

Pam Development Pvt. Ltd. Vs. State of West Bengal and anr.

Pam Development Pvt. Ltd. Vs. State of West Bengal and anr.

SooperKanoon Citation : sooperkanoon.com/1153042

Court : Kolkata

Decided On : Jun-25-2014

Judge : Banerjee

Appellant : Pam Development Pvt. Ltd.

Respondent : State of West Bengal and anr.

Judgement :

ORDER

SHEET GA17602014 APOT2822014 AP4922014 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE PAM DEVELOPMENT PVT.LTD.Versus STATE OF WEST BENGAL & ANR.

BEFORE: The Hon'ble JUSTICE ASHIM KUMAR BANERJEE The Hon'ble JUSTICE ARIJIT BANERJEE Date : 25th June, 2014.

Mr.Paritosh Sinha, Advocate for the appellant.

Mr.Priyankar Saha, Advocate Mr.Amritam Mondal, Advocate for the respondent.

The Court : The appellant applied for appointment of Arbitrator.

The appellant made a grievance before the learned single Judge, despite prayer for appointment of Arbitrator being made, the authority did not act upon the same.

Hence, they filed an application under Section 11 of the Arbitration and Conciliation Act, 1996.

Mr. Priyankar Saha, learned Counsel appearing for the appellant, would inform this Court, the notice to the State was served by registered post with acknowledgement due.

The respondent appeared and took time to seek instruction.

However, on the fifth occasion, the appellant was not present.

Hence, the application was dismissed for default.

The State thereafter appointed the Arbitrator.

The appellant contended before the learned single Judge, once the application was made under Section 11, the State lost their authority to appoint Arbitrator.

They should not have taken advantage of a situation when the application was dismissed for default and subsequently restored.

He would refer to a Division Bench decision of this Court in the case of Modi Korea Telecommunications Private Limited versus AppCo. Consultants Private Limited, reported in 1999 Vol.2 CHN107 Per contra, Mr. Paritosh Sinha, learned Counsel appearing for the State, would contend, the appeal before this Court is not maintainable in view of the clear mandate of Section 37 of the said Act of 1996 which would specifically provide, the scope of appeal in certain circumstances would not include a prayer for rejection of an application under Section 11.

On merits also Mr. Sinha informs this Court, there was shifting of office that might have resulted in delay in appointing the Arbitrator.

Mr. Saha would, however, deny such plea of shifting.

We have considered the rival contentions.

The decision in the case of Modi (supra) would deal with a situation when the learned single Judge declined to appoint the Arbitrator considering the merits of

the matter.

The Division Bench observed, Despite provision for appeal being there in Section 37, the intra court appeal under Clause 15 of the Letters Patent available to the chartered High Court would be maintainable.

We do not express any opinion on the proposition of law so discussed by the Division Bench as we do not find scope of application in view of the fact, in the instant case the learned single Judge did not consider the merits of the matter.

His Lordship considered a situation when the Arbitrator had already been appointed by the State.

His Lordship considered, the fact that there had been some communication gap in view of shifting of office, was reasonable excuse.

We do not find any scope to interfere.

The appeal fails and is hereby dismissed, after treating the same as on days list, without any order as to costs.

Consequently, the application is also dismissed.

(ASHIM KUMAR BANERJEE, J.) (ARIJIT BANERJEE, J.) sd/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com