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Pawan Properties Vs. Biswanath Agarwal

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Court : Kolkata

Decided On : Sep-07-2015

Judge : Arindam Sinha

Appellant : Pawan Properties

Respondent : Biswanath Agarwal

Judgement :

ORDER
SHEET GA No.2614 of 2015 CS No.619 of 1985 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE PAWAN PROPERTIES Versus BISWANATH AGARWAL BEFORE: The Hon'ble JUSTICE ARINDAM SINHA Date : 7th September, 2015.

Appearance: Mr.Parthasarathi Sengupta, Sr.Adv.Mr.Sabyasachi Chowdhury, Adv.Mr.Srenik Singhvi, Adv.Mr.Shubradip Roy, Adv.Mr.Sudip Deb, Adv.Ms.Iran Hasan, Adv.The Court: The applicant defendant no.2C has prayed that the disputes in suit be referred to arbitration by invoking Section 8 of the Arbitration & Conciliation Act, 1996.

Mr.Deb, learned Advocate appearing on behalf of the applicant has drawn attention to the agreement dated 13th October, 1982 annexed to the application and he submits the disputes in suit arise or relate to the rights of parties declared under that agreement.

Clause 17 of that agreement is the arbitration clause as is set out below: 17.

It is hereby further agreed by and between the parties hereto that all and every dispute which may at any time arise under or in connection with this agreement effect or touching thereof the shall construction be referred meaning to the or sole arbitration of Mr.Nathmull Himatsingka of No.6, Old Post Office Street, Calcutta, who shall have summary power and the decision of the Arbitrator shall be binding on the parties hereto in all respect and such arbitration shall be governed by the Arbitration Act, 1940 or any modification thereof for the time being in force. Mr.Deb submits his client had made every enquiry to ascertain whether written statement had been filed by the defendant no.2, applicant.

He drew attention of Court to a letter dated 4th August, 2015 the written predecessor-in-interest on behalf of his client of to the the Advocate-on-Record of the plaintiff, the contents of which are reproduced below: This is in reference to our letter dated 23rd July, 2015 bearing Reference No.S/2015/000007758.

A draft written statement was handed over to us by our client, and so we had stated in our letter that the Written clients Statement has predecessor been filed through the on behalf of our Advocate-on-Record Mr.Pulak Chandra Das, since deceased.

However, we are unable to trace the written statement in the records of the Honble High Court and are thus, unable to ascertain at this point of time whether any Written Statement on behalf of our client was at all filed.

In view of the aforesaid, we request you to kindly let us know if any Written Statement was filed on behalf of our client and if it is in affirmative then please send us a copy of the same had no response on usual terms. Mr.plaintiff Deb submits having client obtained his two certificates from the from the Deputy Registrar of this Court dated 14th August and 27th August, 2015 to the effect that neither his client nor his predecessor-in-interest had filed written statement as on the respective dates of issuance of those certificates.

Mr.Deb, thus submits, no written statement had been filed.

He relies on Section 85 of the said Act to submit that arbitral proceeding is to commence in the recent future and the law governing such arbitration proceeding would be the said Act of 1996.

case of ACC LTD.He also relies on the decision in the versus Global Cements Ltd., reported in (2012) 7 SCC71wherein the Supreme Court had expressed the following view: 27.

We have carefully gone through the arbitration clause in the agreement dated 16.12.1989 and, in our view, the words at any time which appear in Clause 21, are of considerable importance.

At any time expresses a time when an event takes place expressing a particular state or condition that is when the dispute or difference arises.

The arbitration Clause 21 has no nexus with the lifetime of the named arbitrator.

The expression at any time used in the arbitration clause has nexus only to the time-frame within which the question or dispute or difference arises between the parties be resolved.

Those disputes and differences could be resolved during the lifetime of the named arbitrators or beyond their lifetime. Mr.Sengupta, learned senior Advocate appearing on behalf of the plaintiff submits, by drawing attention to the annexures in the affidavit-in-opposition, the defendant no.2 had obtained an order dated 28th November, 1989 in suit getting an extension of time to file written statement by 4th December, 1989 on payment of cost to the plaintiff.

Such cost was tendered to the plaintiff by letter dated 29th November, 1989 after which the plaintiff by its letter dated 6th December, 1989 had, inter alia, requested supply of a legible carbon copy of the written statement on usual terMs.Annexed to the opposition are also the memo of costs raised for supply of a copy of the written statement as requested by the plaintiff, a voucher by which the learned Advocate of the plaintiff debited his clients account with the amount of costs demanded for supply of a copy of the written statement itself.

He and further application for a copy draws extension of the attention of time written of statement Court made by to the the since deceased defendant no.2 which resulted in the said order 28th dated November, 1989.

In paragraph 5 of that application the defendant no.2 had stated as follows: 5.

The Written Statement is lying ready but due to illness of your petitioner no.2 the same could not be filed.

However the same has since been signed and is ready for filing. A perusal of the opposition leads this statement, copy of annexures Court which to is to the infer affidavit that disclosed the in in written the said affidavit, should have been filed.

The copy of the written statement annexed to the affidavit in opposition shows it to be dated 15th June, 1989.

The application for extension of time to file the written statement made by the defendant no.2 was affirmed on statement set out above.

18th August, 1989 carrying the That application resulted in the aforesaid order dated 28th November, 1989.

The plaintiff had requested supply of a copy of the written statement from the learned Advocate acting on behalf of the original deceased defendant no.2 by saying the following in letter dated 6th December, 1989.

The time to file your clients written statement expired on 4th instant.

In the event you have filed the same, kindly supply a legible carbon copy thereof on the usual terMs.In the event you have not filed the same please note that my instructions are to oppose your clients using any written statement in the above suit. A copy of the written statement was supplied per request made as above.

the As such, this court is satisfied that in circumstances it can be deemed that such written statement was submitted, at least for the purposes of this application.

Section 8(1) of the Arbitration and Conciliation Act, 1996 provides as follows:8(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his fiRs.statement on the substance of the dispute, refer the parties to arbitration. The above provision requires reference of the parties to arbitration if a party so applies not later than when submitting his fiRs.statement on the substance of the dispute.

The dispute was between the parties in the suit brought by the plaintiff against, inter alia, the defendant no.2 who, it is undisputed, had an arbitration agreement between themselves.

The plaintiff by filing the suit as far back as in the year 1985 chose not to invoke or enforce the arbitration agreement.

The defendant no.2 made ready a written statement to be filed in the suit and made an application for extension of time to file it with the averment as reproduced above.

On the plainti

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