

CARAVEL SHIPPING SERVICES (P) LTD. v. PREMIER  
SEA FOODS EXIM (P) LTD.

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- a* (BEFORE ROHINTON FALI NARIMAN AND NAVIN SINHA, JJ.)  
CARAVEL SHIPPING SERVICES  
PRIVATE LIMITED . . . Appellant;
- b* PREMIER SEA FOODS EXIM  
PRIVATE LIMITED . . . Respondent.
- Civil Appeals Nos. 10800-801 of 2018<sup>†</sup>, decided on October 29, 2018
- Arbitration and Conciliation Act, 1996 — Ss. 7(4)(a), 7(5) and 8(3) —  
Signing of arbitration agreement — Not mandatory, when such agreement  
satisfies the test of being in writing — Arbitration clause — Incorporation of,  
by reference to the printed condition annexed to the agreement**
- c* — Respondent filed a suit of recovery against appellant in which the bill  
of lading was expressly stated to be a part of cause of action — Bill of lading  
specified that the merchant agreed to be bound by all the terms, conditions,  
clauses and exceptions on both sides of the bill of lading whether typed, printed  
or otherwise and Cl. 25, being a printed condition annexed to the bill of  
lading, provided for settlement of disputes/differences by arbitration — Held,
- d* respondent had expressly agreed to be bound by the arbitration clause had  
itself relied upon the bill of lading as part of its cause of action — Further,  
in all cases an arbitration agreement was not required to be signed and the  
only pre-requisite being that it be in writing — Further, the reference in the  
bill of lading was such as to make the arbitration clause part of the contract  
between the parties — Thus, appeal against the dismissal of application of
- e* the appellant/defendant under S. 8(3), allowed — Contract and Specific Relief  
— Contractual Obligations and Rights — Incorporation by Reference/Or  
Otherwise (Paras 6 to 10)  
*Jugal Kishore Rameshwardas v. Goolbai Hormusji*, AIR 1955 SC 812; *M.R. Engineers &  
Contractors (P) Ltd. v. Som Datt Builders Ltd.*, (2009) 7 SCC 696 : (2009) 3 SCC (Civ)  
271, followed
- f* *Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.*, 2015 SCC OnLine  
Ker 26752 : (2015) 4 KLT 1035; *Caravel Shipping Services (P) Ltd. v. Premier Sea Foods  
Exim (P) Ltd.*, 2016 SCC OnLine Ker 18893, reversed  
*Caravel Logistics (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.*, 2015 SCC OnLine Mad 721,  
referred to
- Appeals allowed VN-D/61393/SV
- g* Advocates who appeared in this case :  
Ms Liz Mathew and M.F. Philip, Advocates, for the Appellant;  
P.A. Noor Muhamed, Sunny P. Markose, Ms Giffara S. and Bilal Niamathulla, Advocates,  
for the Respondent.
- h* <sup>†</sup> Arising out of SLPs (C) Nos. 31101-102 of 2016. Arising from the Judgments and Orders in  
*Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.*, 2015 SCC OnLine Ker  
26752 : (2015) 4 KLT 1035 (Kerala High Court, Ernakulam Bench, OP (C) No. 522 of 2013 (O), dt.  
8-9-2015] and *Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.*, 2016 SCC  
OnLine Ker 18893 (Kerala High Court, Ernakulam Bench, RP No. 135 of 2016, dt. 14-6-2016)

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***Chronological list of cases cited***

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| 1. 2016 SCC OnLine Ker 18893, <i>Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd. (reversed)</i>                     | 462g-h, 464e | a |
| 2. 2015 SCC OnLine Ker 26752 : (2015) 4 KLT 1035, <i>Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd. (reversed)</i> | 462f-g, 464e |   |
| 3. 2015 SCC OnLine Mad 721, <i>Caravel Logistics (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.</i>  | 463b-c       |   |
| 4. (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271, <i>M.R. Engineers &amp; Contractors (P) Ltd. v. Som Datt Builders Ltd.</i>                  | 463a-b, 464c | b |
| 5. AIR 1955 SC 812, <i>Jugal Kishore Rameshwardas v. Goolbai Hormusji</i>   | 464a-b       |   |

The Judgment of the Court was delivered by

**ROHINTON FALI NARIMAN, J.**— Leave granted. The present appeals arise out of a document styled as “Multimodal Transport Document/Bill of Lading” dated 25-10-2008. This bill of lading states that the consignor/shipper is one M/s Premier Seafoods Exim Private Ltd. of Kerala, and that Caravel Shipping Services Private Ltd., who is the appellant before us, is the agent who facilitates transport. The very opening clause of the bill of lading specifies:

“In accepting this bill of lading the merchant expressly agrees to be bound by all the terms, conditions, clauses and exceptions on both sides of the bill of lading whether typed, printed or otherwise.”

2. The respondent filed a suit being OS No. 9 of 2009 before the Sub-Judge’s Court in Kochi to recover a sum of Rs 26,53,593 in which the bill of lading was expressly stated to be a part of cause of action. Soon after the suit was filed, an IA being IA No. 486 of 2009 was filed by the appellant under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) in which it was pointed out to the Court that an arbitration clause was included in the printed terms annexed to the bill of lading. The IA also pointed out that a Section 11 petition to appoint an arbitrator in accordance with Clause 25, being the printed term in question, has also been filed in Chennai. The Sub-Court, Kochi, by its judgment dated 8-1-2013 dismissed the IA, stating that printed conditions annexed to the bill of lading would not be binding upon the parties, and also that as no part of the cause of action arose in Chennai, the IA would have to be dismissed.

