**(1929) 02 BOM CK 0023**

**Bombay High Court**

**Case No:** None

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| A.E.G. India Electric Company, Limited | | APPELLANT |
| | Vs | |
| General Electric Trading Company | | RESPONDENT |

**Date of Decision:** Feb. 6, 1929

**Acts Referred:**

- Arbitration Act, 1940 - Section 19

**Citation:** (1929) 31 BOMLR 426 : (1929) ILR (Bom) 573

**Hon'ble Judges:** Kemp, J

**Bench:** Single Bench

**Judgement**

Kemp, J.

This is a Chamber Summons for stay of this suit u/s 19 of the Indian Arbitration Act. The suit was filed on January 7,1929. In 1927 the plaintiffs appointed the defendants as their sole selling and distributing agents in certain, districts under the terms of an agreement in writing executed by the plaintiffs in Bombay and by the defendants in Karachi, in July, 1927. The agency referred to the supply of electric goods etc., to the defende-ants and although the document is termed, an agency agreement in effect it was an agreement by which the plaintiffs sold the goods to the defendants at a rate 5 percent., lower than the prices to any dealer in the-Indian market. I do not consider it necessary to specify the terms of the agreement in detail. It is sufficient to say that the plaintiffs'' claim is in respect of the price of goods supplied to the defendants. It is, however, necessary to refer to Clause 12 of the agreement. It isin these terms:

2. 12, Arbitration.--All disputes between the parties here to and any differences of opinion concerning and arising out of this agreement shall not be referred to a Court of Law, in the first instance to arbitration, as provided for below:

Each party to nominate one arbitrator. If arbitrators agree, the decision will be binding on both parties. If the arbitrar tors disagree, they shall have the right.to appoint an umpire who could agree with one of the arbitrators and give his final award which will bind parties. If the umpire disagrees with both arbitrators, the matter must be decided in the ordinary course.

3. From this it will be seen that the parties are required in respect of all disputes between them concerning and arising out of the agreement to go in the first instance to arbitration.

4. The relief u/s 19 of the Indian Arbitration Act is one within the discretion of the Court and it lies on the plaintiffs; to show whythe matter should not be referred arbitration.

5. Mr. Taraporewala for the plaintiffs contends that there are no disputes which can be the subject-matter of a submission and that tip suit is for the price. The answer to this is that the defendants, it may be perhaps not so early as they might have one, objected to the accounts submitted to the plaintiffs and alleged amongst other things that the plaintiffs had sold goods direct to other agents than themselves in contravention of the terms of the contract. I do not propose to discuss all the matters of which the defendants complain, but I am quite satisfied that in October, 1928, they did raise a dispute and, so far as I know, a "genuine dispute, that the amount claimed by the plaintiffs was incorrect.

6. Mr. Taraporewala next contends that as his clients put an end to the contract on the ground, he says, that the defendants had broken it the arbitration clause in the contract does not apply. In the first place, however, it is impossible for me to say now on these affidavits whether the plaintiffs or the defendants have broken the contract, and in the second place, the plaintiffs by putting an end to the contract do not also put an end to the arbitration clause. The only decision cited in the argument is the case of Hodson v. Railway Passengers'' Assurance Co. (1904) 2 K.B. 833 : 73 L.J.K.B. 1001 which Mr. Taraporewala referred to. But there are other authorities which may properly be referred to in deciding this application. The guiding principle determining whether the clause as to arbitration applies or not in cases like the present has been laid down in the following cases from which I draw the general rule that the dispute is referable to arbitration in a case where the avoidance of the contract arises out of the terms of the contract itself. Where, however, a party seeks to avoid the contract for reasons dehors it the arbitration clause cannot be resorted to as it, together with the other terms of the contract, is set aside. In other words, a party cannot rely on a term of the contract to repudiate it and still say the arbitration clause should not apply. If he relies on the contract he must rely on it for all purposes. The present disputes clearly arise out of the agreement and the plaintiffs themselves are suing under it for the price. Thus, in Jureidini v. National British and Irish Mills Insurance Co. (1915) A.C. 499 : 84 L.J.K.B. 640 : (1915) W.C. 239 : 112 L.T. 531 : 59 S.J. 205 : 31 T.L.R. 132 the contract was repudiated and with it he arbitration clause. In the later case of Stebbing v. Liverpool and London and Globe Insurance Co. (1917) 2 K.B. 433 : 86 L.J.K.B. 1155 : (1917) W.C.R 241 : 117 L.T. 247 :33 T.L.R. 395 the Company relied on a term in the contract to avoid liability and it was held the arbitration

clause stood and the dispute was referable to arbitration. In Woodall v. Pearl Assurance Co. the Company also relied on a term in the policy rendering it invalid and did not thereby repudiate the policy as a binding contract. There also it was held that the dispute was referable to arbitration under the arbitration clause as the Company had had to rely on a term of the policy itself. Lastly, there is the decision in De La Garde v. Worsnop and Co. (1928) 1 Ch. 17 : 96 L.J. Oh. 446 : 137. I.T. 475 : 71 S.J. 604 where Mr. Justice Clauson held that the agreement to refer to arbitration was binding and the action must be stayed where the plaintiffs'' obligation under the contract came to an end in accordance with the terms expressed in the contract itself and not by reason of the occurrence of an event dehors the consideration of the contracting parties. In the present case the plaintiffs sue to recover the price under the contract as a valid and binding contract. They cannot, therefore, repudiate one of the terms of the contract relating to arbitration whilst seeking to rely on the contract in support of their claim. I, therefore, hold that the fact that the plaintiffs put an end to the contract does not avoid the effect of Clause 12 of the contract.

7. Then Mr. Taraporewala argues that as the plaintiffs are in Bombay and the defendants in Karachi the arbitrators might not agree on a place at which to hold the arbitration. I see, however, no reason why 1 should anticipate that the arbitrators are going to disagree on this point and, secondly, the natural thing for the arbitrators to do, whether they are appointed from residents or traders in Bombay or Karachi, is to take the evidence obtainable at Karachi, at Karachi, and the evidence obtainable at Bombay, at Bombay.

8. I do not propose to discuss all the decisions which show in what cases the Court should exercise its discretion by allowing the suit to proceed. The parties to this contract are both merchants and presumably included Clause 12 in their agreement deliberately and with a full knowledge of the effect of it and must be assumed to have known that the arbitrators might have to take the evidence both at Karachi and Bombay. They have gone so far as to provide that an arbitration must first be resorted to before a suit may be filed. I see no reason why in the face of this solemn and deliberate agreement between the parties I should allow the plaintiffs to file their suit and give no effect to the clause as to arbitration. They must have contemplated the consequences when they inserted the clause in their agreement.

9. Suit stayed till further orders. Liberty to apply. The plaintiffs to pay the defendants costs of this application and the costs of the suit up to date to be in the discretion of the arbitrators. Counsel certified