the only means of arriving at a decision.

19. I am by no means satisfied that the parties agreed that there should be a survey, and that if a survey were not held, there should be no award. It seems to me that the argument of the learned Advocate-General on behalf of the appellants must be adopted. The result is that in this respect also, with great respect to the learned Judge, I am constrained to come to the conclusion that the Arbitrators acted within their jurisdiction.

20. For these reasons, in my judgment, the appeal must be allowed, the learned Judge"s judgment and decree will be set aside and the suit dismissed with costs in both the Courts, except such costs as have been directed to be paid by the defendants with regard to the amendment of the written statement.

Walmsley, J.

21. I agree.