

SECOND DIVISION

[G.R. No. 114323, July 23, 1998]

**OIL AND NATURAL GAS COMMISSION, PETITIONER, VS. COURT
OF APPEALS AND PACIFIC CEMENT COMPANY, INC.
RESPONDENTS.**

D E C I S I O N

MARTINEZ, J.:

This proceeding involves the enforcement of a foreign judgment rendered by the Civil Judge of Dehra Dun, India in favor of the petitioner, OIL AND NATURAL GAS COMMISSION and against the private respondent, PACIFIC CEMENT COMPANY, INCORPORATED.

The petitioner is a foreign corporation owned and controlled by the Government of India while the private respondent is a private corporation duly organized and existing under the laws of the Philippines. The present conflict between the petitioner and the private respondent has its roots in a contract entered into by and between both parties on February 26, 1983 whereby the private respondent undertook to supply the petitioner FOUR THOUSAND THREE HUNDRED (4,300) metric tons of oil well cement. In consideration therefor, the petitioner bound itself to pay the private respondent the amount of FOUR HUNDRED SEVENTY-SEVEN THOUSAND THREE HUNDRED U.S. DOLLARS (\$477,300.00) by opening an irrevocable, divisible, and confirmed letter of credit in favor of the latter. The oil well cement was loaded on board the ship MV SURUTANA NAVA at the port of Surigao City, Philippines for delivery at Bombay and Calcutta, India. However, due to a dispute between the shipowner and the private respondent, the cargo was held up in Bangkok and did not reach its point of destination. Notwithstanding the fact that the private respondent had already received payment and despite several demands made by the petitioner, the private respondent failed to deliver the oil well cement. Thereafter, negotiations ensued between the parties and they agreed that the private respondent will replace the entire 4,300 metric tons of oil well cement with Class "G" cement cost free at the petitioner's designated port. However, upon inspection, the Class "G" cement did not conform to the petitioner's specifications. The petitioner then informed the private respondent that it was referring its claim to an arbitrator pursuant to Clause 16 of their contract which stipulates:

"Except where otherwise provided in the supply order/contract all questions and disputes, relating to the meaning of the specification designs, drawings and instructions herein before mentioned and as to quality of workmanship of the items ordered or as to any other question, claim, right or thing whatsoever, in any way arising out of or relating to the supply order/contract design, drawing, specification, instruction or these conditions or otherwise concerning the materials or the execution or failure to execute the same during stipulated/extended period or after the completion/abandonment thereof shall be referred to the sole

arbitration of the persons appointed by Member of the Commission at the time of dispute. It will be no objection to any such appointment that the arbitrator so appointed is a Commission employer (sic) that he had to deal with the matter to which the supply or contract relates and that in the course of his duties as Commission's employee he had expressed views on all or any of the matter in dispute or difference.

"The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason the Member of the Commission shall appoint another person to act as arbitrator in accordance with the terms of the contract/supply order. Such person shall be entitled to proceed with reference from the stage at which it was left by his predecessor. Subject as aforesaid the provisions of the Arbitration Act, 1940, or any Statutory modification or re-enactment there of and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause.

"The arbitrator may with the consent of parties enlarge the time, from time to time, to make and publish the award.

"The venue for arbitration shall be at Dehra dun."^[1]

On July 23, 1988, the chosen arbitrator, one Shri N.N. Malhotra, resolved the dispute in petitioner's favor setting forth the arbitral award as follows:

"NOW THEREFORE after considering all facts of the case, the evidence, oral and documentaries adduced by the claimant and carefully examining the various written statements, submissions, letters, telexes, etc. sent by the respondent, and the oral arguments addressed by the counsel for the claimants, I, N.N. Malhotra, Sole Arbitrator, appointed under clause 16 of the supply order dated 26.2.1983, according to which the parties, i.e. M/S Oil and Natural Gas Commission and the Pacific Cement Co., Inc. can refer the dispute to the sole arbitration under the provision of the Arbitration Act. 1940, do hereby award and direct as follows:-

