

**Thakurdas Vs. the Chairman, Indore Development Authority and anr.**

**Thakurdas Vs. the Chairman, Indore Development Authority and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/509263](http://sooperkanoon.com/509263)

**Court :** Madhya Pradesh

**Decided On :** Nov-20-1991

**Reported in :** 1(1992)ACC658

**Judge :** R.K. Varma, J.

**Appellant :** Thakurdas

**Respondent :** The Chairman, Indore Development Authority and anr.

**Judgement :**

ORDER

**R.K. Varma, J.**

1. This Order shall also govern the disposal of Misc. Appeal No. 102/82 Thakurdas v. Chairman Indore Development Authority and another which is also directed against the Indore Development Authority as well as Misc. Appeal No. 104/82 Thakurdas v. M.P. Housing Board and Ors. Misc. Appeal No. 100/82 Thakurdas v. M.P. Housing Board and Ors. and Misc. Appeal No. 101/82 Thakurdas v. M.P. Housing Board and Ors. which are directed against the M.P. Housing Board.

2. This is an appeal by the plaintiff-contractor against the Order dated 4.3.1982 passed by the Xth Additional Judge to the Court of the District Judge, Indore in Civil Suit No. 46-A/81 whereby the plaintiff's application under Section 20 of the Arbitration Act, 1940 (hereinafter referred to as the Act') has been dismissed on

the ground that there is no arbitration clause in the agreement between the plaintiff-contractor and the defendant-authority relating to construction work.

3. The appellant-plaintiff had given a notice to the respondent-authority to decide dispute between the parties as per Clause 29 of the agreement but as the notice was neither replied to nor any reference was made, the appellant-contractor filed the application under Section 20 of the Act which has been dismissed by the impugned order.

4. Being aggrieved by the said order the plaintiff-contractor has filed this appeal on the ground that the learned lower Court has erred in interpreting Clause 29 of the agreement which empowers the respondent-authority to decide all the disputes arising out of the contract between the parties.

5. Clause 29 of the agreement, as reproduced in the impugned order, reads as under:

Clause 29, Except where otherwise specified in the contract the decision of the Chairman, Indore Vikas Pradhikaran shall be final conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications, designs, drawings and instructions here in before mentioned and as to the quality of workmanship or material used on the work or as to any other question claim, right matter or thing whatsoever, in anyway arising out of or relating to the contract designs, drawings, specifications, estimates, instructions, orders, or these conditions or otherwise concerning the works or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof.

(Emphasis Supplied)

6. In a decision of the Supreme Court in State of U.P. v. Tipper Chand : AIR 1980 SC1522 , relied upon by the learned lower Court a similar clause fell for consideration, which read as under:

Except where otherwise specified in the contract the decision of the Super intending Engineer for the time being shall be final, conclusive and binding on all

parties to the contract upon all questions relating to the meaning of the specifications, design, drawing and instructions here in before mentioned. The decision of such Engineer as to the quality of workmanship, or materials used on the work, or as to any other question, claim, right, matter or thing whatsoever, in any way arising out of or relating to the contract, designs, drawing specifications, estimates, instructions, orders, or these conditions, or otherwise concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment of the contract by the contractor, shall also be final, conclusive and binding on the contractor.

(Emphasis Supplied)

7. Agreeing with the judgment of the High Court, the Supreme Court held that the relevant clause of the agreement reproduced as above, does not amount to an arbitration agreement. The learned lower Court, therefore, construed Clause 29 of the agreement, relied upon by the contractor, as not amounting to an arbitration agreement and as such, the contractor's demand for reference to arbitration has been negated and the application under Section 20 of the Act, has been dismissed and, in my opinion, rightly so.

8. Learned Counsel for the appellant has submitted that the learned lower Court should have ordered the respondents to file the agreement in Court instead of dismissing the application under Section 20 of the Act while deciding the stay application. It has, however, not been shown as to how the appellant has been prejudiced by the interpretation of Clause 29 as made by the learned lower Court on the basis of Supreme Court decision in the case of Tipper Chand (supra). It has also not been shown that there is any other clause in the agreement providing for reference to arbitration.

9. Learned Counsel for the respondent has submitted that in this case as well as in Misc. Appeal No. 100/82, the value of the plaintiff-contractor's claim arising out of the execution or non-execution of works contract exceeds Rs. 50,000/- and, therefore, the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as the 'Adhiniyam') shall be applicable to the dispute and a reference to the Tribunal under the Adhiniyam shall lie under Section 7(1) of the Adhiniyam which

provides that either party to a works contract shall, irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal.

10. As regards Misc. Appeal No. 102/82, Misc. Appeal No. 104/82 and Misc. Appeal No. 101/82, the learned Counsel for the respondents has submitted that since the value of the claim involved in each of these three cases is below Rs. 50,000/- and the matter is not referable to arbitration, on true construction of Clause 29 of the agreement aforesaid, the plaintiff-contractor can approach the authority under Clause 29 for his decision. I think the aforesaid submission of the learned Counsel for respondent is right.

11. The plaintiff-contractor in this appeal as well as in M.A. No. 100/82 in respect of his claim exceeding Rs. 50,000/- can approach the Tribunal by way of reference under Section 7 of the Adhinyam.

12. The plaintiff-contractor in other three appeals (M.A. No. 102/82, M.A. No. 104/82 and M.A. No. 101/82) can approach the authority named in Clause 29 of the agreement for decision of the respective claims.

13. With the observations aforesaid, this appeal is also the connected appeals M.A. No. 102/82, 104/82, 100/82 and 101/82, deserve to be dismissed and are hereby dismissed with no order as to cost.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**