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Court : Guwahati

Decided On : Aug-28-1951

Judge : Thadani, C.J. and Deka, J.

Acts : [Arbitration Act, 1940](#) - Sections 1 and 14; [Government of India Act, 1935](#) - Sections 92

Appeal No. : Civil Revn. No. 17 (H) of 1951

Appellant : Sardar Chanda Singh

Respondent : The Executive Engineer, Assam Rly. and ors.

Advocate for Pet/Ap. : S.K. Ghose and N.M. Dam, Advs.D.N. Medhi, Govt. Adv.

Judgement :

Thadani C.J.

1. This is a revision application under Rule 39 of the Rules framed for the administration of justice in North Cachar Hills, directed against an appellate order, dated 6-12-50 passed by the learned District Judge, North Cachar Hills, by which he affirmed the judgment and decree of the S. D. O. Haflong, dated 11-3-50, setting aside an award under Section 30(c), Arbitration Act.

2. One Sardar Chanda Singh entered into an agreement with the Governor-General of India represented by the Executive Engineer, B. A. Railway, Haflong,

for the construction of additional staff quarters at Akhaura (now in East Pakistan) for the Traffic and Electric Department of the said Railway, at a cost of Rs. 1,53,600. It was agreed that all disputes arising out of the contract were to be decided by arbitration. The petitioner's case is that, after acquisition of the site, he collected various materials for the execution of the contract and stored them on the site selected ; that due to flood, the work had to be suspended at the instance of the authorities; that thereafter the hostilities came to an end and the work was totally stopped by order of the Executive Engineer, A. Railway, on 15-9-45. Thereafter the Railway authorities took over the materials collected by the petitioner for the execution of the said contract; the petitioner claimed RS. 39,482 as the price of the materials taken over by the Railway, but a dispute arose between him and the Railway authorities as to the proper amount payable to the petitioner, and correspondence went on between the parties for some time.

At this stage, the country was partitioned, and Akhaura, the site for the construction of the Railway quarters, fell to Pakistan. The petitioner tried to realise his dues as price of the materials taken over by the Railway, from both the. Pakistan and the Assam Railway, but failed. He there, after referred the matter to arbitration in terms of the arbitration clause in the agreement.' In due course the arbitrator appointed by the petitioner acted as the sole arbitrator and made, an award for RS. 49,352 in favour of the petitioner and filed in the Court of the S. D. C., Haflong, North Cachar Hills. The learned S. D. O., however, set aside the award by his order dated 11-3-50, under Section 30(c), Arbitration Act. On appeal, the learned District Judge, North Cachar Hills by his order dated 6-12-50, affirmed the judgment and order of the learned S.D.O. Haflong.

3. Both the Courts below have proceeded on the assumption that the Arbitration Act, 1940, applied to the area. But a reference to Section 92, Government of India Act, 1935, shows that the [Arbitration Act, 1940](#), under which this award was

filed, is not applicable to North Cachar Hills.

Section 92, [Government of India Act, 1935](#), is in

these terms :

'92. (1) The executive authority of a Province extends to excluded and partially excluded area therein, but notwithstanding anything in this Act, no Act of the Dominion Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor, by public notification, so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.'

4. It is admitted by Mr. Ghose for the applicant that North Cachar Hills are an excluded area and that unless the Governor of Assam, by public notification, has directed that the Arbitration Act of 1940 has application, the Act will not apply to this area. He conceded that no notification in this behalf has been issued by the Governor of Assam. Quite ingeniously, however, Mr. Ghose contended that as under the rules framed for the administration of justice in this area, the spirit of the Code of Civil Procedure could be invoked, the spirit of Schedule 2 to the Civil P. C. relating to arbitration, might properly be invoked. The short answer to this very unconvincing argument is that the [Arbitration Act, 1940](#), has expressly repealed Schedule 2, Civil P. C.

5. It follows then that the Courts below had no jurisdiction to entertain the award and should have returned the award and not set it aside.

6. In this view of the matter, the application must fail and is dismissed. But in the circumstances of the case, we make no order as to costs. The award is ordered to be returned to the arbitrator who filed it. The Rule is discharged.

Deka, J.

7. I agree.