

Prism Cement Limited Vs. Delta Construction Systems Limited

Prism Cement Limited Vs. Delta Construction Systems Limited

SooperKanoon Citation : sooperkanoon.com/500640

Court : Madhya Pradesh

Decided On : Mar-10-2004

Reported in : 2004(2)MPHT479; 2004(2)MPLJ228

Judge : A.K. Shrivastava, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11(6), 12, 13 and 16;
[Constitution of India](#) - Article 226

Appeal No. : Misc. Civil Case No. 3182/2003

Appellant : Prism Cement Limited

Respondent : Delta Construction Systems Limited

Advocate for Def. : Satish Agrawal and ;Pritpal Kaur, Adv.

Advocate for Pet/Ap. : Alok Aradhe, Adv.

Disposition : Application allowed

Judgement :

ORDER

A.K. Shrivastava, J.

1. By this application, filed under Section 11(6) of the [Arbitration and Conciliation Act, 1996](#) (in short 'the Act'), the applicant has prayed to appoint an arbitrator to

arbitrate the dispute which has arisen between the parties in pursuance of the contract, Annexure A-1.

2. In nutshell, it has been contended, in the application that to manufacture the cement, limestone is used as raw material and for that purpose, the applicant-company has been granted mining leases in the areas surrounding its plant for mining of limestone. It has been put forth in the application that for breaking limestone and hard rock, the applicant had entered into a contract with non-applicant vide its order dated 16-08-2001 (Annexure A-1). Under this contract the non-applicant agreed to deploy Indico make rock breaker duly mounted on DEML make excavator in the mine of the applicant. Under Clause 10.9 of the contract, the non-applicant agreed that after commissioning Mega Rock Breaker at the premises of the applicant the non-applicant shall not remove the machines from the mines of the applicant without clearance in writing of the applicant until the non-applicant delivers Nine lac. In Clause 13 of the contract, there is an arbitration clause, according to which, in case of dispute regarding terms and conditions of the work order it shall be referred to whole time Director of the applicant and the decision of the Director shall be final and binding on both the parties.

3. According to the learned Counsel for the applicant, after commissioning Mega Rock Breaker at the premises of the applicant the non-applicant has breached the contract and has given the authority to M/s. L & T Finance to remove the machines. As such a dispute between the parties has arisen and a Civil Suit was filed (Civil Suit No. 28-A/03 before the District Court, Satna) for declaration and injunction, mainly against L & T Finance. However, that suit was withdrawn and another suit has been filed, which is pending in the Court of Second Additional District Judge, Satna. In that suit the plaintiff-applicant has sought relief for declaration and injunction that the applicant is the owner of the machines, in question, as well as for injunction.

4. According to the applicant, he had suffered huge loss, therefore, he served a notice Annexure A/2 dated 20-8-2003 to respondent to make payment of Rs. 1,14,12,661/- and, therefore applicant invoked the arbitration clause by another notice dated 21-8-2003 (Annexure A-3) and appointed Mr. Manoj Chhabra being

the whole time Director of the applicant's company to adjudicate the claim.

5. According to the applicant, the non-applicant raised an objection by communication dated 25-8-2003 (Annexure A-4) on the ground that there is no valid agreement in the eyes of law, and, therefore, arbitration clause can not be invoked. It was further alleged that the arbitrator appointed by the applicant is disqualified from acting as arbitrator to arbitrate the dispute because he has been involved in the decision making process. On account of the objection raised by the non-applicant the arbitrator which was appointed by the applicant declined himself to become an arbitrator vide communication dated 27-8-2003 (Annexure A-5).

6. On above said premised reasons, a prayer to appoint an arbitrator has been made by this application.

7. In reply to the application several grounds have been raised by the non-applicant, not to appoint the arbitrator. The main contention of learned Counsel is that according to the contract (Annexure A-1), the dispute can be referred to the arbitrator only regarding the terms and conditions of the work order. According to learned Counsel, as there is no dispute regarding the terms and conditions of the work order no arbitrator can be appointed and the application deserves to be dismissed.

8. Combating the objection raised in the reply regarding the maintainability of the application filed under the Act, Shri Alok Aradhe learned Counsel for the applicant has invited my attention to Section 16 of the Act and has contended that this objection can be raised even before the arbitrator. The learned Counsel has also placed reliance on the decision of the Supreme Court in the case of State of Orissa and Ors. v. Gokulananda Jena, (2003) 6 Supreme Court Cases 465. In this case in para 8 the Apex Court laid down the law as under :--

'However, we must notice that in view of Section 16 read with Section 12 and 13 of the Act, as interpreted by the Constitution Bench of this Court in Konkan Rly. almost all disputes which could be presently contemplated can be raised and agitated before the arbitrator appointed by the Designated Judge under Section 11(6) of the Act. From the perusal of the said provisions of the Act, it is clear that

there is hardly any area of dispute which cannot be decided by the arbitrator appointed by the Designated Judge. If that be so, since an alternative efficacious remedy is available before the arbitrator, a writ court normally would not entertain a challenge to an order of the Designated Judge made under Section 11(6) of the Act which includes considering the question of jurisdiction of the arbitrator himself. Therefore, in our view even though a writ petition under Article 226 of the Constitution is available to an aggrieved party, ground available for challenge in such a petition is limited because of the alternative remedy available under the Act itself.'

9. The Apex Court in the case of Gokulananda Jena (supra) placed reliance on the Constitutional Bench of the Apex Court in the Case of Konkan Rly. Corporation Ltd. v. Rani Construction (P) Ltd., (2002) 2 SCC 388. The objection raised by the learned Counsel for the non-applicant that as there is no dispute in respect of the terms and conditions of the work order the matter can not be required to arbitrator is devoid of any substance. A complete answer to this objection has been given by the Apex Court in the case of Gokulananda Jena (Supra) and thus, the arbitrator can itself decide the question of jurisdiction.

10. In this view of the matter, without entering into the controversy whether there exists any dispute regarding the 'terms and conditions of the work order' which is left open to be decided by the arbitrator, this application is hereby allowed and Hon'ble Justice Shri B.C. Verma, a retired Judge of this Court and former Chief Justice of Punjab and Haryana High Court is hereby appointed as arbitrator. The arbitrator so appointed shall be free to decide the objection in respect to existence of the dispute regarding the terms and conditions of the work order, if any, raised before it.

11. The structure of the fees of arbitrator and the venue of arbitration proceedings shall be fixed by the arbitrator with the consultation of the parties.

12. In the result, this application is hereby allowed. Parties are directed to bear their own costs.

