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

G.R. No. 114323. September 28, 1999

Ponente: YNARES_SANTIAGO, J.

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YNARES_SANTIAGO, J.:

This resolves the Motion for Reconsideration filed by private respondent against the Decision rendered by this Court's Second Division on July 23, 1998.

The facts as set forth in the Decision sought to be reconsidered are restated thus:

> "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 acordance 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 Statutary 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 documentarys 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

- - - US $

417,169.95

Total amount of award

- - - US $

899,603.77

"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.

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"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:

> "ORDERSince 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.
>
> "ORDERAward 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) along with 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 ruled that the arbitration proceedings was null and void because the submission of the dispute to the arbitrator was a "mistake of law or fact amounting to want of jurisdiction". It then concluded that petitioner acquired no enforceable right under the foreign court's judgment because of the invalid adoption of the arbitrator's award.[7] On appeal, the Court of Appeals affirmed the trial court's ruling that the arbitrator did not have jurisdiction over the dispute and that the full text of the foreign court's judgment did not contain any findings of facts and law but merely a "simplistic decision containing literally, only the dispositive portion"[8] in contravention of the Constitution.[9] 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. Finally, the Court of Appeals held 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.[10]

After petitioner's motion for reconsideration was denied, it brought a petition for review on certiorari to this Court,[11] wherein the threshold issue raised was the enforceability of the foreign judgment rendered by the Civil Judge of Dehra Dun, India in favor of petitioner and against private respondent --- the resolution of which hinges on whether or not the arbitrator had jurisdiction over the dispute between the said two parties under Clause 16 of the contract. On July 23, 1998, this Court, as stated, rendered the assailed Decision in favor of petitioner, the dispositive portion of which reads:

> "WHEREFORE, the instant petition is GRANTED, and the assailed decision of the Court of Appeals sustaining the trial court's dismissal of the OIL AND NATURAL GAS COMMISSION's complaint in Civil Case No. 4006 before Branch 30 of the RTC of Surigao City is REVERSED, and another in its stead is hereby rendered ORDERING private respondent PACIFIC CEMENT COMPANY, INC. to pay to petitioner the amounts adjudged in the foreign judgment subject of said case.
>
> "SO ORDERED."

The dispute is within the jurisdiction of the arbitrator pursuant to Clause 16 of the contract which provides:

> "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."[12]

This Court reiterates its ruling in the Decision of July 23, 1998, to wit:

> "The dispute between the parties had its origin in the non-delivery of the 4,300 metric tons of oil well cement to the petitioner. The primary question that may be posed, therefore, is whether or not the non-delivery of the said cargo is a proper subject for arbitration under the above-quoted Clause 16. The petitioner contends that the same was a matter within the purview of Clause 16, particularly the phrase, "x x x or as to any other questions, claim, right or thing whatsoever, in any way arising or relating to the supply order/contract, design, drawing, specification, instruction x x x".[13] It is argued that the foregoing phrase allows considerable latitude so as to include non-delivery of the cargo which was a "claim, right or thing relating to the supply order/contract". The contention is bereft of merit. First of all, the petitioner has misquoted the said phrase, shrewdly inserting a comma between the words "supply order/contract" and "design" where none actually exists. An accurate reproduction of the phrase reads, "x x x 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 x x x". The absence of a comma between the words "supply order/contract" and "design" indicates that the former cannot be taken separately but should be viewed in conjunction with the words "design, drawing, specification, instruction or these conditions". It is thus clear that to fall within the purview of this phrase, the "claim, right or thing whatsoever" must arise out of or relate to the design, drawing, specification, or instruction of the supply order/contract. The petitioner also insists that the non-delivery of the cargo is not only covered by the foregoing phrase but also by the phrase, "x x x or otherwise concerning the materials or the execution or failure to execute the same during the stipulated/extended period or after completion/abandonment thereof x x x.
>
> "x x x. The non-delivery of the oil well cement is definitely not in the nature of a dispute arising from the failure to execute the supply order/contract design, drawing, instructions, specifications or quality of the materials. That Clause 16 should pertain only to matters involving the technical aspects of the contract is but a logical inference considering that the underlying purpose of a referral to arbitration is for such technical matters to be deliberated upon by a person possessed with the required skill and expertise which may be otherwise absent in the regular courts.
>
> "This Court agrees with the appellate court in its ruling that the non-delivery of the oil well cement is a matter properly cognizable by the regular courts as stipulated by the parties in Clause 15 of their contract:
> "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."[14]

If Clause 16 would be interpreted to include even the non-delivery of the oil well cement, it would render Clause 15 a surplusage. Manifestly clear from Clause 16 is that the arbitration is not the only means of settling disputes between the parties. Precisely, it is prefixed with the proviso, "Except where otherwise provided in the supply order/contract x x x", thus indicating that the jurisdiction of the arbitrator is not all encompassing, and admits of exceptions as may be provided elsewhere in the supply order/contract. So as not to negate one provision against the other, Clause 16 should be confined to all claims or disputes arising from or relating to the design, drawing, instructions, specifications or quality of the materials of the supply order/contract, and Clause 15 to cover all other

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claims or disputes.