"The Respondent will pay the following to the claimant :-

1. Amount received by the Respondent
against the letter of credit No. 11/19
dated 28.2.1983 - - - US \$
477,300.00
2. Re-imbursement of expenditure incurred
by the claimant on the inspection team's
visit to Philippines in August 1985 - - - US\$
3,881.00
3. L. C. Establishment charges incurred
by the claimant - - - US \$
1,252.82

4.	Loss of interest suffered by claimant	
	from 21.6.83 to 23.7.88	- - - <u>US \$</u>
	<u>417,169.95</u>	
	Total amount of award	- - - <u>US \$</u>
	<u>899,603.77</u>	

"In addition to the above, the respondent would also be liable to pay to the claimant the interest at the rate of 6% on the above amount, with effect from 24.7.1988 upto the actual date of payment by the Respondent in full settlement of the claim as awarded or the date of the decree, whichever is earlier.

"I determine the cost at Rs. 70,000/- equivalent to US \$5,000 towards the expenses on Arbitration, legal expenses, stamps duly incurred by the claimant. The cost will be shared by the parties in equal proportion.

"Pronounced at Dehra Dun to-day, the 23rd of July 1988."^[2]

To enable the petitioner to execute the above award in its favor, it filed a Petition before the Court of the Civil Judge in Dehra Dun, India (hereinafter referred to as the foreign court for brevity), praying that the decision of the arbitrator be made "the Rule of Court" in India. The foreign court issued notices to the private respondent for filing objections to the petition. The private respondent complied and sent its objections dated January 16, 1989. Subsequently, the said court directed the private respondent to pay the filing fees in order that the latter's objections could be given consideration. Instead of paying the required filing fees, the private respondent sent the following communication addressed to the Civil Judge of Dehra Dun:

"The Civil Judge
Dehra Dun (U.P.) India
Re: Misc. Case No. 5 of 1989
M/S Pacific Cement Co.,
Inc. vs. ONGC Case
Sir:

1. We received your letter dated 28 April 1989 only last 18 May 1989.
2. Please inform us how much is the court fee to be paid. Your letter did not mention the amount to be paid.
3. Kindly give us 15 days from receipt of your letter advising us how much to pay to comply with the same.

Thank you for your kind consideration.
Pacific Cement Co., Inc.

By:
Jose Cortes, Jr.
President"^[3]

Without responding to the above communication, the foreign court refused to admit the private respondent's objections for failure to pay the required filing fees, and thereafter issued an Order on February 7, 1990, to wit:

"ORDER

Since objections filed by defendant have been rejected through Misc. Suit No. 5 on 7.2.90, therefore, award should be made "Rule of the Court.

"ORDER

Award dated 23.7.88, Paper No. 3/B-1 is made Rule of the Court. On the basis of conditions of award decree is passed. Award Paper No. 3/B-1 shall be a part of the decree. The plaintiff shall also be entitled to get from defendant (US\$ 899, 603.77 (US\$ Eight Lakhs ninety nine thousand six hundred and three point seventy seven only) alongwith 9% interest per annum till the last date of realisation."^[4]

Despite notice sent to the private respondent of the foregoing order and several demands by the petitioner for compliance therewith, the private respondent refused to pay the amount adjudged by the foreign court as owing to the petitioner. Accordingly, the petitioner filed a complaint with Branch 30 of the Regional Trial Court (RTC) of Surigao City for the enforcement of the aforementioned judgment of the foreign court. The private respondent moved to dismiss the complaint on the following grounds: (1) plaintiff's lack of legal capacity to sue; (2) lack of cause of action; and (3) plaintiff's claim or demand has been waived, abandoned, or otherwise extinguished. The petitioner filed its opposition to the said motion to dismiss, and the private respondent, its rejoinder thereto. On January 3, 1992, the RTC issued an order upholding the petitioner's legal capacity to sue, albeit dismissing the complaint for lack of a valid cause of action. The RTC held that the rule prohibiting foreign corporations transacting business in the Philippines without a license from maintaining a suit in Philippine courts admits of an exception, that is, when the foreign corporation is suing on an isolated transaction as in this case.^[5] Anent the issue of the sufficiency of the petitioner's cause of action, however, the RTC found the referral of the dispute between the parties to the arbitrator under Clause 16 of their contract erroneous. According to the RTC,

