

[2018] 14 S.C.R. 289

M/S. CARAVEL SHIPPING SERVICES PVT.LTD.

V.

M/S. PREMIER SEA FOODS EXIM PVT.LTD.

(Civil Appeal Nos. 10800-10801 of 2018)

OCTOBER 29, 2018

[R.F. NARIMAN AND NAVIN SINHA, JJ.]

Arbitration and Conciliation Act, 1996: ss.7(3), 7(4), 8 – Pot thakhibagi sakkhang chening (Bill of lading) – Respondent su oiriba pot thariba mishak aduna Kochi gi Court ta thangtkhiba mangkhiba hanjinabagi wakat (Suit for recovery) – AC Act ki s.8 ki makha da pot puthok-pushin touba yaraba agent ama oiriba appellant na Bill of lading da yaoriba Court ki wangmada yashannaba purakpagi ayaba (arbitration clause) adugi matengna pukhatlakhiba wakat – Darkhast (Appllication) adugi manungda s.11 Application amasu Chennai Court ta thangatkhre haiba wafham thamba - Bill of lading da hapchinba (annexed) namthoklaba warol sing adu parties sing gi mathak ta chatnahanba yaro amadi masiga mari leinaba Chennai da thoudok amata thokkhidabana maram oiraga khannaba chumde haibagidamak Kochigi Court na s.8 Application bu kakthatkhi – Kochi Court ki wafham sing adubu yaningaduna High Court na Bharat sangbidhangi Art, 227 gi makha da tharakhiba original petition adubukakthatkhi – Nouhounana khananaba pukhatpada: Respondent na Bill of lading da hapchinba namthoklaba warolsingni hairabsu arbitration clause na yanaba adubu punshilli haibasi efong-fongna yajakhi – Makha chatharakpada, respondent masa makna Bill of Lading sijinaduna mangkhiba hanjinnabagi wakhat adu thangatkhiani – Maram aduna, respondent na mahakki tongjaba thiraga mahakki wakat adubu yahannabagidamak khutyek pidriba (unsigned) Bill of Lading bu sijinage aduga yashannaba purakpagi (arbitration) gi oinadi Arbitration Act ki matung enna khutyek pidribana maram oiraga chatnaba yaro haibasi yafham thokte – High Court ki order adu kakthatle.

Appeal adubu yaraduna, Court na

Thamba: 1. Bill of Lading na “Mechant” haiba wahei asina (Multimodal Transport Documents ki chatna-pathapki matung enna asumna wahan piri – Clause (1) (e) hairaga shipper, consigner natraga consignee adubu khangnagani) Bill of Lading gi nakal animakta piriba niti-niyom, chatna-pathap, machak khaiba wafham sing amadi tongan-taba wafham (exception) sing asi type touthoklaba, namthoklaba, natraga atei atoppa

makhal amatada yetnaba leitana yagani. Arbitration clause ki Bill of Lading da hapchillaba Clause 25 ta yaoriba namthoklaba chatna-pathapta yenglubada respondent na arbitration clause pu hapchilliba namthoklaba chatna-pathap oirabasu yetnaba leitana enbada ayaba piri haiba khangle. Anisubada, respondent masamakna mangkhiba senpham (lupa) Rs. 26,53,593/- hanjinnaba hotnabada Bill of Lading bu manga (5) suba maram amani haina mahakki wakat aduda palli. Maram asina, respondent masana masagi kanaba khak yenglaga khutyek pidriba Bill of Lading bu mahakki wakatki oinadi mateng oihallaga arbitration gi oinadi Arbitration Act ki makha da arbitration clause asi khutyek piba tangai phade haina yetpa asi yaroi. [Paras 7, 8][292-E-F; 293-A-B]

2. Arbitration agreement (yanaba) asi a-eeba oigadabani haibasi 1996 Act ki Section 7(3) da makhatana palli. Section 7(4) na supnatagi makhatana palli madudi arbitration agreement asi Section 7(4) sabada yaoriba sub-clauses ahum adugi manunggi warol singda yaoba thengnagani. Masi haidunasu arbitration agreement asi cases khudinggi khutyek pidaba tangaiphade haibadi leite. Adubu amata-ngairaba toudaba yadraba mangjounana thamlaba wapham hairagadi eethoklaba oigadabani haibasini, asumna Section 7(3) nahairi. Pumnamakse thamduna, houjik leiriba wakat asi Act asigi Section 7(5) ki makha da Bill of Lading na arbitration clause pu kanglup (parties) anigi marakta pinariba yanache adugi machang oiba saruk ama oiri. [Paras 9, 10][293-D-E]

M.R. Engineers and Contractors Private Limited v. SomDatt Builders Limited(2009) 7 SCC 696 : [2009] 10 SCR 373 ;*Jugal Kishore Rameshwardas v. Mrs. GoolbaiHormusji*AIR 1955 SC 812 ; [1955] SCR 857 – mateng louraga.