3. In the original petition filed under Article 227 of the Constitution of India, the High Court referred<sup>1</sup> to certain provisions of the Multimodal Transportation of Goods Act, 1993, and also stated that the arbitration clause, being in a printed condition, there being no intention to arbitrate and nothing to show that Clause 25 was brought to the notice of the respondent, agreed with the learned Sub-Judge and dismissed the original petition. A review filed against the said judgment was also dismissed by a judgment dated 14-6-2016 *Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.*<sup>2</sup>

1 *Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.*, 2015 SCC OnLine Ker 26752 : (2015) 4 KLT 1035

2 2016 SCC OnLine Ker 18893

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- 4.** Ms Liz Mathew, learned counsel appearing on behalf of the appellant
- a* pointed out that printed conditions of the bill of lading were expressly referred to in the bill of lading and both parties were stated to be bound by the same. This being so, in accordance with Section 7(5) of the Arbitration Act read with this Court's judgment in *M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd.*<sup>3</sup> would make it clear that there was a reference in the contract to the arbitration clause, and since it is in writing and the reference is such
- b* that the arbitration clause formed part of the contract, according to her, both the courts were in error. She also pointed out to us that, in the meanwhile, the Madras High Court, by order dated 9-1-2015 in *Caravel Logistics (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.*<sup>4</sup>, has referred to the Kerala proceeding, but nonetheless applied the arbitration clause and appointed a Senior Advocate to arbitrate between the parties in that proceeding.
- c* **5.** On the other hand, Mr P.A. Noor Muhamed, learned counsel for the respondent, invited our attention to Section 7(4) of the Act and argued that Section 7(4)(a) requires an arbitration agreement to be in a document that is signed by the parties. Since the bill of lading was not signed by his client, according to him, he is, therefore, not bound by the arbitration clause contained in that document. Further, he has also argued that at present the stage of the suit
- d* is that issues have been struck and one witness is being examined.
- 6.** Having heard the learned counsel for both parties, we are of the view that the bill of lading makes it clear that the term "merchant" [which is defined in the Standard Conditions Governing Multimodal Transport Documents — Clause (1)(e) as meaning shipper, consignor or consignee] *expressly* agrees to be bound by all the terms, conditions, clauses and exceptions on both sides of
- e* the bill of lading whether typed, *printed* or otherwise. The arbitration clause, which is Clause 25 being a printed condition annexed to the bill of lading, reads as under:
- "25. Jurisdiction/Arbitration:** The contract evidenced by the bill of lading shall be governed by the laws of India, and subject to the exclusive
- f* jurisdiction of court in Chennai only. Disputes/difference arising out of this contract and/or connection with the interpretation of any of its clauses shall be settled by arbitration in India in accordance with the Arbitration and Conciliation Act, 1996. The number of arbitrators shall be three, the arbitrators shall be commercial persons, the venue for arbitration shall be Chennai."
- g* **7.** A perusal of the same shows that the respondent has expressly agreed to be bound by the arbitration clause despite the fact that it is a printed condition annexed to the bill of lading. Secondly, it must be remembered that the respondent has itself relied upon the bill of lading as part of its cause of action to recover the sum of Rs 26,53,593 in the suit filed by it. The respondent,
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- <sup>3</sup> (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271  
<sup>4</sup> 2015 SCC OnLine Mad 721

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therefore, cannot blow hot and cold and argue that for the purpose of its suit, it will rely upon the bill of lading (though unsigned) but for the purpose of arbitration, the requirement of the Arbitration Act is that the arbitration clause should be signed. a

**8.** In addition, we may indicate that the law in this behalf, in *Jugal Kishore Rameshwardas v. Goolbai Hormusji*<sup>5</sup>, is that an arbitration agreement needs to be in writing though it need not be signed. The fact that the arbitration agreement shall be in writing is continued in the 1996 Act in Section 7(3) thereof. Section 7(4) only further adds that an arbitration agreement would be found in the circumstances mentioned in the three sub-clauses that make up Section 7(4). This does not mean that in all cases an arbitration agreement needs to be signed. The only pre-requisite is that it be in writing, as has been pointed out in Section 7(3). b

**9.** This being the case, the present is a clear case where, under Section 7(5) of the Act read with *M.R. Engineers & Contractors (P) Ltd.*<sup>3</sup>, SCC paras 22 & 24, the reference in the bill of lading is such as to make the arbitration clause part of the contract between the parties. c

**10\*.** The fact that the stage of the present suit is that a particular witness is being examined would not come in the way of the Section 8(3) application being allowed inasmuch as the Section 8(3) application was filed in the same year as that of the suit. We may also add that we have not gone into the Multimodal Transportation of Goods Act, 1993 for the reason that whether the present bill of lading is governed by the provisions of the Act (Section 26 in particular) or not would not make any difference to the position that an arbitration clause forms part of an agreement between the parties, and would, therefore, be governed by Section 7 of the Arbitration Act. d

**11.** We, therefore, allow the appeals and set aside the judgments<sup>1, 2</sup> of the High Court. e

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<sup>5</sup> AIR 1955 SC 812

<sup>3</sup> *M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd.*, (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271

\* **Ed.:** Para 10 corrected vide Official Corrigendum No. F.3/Ed.B.J./94/2018 dated 4-2-2019.

<sup>1</sup> *Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.*, 2015 SCC OnLine Ker 26752 : (2015) 4 KLT 1035

<sup>2</sup> *Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.*, 2016 SCC OnLine Ker 18893 h