However, private respondent alleges that the foreign court's judgment is not enforceable in this jurisdiction because it failed to contain a statement of the facts and the law upon which the award in favor of petitioner was based. The foreign judgment sought to be enforced reads:

> "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."
>
> "ORDERAward 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." (Emphasis supplied).[15]

The foreign court explicitly declared in its Order that "Award Paper No. 3/B-1 shall be part of the decree." This curt ruling of the foreign court may be categorized in the nature of memorandum decisions or those which adopt by reference the findings of facts and conclusions of law of inferior tribunals. In this jurisdiction, it has been held that memorandum decisions do not transgress the constitutional requirement in Article VIII, Section 14, on clearly and distinctly stating the facts and the law on which the decision is based.[16] Nonetheless, it would be more prudent for a memorandum decision not to be simply limited to the dispositive portion but to state the nature of the case, summarize the facts with references to the record, and contain a statement of the applicable laws and jurisprudence and the tribunal's assessments and conclusions on the case. This practice would better enable a court to make an appropriate consideration of whether the dispositive portion of the judgment sought to be enforced is consistent with the findings of facts and conclusions of law made by the tribunal that rendered the decision. This is particularly true where the decisions, orders, or resolutions came from a court in another jurisdiction. Otherwise, the enforcement of the decisions would be based on presumptions that laws in other jurisdictions are similar to our laws, at the expense of justice based on the merits.

Moreover, the constitutional guideline set forth in Article VIII, Section 14 cannot prevail over the fundamental elements of due process. Matters of procedure even if laid down in the Constitution must be tempered by substantial justice provided it has factual and legal basis. Considering that the case involves significant properties, the overriding consideration of a judgment based on the merits should prevail over the primordial interests of strict enforcement on matters of technicalities. Procedural lapses, absent any collusion or intent to defraud the parties or mislead the tribunals, should not be allowed to defeat the claim of a party who is not well-informed in the technical aspects of the case but whose interest is merely to enforce what he believes to be his rightful claim.

In this case, considering that petitioner simply prayed for the remand of the case to the lower court, the outright ruling and adherence to the foreign courts' order adopting by reference another entity's findings and conclusion was misplaced. The adjudication of this case demands a full ventilation of the facts and issues and the presentation of their respective arguments in support and in rebuttal of the claims of the contending parties. This is all the more applicable herein since the Court is not a trier of facts,[17] but oftentimes simply relies on the cold pages of the silent records of the case.

ACCORDINGLY, in the interest of due process, the case is REMANDED to the Regional Trial Court of Surigao City for further proceedings.

SO ORDERED.

Melo, (Chairman), and Puno, JJ., concur. Mendoza, J., took no part.

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[1] Supply Order Contract, ANNEX “C” to PETITION in G.R. No. 114323, p. 5; Rollo, p. 114.

[2] Arbitral Award dated July 23, 1988, ANNEX “D” of the Petition, p. 17; Rollo, p. 143-144.

[3] DECISION in CA-G.R. CV NO. 37080 promulgated on October 29, 1993, p. 10; Rollo, p. 103; RTC Records, pp. 143-144.

[4] ANNEX “F” of the Petition; Rollo, p. 157.

[5] ORDER in Civil Case No. 4006, ANNEX “G” of the Petition, p. 1; Rollo, p. 158.

[6] Ibid., p. 4; Rollo, p. 161.

[7] Ibid., p. 5; Rollo, p. 162.

[8] CA Decision.

[9] Constitution, Article VIII, Section 14.

[10] CA Decision, Supra, pp. 8-12; Rollo, pp. 101-105.

[11] Petitioner assigned the following arguments:

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.” (Petition, Supra, p. 9; Rollo, p. 73.).

[12] See Supply Order Contract.

[13] Petition, Supra; pp. 11-12; Rollo, pp. 75-76.

[14] Terms and Conditions of Supply Order, “ANNEX C-1” of the Petition, p. 8; Rollo, p. 125-126; RTC Records, pp. 17-26.

[15] Court of Dehra Dun, Suit No. 677 of 1988, ONGC vs. Pacific Cement, 7-2-90; Rollo, p. 157.

[16] Francisco v. Permskul, 173 SCRA 324 [1989]; Romero v. Court of Appeals, 147 SCRA 183 (1987).

[17] David-Chan v. CA, 268 SCRA 677 (1997).

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