Reference louriba case law sing

[2009] 10 SCR 373	relied on	Para 5
[1955] SCR 857	relied on	Para 9

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 10800- 10801 of 2018

High Court of Kerala at Ernakulum na tarik 08.09.2015 da OP(C) No. 522 of 2013 (O) da takhiba waayel amadi yathang amasung tarik 14.06.2016 da R.P. No. 135 of 2016 da takhiba waayel amadi yathangdagi louraga.

Ms. Liz Mathew, M. F. Philip, Appellant kiukil sing (Advs.).

P. A. Noor Muhamed, Sunny P. Markose, Ms. Giffara S., Bilal Niamathulla, Respondent kiukil sing.

M/S. CARAVEL SHIPPING SERVICES PVT.LTD. v. M/S. PREMIER SEA FOODS
EXIM PVT.LTD.

Waayel-shangadugiwaayenpikhiba

R.F. NARIMAN, J.

1. Leave kiayabapire.

2. Houjik mang da lakliba wakat asi tarik 25.10.2018 gi “Multimodal Transport Document/Bill of Lading” hairiba document asina maram oire. Bill of Lading na asumna hairi madudi, Kerala gi M/s Premier Seafoods Exim Private Limited asina pot thariba (Consignor/Shipper) ni, aduga eikhoigi mang da appellant oina leplibba Caravel Shipping Services Private Limited asina pot puthok-pushin touhalliba agent ni. Bill of Lading gi wahoudok oiriba Clause da asumna thamli, madudi:

“Bill of Lading asibu karigumba pot thariba/yolliba (Merchant) aduna ayaba pirabadi masiga loinariba niti-niyom, chatna-pathap, machak khaiba wapham sing amadi tongan taba wapham (exception) sing asisu type touthoklaba, namthoklaba, natraga atei atoppa makhal amatada yetnaba leitana yagani.”

3. Respondent na Kochi gi Court ki Sub-Judge ki mamang da mahakki mangkhiba sel oina lupa (Rs.) 26,53,593/- bu hanjinnabagi thangatlakpa waakat (Suit) O.S. No. 9 of 2009 aduda Bill of Lading asina maram ama oi haina phongna palli. Hairiba waakat asi hek thangatkhibaga I.A. ama, I.A. No. 486 of 2009 asi Arbitration and Conciliation Act, 1996 (makha tana “the Act” haina khangnagadaba) ki section 8 gi makha da appellantna thagatkhi, masida Bill of Lading da arbitration clause ama namthoklaba warol oina happe haibase waayelshang da khanghankhi. I.A. asigi section 11 dasu waahang oina namthoklaba chatna-pathap oiriba Clause 25 na yaraba Court ki wangmada waayel tounaba mee-oi (arbitrator) ama khanbinaba Chennai da haijakhre hainasu thamli. Bill of lading da hapchinba namthoklaba waarolsing adu parties singgi mathak ta chatnaba yaro amadi I.A. asiga mari leinaba Chennai da thoudok amata thokkhidabana maram oiraga Kochi gi Sub-Court na makhoigi tarik 08.01.2013 da thokpa waayel da I.A. adubu kakthatkhi.

4. High Court na sangbidhangi Article 227 gi makha da thangatlakhiba original petition (waakat) aduda Multimodal Transportation of Goods Act, 1993 ta thamba chatna-kanglon kaya amada changdamkhi, aduga asumnasu haikhi madudi, arbitration clause adu namthoklaba chatna-pathap oibana tonganna yashinnaba purakke haibagi apamba leikhide amasung respondent ta Clause 25 ka mari leinana khanghankhibasu leite, masiga loinana learned Sub-judge pu yaningladuna Original Petition adubu kakthatkhi. Masigi waayel asibu nouhouna khannabinaba (review) thagatkhiba waakat adubusu tarik 14.06.2016 ki waayel amana kakthatkhi.

5. Bill of Lading da yaoriba namthoklaba warol singna takli madudi parties animak pu yetnaba leitana Bill of Lading na punshilli haina Appellant ki mahut sillaga Ms. Liz Mathew na puthokkhi. Masi oidunasu, Arbitration Act gi Section 7(5) ga loinana wayelshang (Court) asigi M.R. Engineers and Contractors Private Limited vs. SomDatt Builders Limited, (2009) 7 SCC 696 da pikhiba wayel aduga punna yengminaba matam da contract adugi manung da arbitration clause ta mityeng thammi haibasi mayek sengna uba fhangi, adugi mathakta hairiba arbitration clause asi eethoklaba contract adugi machang oiba saruk amani, maram aduna mahakki oinadi, wayelshang animak asida aranba leire. Mahakna makha tana palladuna hairi madudi, matang asida, Madras High Court na makhioigi tarik 09.01.2015 gi yathang (order) amada Kerala gi proceeding bu palli, touwigumbasu proceeding adumaktada arbitration clause pu chatnahanduna Senior Advocate amabu party sing gi marak ta wayelnaba su palli.

6. Nakal amaromdana, respondent ki mahut silliba learned counsel Mr. P.A. Noor Muhamed na Act adugi Section 7(4) da mityeng chingsinkhi amadi Section 7(4) gi matung enna paty sing na document tu gi manung da yaoriba arbitration agreement aduda khutyek piba mathou tai hainasu yetkhi. Mahkki client na Bill of Lading aduda khutyek pikhidabana maram oiraga, mahak ki mityeng dadi, maram aduna document tuda yaoriba arbitration clause aduna punshande haikhi. Mahakna makha tana asumna su yetkhi madudi, wakat asigi houjik leiriba fhibam asidadi leiriba yetnaba (issues) khara kakthatkhre amadi witness amasu kanna wahang-paohang chathari.

7. Party animak ki wafham sing eikhoina tare, aduga eikhoina khangle madudi Bill of Lading na “Mechant” haiba waheiasina (Multimodal Transport Documents ki chatna-pathapki matung enna asum wahan piri – Clause (1) (e) hairaga shipper, consigner nattraga consignee adubu khangnagani) Bill of Lading gi nakal animakta piriba niti-niyom, chatna-pathap, machak khaiba wafham sing amadi tongan-taba wafham (exception) sing asi type touthoklaba, namthoklaba, nattraga atei atoppa makhal amatada yetnaba leitana yagani. Bill of Lading da hapchallaba namtoklaba warol oiriba Arbitration clause, haibadi Clause 25 na sumna hairi:

“25. Konshilliba mafham/Wayel piba (Jurisdiction/Arbitration):

Bill of Lading na masak takliba contract adu Bharat ki a-ingi makha da leigani, amadi Chennai gi court khaktana wayel-bichar toubu yagani. Contract asiga mari leinana thoklakpa yetnaba khuding nattraga masida yaoriba warol (clauses) asigi wahanthok pibada chamamnaba/chayetnaba thoklakpa matamda Bharat ki Arbitration & Conciliation Act, 1996 ki matung enna a-ingi wayelshang youdana yashinnaba purakkadabani. Wayelgadaba meei asi punna ahum sugadabani amadi hairiba meei sing asi sinfham (commercial) naiba meei ngakta oigadabani aduga wayel pipham na Chennai oigadabani.”

M/S. CARAVEL SHIPPING SERVICES PVT.LTD. v. M/S. PREMIER SEA FOODS
EXIM PVT.LTD. [R.F. NARIMAN, J.]

8. Hairiba asibu yengshalluba matamdasu respondent na arbitration clause adubu Bill of Lading da namthoklaba hapchinba chatna-pathap oirabasu yetnaba leitana ennaba ayaba pire haiba uba phangle. Anisubada, respondent masamak na mahakki mangkhiba senpham lupa Rs. 26,53,593/- bu hanjinnaba thangatpa waakat ta Bill of Lading bu maram amani haina palli. Maram aduna, respondent na mahakki tongjaba thiraga makhakki wakat adubu yahannabagidamak khutyekpidriba (unsigned) Bill of Lading bu sijinage aduga yashannaba purakpagi(arbitration) gi oinadi Arbitration Act ki matung enna khutyek pidribana maram oiraga chatnaba yaroi haibasi yafham thokte.

9. Masigi mathakta, eikhina a-ingi oina kari leiri haibdu utli, madudi Jugal Kishore Rameshwardas vs. Mrs. Goolbai Hormusji, AIR 1955 SC 812 gida asumna palli madudi arbitration agreement adu eethoklaba oigadabani adubu khutyek pibagi mathoudi tade. Hairiba arbitration agreement adu eethoklaba oigadabani haiba wapham asi 1996 Act ki Section 7(3) dasu makha tana palli. Section 7(4) na supnatagi arbitration agreement asi section 7(4) bu sabada yaoriba sub-clause ahum adugi makha da palliba warol sing duda yaoba thengnagani haiba khaktani. Masi haidunasu thenghkhankhang da arbitration agreement asi khutyek pibadi mathou tade. Tangai fhadaba mangjounana thamba wapham ama hairagadi masi eethoklaba oigadabani haina Section 7(3) na takli.

10. Masi pumnakamse oidunasu , maang da leiriba wakat asi Arbitration Act gi Section 7(5) ga loinana waayelshang asigi M.R. Engineers and Contractors Private Limited vs. SomDatt Builders Limited, (2009) 7 SCC 696 da pikhiba wayel aduga punna yengminaba matam da arbitration clause asi contract adugi manung da yaohannabani haibasi mayek sengna uba fhangi.

11. Wakat asigi houjik leiriba fhibam asida witness ama wahang-paohang chathariba asina chahi adumaktada tharakpa oirabasu Section 8(3) ki waakat aduda ayetpa leiroy. Eikhoina makha tana hapchinba yaba wapham di eikhoi Multimodal Transportation of Goods Act, 1993 ta yam manung hanjinna changsindri, maramdi Bill of Lading asi Act ki niti-neyam gi makha ponna lei (akaknana pallabada Act ki Section 26), madu natraga arbitration clause na party singgi marakta agreement adugi saruk ama oini haibada khetnaba amata leiroy, maram aduna hairiba asi Arbitration Act ki Section 7 na konshingani.

12. Maram aduna, eikhoina wakat (appeals) sing asi ayaba pire amadi High Court na pikhiba waayel adubu kakthatle.

Devika Gujral

Wakat ayaba pire.