"[a] perusal of the above-quoted clause (Clause 16) readily shows that the matter covered by its terms is limited to "ALL QUESTIONS AND DISPUTES, RELATING TO THE MEANING OF THE SPECIFICATION, DESIGNS, DRAWINGS AND INSTRUCTIONS HEREIN BEFORE MENTIONED and as to the QUALITY OF WORKMANSHIP OF THE ITEMS ORDERED or as to any other questions, claim, right or thing whatsoever, but qualified to 'IN ANY WAY ARISING OR RELATING TO THE SUPPLY ORDER/CONTRACT, DESIGN, DRAWING, SPECIFICATION, etc.,' repeating the enumeration in the opening sentence of the clause.

"The court is inclined to go along with the observation of the defendant that the breach, consisting of the non-delivery of the purchased materials, should have been properly litigated before a court of law, pursuant to Clause No. 15 of the Contract/Supply Order, herein quoted, to wit:

'JURISDICTION

All questions, disputes and differences, arising under out of or in

connection with this supply order, shall be subject to the EXCLUSIVE JURISDICTION OF THE COURT, within the local limits of whose jurisdiction and the place from which this supply order is situated.”[6]

The RTC characterized the erroneous submission of the dispute to the arbitrator as a “mistake of law or fact amounting to want of jurisdiction”. Consequently, the proceedings had before the arbitrator were null and void and the foreign court had therefore, adopted no legal award which could be the source of an enforceable right.
[7]

The petitioner then appealed to the respondent Court of Appeals which affirmed the dismissal of the complaint. In its decision, the appellate court concurred with the RTC’s ruling that the arbitrator did not have jurisdiction over the dispute between the parties, thus, the foreign court could not validly adopt the arbitrator’s award. In addition, the appellate court observed that the full text of the judgment of the foreign court contains the dispositive portion only and indicates no findings of fact and law as basis for the award. Hence, the said judgment cannot be enforced by any Philippine court as it would violate the constitutional provision that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.[8] The appellate court ruled further that the dismissal of the private respondent’s objections for non-payment of the required legal fees, without the foreign court first replying to the private respondent’s query as to the amount of legal fees to be paid, constituted want of notice or violation of due process. Lastly, it pointed out that the arbitration proceeding was defective because the arbitrator was appointed solely by the petitioner, and the fact that the arbitrator was a former employee of the latter gives rise to a presumed bias on his part in favor of the petitioner.[9]

A subsequent motion for reconsideration by the petitioner of the appellate court’s decision was denied, thus, this petition for review on certiorari citing the following as grounds in support thereof:

“RESPONDENT COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE LOWER COURT’S ORDER OF DISMISSAL SINCE:

A. THE NON-DELIVERY OF THE CARGO WAS A MATTER PROPERLY COGNIZABLE BY THE PROVISIONS OF CLAUSE 16 OF THE CONTRACT;

B. THE JUDGMENT OF THE CIVIL COURT OF DEHRADUN, INDIA WAS AN AFFIRMATION OF THE FACTUAL AND LEGAL FINDINGS OF THE ARBITRATOR AND THEREFORE ENFORCEABLE IN THIS JURISDICTION;

C. EVIDENCE MUST BE RECEIVED TO REPEL THE EFFECT OF A PRESUMPTIVE RIGHT UNDER A FOREIGN JUDGMENT.”[10]

The threshold issue is whether or not the arbitrator had jurisdiction over the dispute between the petitioner and the private respondent under Clause 16 of the contract. To reiterate, Clause 16 provides as follows: