

Jindal Pipes Limited Vs. Mahandi Coal Fields Limited

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Court : Kolkata

Decided On : Mar-03-2014

Judge : Banerjee

Appellant : Jindal Pipes Limited

Respondent : Mahandi Coal Fields Limited

Judgement :

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ORDER

SHEET APO No.4 of 2014 AP No.943 of 2012 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE JINDAL PIPES LIMITED Versus MAHANDI COAL FIELDS LIMITED BEFORE: The Hon'ble JUSTICE BANERJEE The Hon'ble JUSTICE ARIJIT BANERJEE Date : 3rd March, 2014.

Appearance: Mr.Dhrubo Ghosh, Mr.Soumava Ghosh Ld.

Advocates for the appellant.

Mr.Tilak Bose,Sr.Advocate and Mr.Partha Bose, Id.

Advocate for the respondent.

The judgment Court and dismissing :- order the This appeal dated application April made would 11, by relate 2013, the to the inter-alia, appellant under section 9 of

the Arbitration and Conciliation Act, 1996.

The parties entered into a commercial transaction by which the appellant purchased coal from the respondent by availing the process of e-tender.

Clause 11.8 would not permit the appellant to draw any sample at the time of purchase.

It was in effect a risk purchase.

Clause 11.8 is quoted below: 11.8: There will not be any joint/third party sampling facility extended to any buyer, Refusal on account of non-suitability and/or sub-standard quality for the allotted quantity of coal shall not be acceptable. Keeping their eyes wide open, the appellant purchased the coal.

They consumed the same leaving a small quantity that they claimed, is still lying at their Gaziabad factory that could not be used as not suitable.

The dispute arose when the Coal Company denied their responsibility on the issue.

The appellant filed an application under section 11 of the Arbitration and Conciliation Act, 1996 that this Court dismissed.

The appellant also approached the learned Single Judge under section 9 of the said 1996 Act, inter-alia, praying for appointment of a Receiver to have independent report from the expert after drawing samples.

As usual, the respondent a Government Company did not appear before His Lordship, despite notice.

The learned Single Judge appointed Receiver, who drew samples and got it tested through expert.

The hearing before Section 11 application observed in absence His application Lordship.

of stood ultimately At the juncture dismissed, arbitration came the His up for when the Lordship protection under section 9 was not called for.

His Lordship dismissed the application and discharged the Receiver.

While doing so, His Lordship observed, the report as to the quality of the coal obtained at the instance of the receiver pursuant to the ad interim order may not be relied upon before any forum or authority. commented His on Lordship merits as while well.

dismissing, His Lordship however, doubted the appellants right to have samples drawn in view of specific embargo under clause 11.8 quoted supra.

Hence this appeal at the instance of the appellant.

Mr.Dhrubo Ghosh, learned Counsel appearing for the appellant would application stood at contend, the dismissed.

His juncture Today, Lordship when section the changed in dismissed 11 his application scenario when arbitration is in progress with the blessing of Apex Court, the order should be revisited.

On the observation of His Lordship as to the reliance on the report he would contend, since a report was obtained from an expert, that would favour his claim, he should be allowed to rely on the same.

However, he has to prove the same and at the same time the respondent would be entitled to rebut it.

He would only pray, last sentence of His Lordships order quoted above should be set aside so that he may rely upon the report subject to restriction as available under the Evidence Act.

Per contra, Mr.Tilak Bose, learned senior Counsel appearing for contend, the participated the in respondent appellant, the Coal keeping e-tender.

The India Company their purchased eyes the would open, goods accepting the condition including clause 11.8.

The learned Judge appointed Receiver at the ad-interim stage.

Once the application got dismissed, he is not entitled to take the benefit of the Receivers report that the Court availed at the interim appellant has stage.

a He claim would he is further to contend, prove it if the before the appropriate forum.

The Court must not come to his aid to help him to collect evidence.

We have considered the take the judgment and order rival impugned contentions.

If we and on a combined reading of it we would agree with Mr.Ghosh when he would say, the same was rendered at a situation when Section 11 application stood dismissed.

Today in the changed scenario, when arbitration is in progress, parties to the arbitration would definitely be entitled to invoke section 9.

However, the relief would depend upon factual matrix.

Mr.Ghosh wants to rely upon the report.

Clause 11.8 would specifically make it clear, parties would have to be satisfied with the delivery.

They would not be entitled to raise the issue of non-availability of permission to draw sample from the consignment.

Hence, we do not find any scope of interference.

We, however, clarify, before the Arbitrator, the order of the learned Single Judge would not prevent any of the parties to adduce any evidence that they would be desiring.

However, admissibility of which would depend upon the Arbitrator.

In the process if the appellant wishes to rely upon the subject report, they may do so.

However, at the risk of resistance from the Coal Company and the appellant is not entitled to any special blessing on that score.

The appeal is disposed of without any order as to costs.

(BANERJEE, J.) (ARIJIT BANERJEE, J.) dg/

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