

Union of India Vs. A.S. Dhupia and anr.

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Court : Delhi

Decided On : Mar-02-1972

Reported in : AIR1972Delhi108; 8(1972)DLT174

Judge : Hardayal Hardy,; V.S. Deshpande,; S. Rangarajan,; B.C. Misra and; Rajinda

Acts : [Delhi High Court Act, 1966](#) - Sections 10(1); [Arbitration Act, 1940](#) - Sections 33

Appeal No. : First Appeal No. 14 of 1970

Appellant : Union of India

Respondent : A.S. Dhupia and anr.

Advocate for Pet/Ap. : B.N. Sen,; D.K. Kapur,; Rishikesh and;

Judgement :

Sachar, J.

(1) Certain disputes having arisen between Shri A. S. Dhupia, respondent No. 1, and the Union of India, the appellant, the same were referred to the Arbitration under clause 25 of the Contract Agreement. Before the Arbitrator, respondent No. 1 filed his claim. The appellant also filed its counter claim which, however, was rejected by respondent No. 2 on the ground that the counter claim was not

maintainable as it was outside the scope of reference. The arbitrator accepted the objection and ordered that he would proceed with the claim of respondent No. 1. Thereafter the appellant filed an application under Section 33 of the [Arbitration Act, 1940](#) (hereinafter called the Act) in this court. This application was decided by a learned single judge of this court by his order dated 16-1-1970. The Union of India aggrieved against the order filed the present appeal. When this matter came up for hearing before the Division Bench, objection was taken that the appeal was not competent as the order passed by the learned single judge was not one of those orders mentioned by sub-section (1) of Section 39 of the Act, and therefore, no appeal is maintainable. The appellant, however, maintained that the appeal had been filed under Section 10(1) of the [Delhi High Court Act, 1966](#) (hereinafter called the Act of 1966) which provides that an appeal shall lie from the judgment of single judge to the Division Court. As the point was of sufficient importance, the matter was placed before a larger bench. The matter having come up before the bench of three judges, the same was referred to a larger bench as directed by the Full Bench on 22-4-1971. This is how the matter has come up before us.

(2) We have already held in F.A.O. (O.S.) 6 of 1968 (by separate judgment of today) that Section 10(1) of the Act of 1966 provides only a forum of appeal from the judgment of the single judge to a Division Court. We have repelled the argument that the word 'judgment' under Section 10(1) of the Act of 1966 is to be read as having a meaning which judicial decisions have given to the expression 'judgment' in Letters Patent. According to our judgment, the appeal from the order of a single judge to a Division- Court under Section 10(1) of the Act of 1966 will lie only against orders mentioned in Section 104 read with Order 43 Rule 1 of the Code of Civil Procedure (hereinafter called the Code). The contention, therefore that Section 10(1) of the Act of 1966 confers unfettered right of appeal without any limitation cannot be accepted. In the present case which is under the Arbitration Act a similar bar as is under Section 104 of the code is to be found in Section 39 of the Act which provides that an appeal shall lie from the orders specified therein (and from no others). Sub-section (2) of Section 39 of the Act also places a restriction that no second appeal shall lie from an order passed in appeal under this Section. The construction of Section 39 of the Act came up for decision before

the Supreme Court in *The Union of India v. The Mohindra Supply Co.* : [1962]3SCR497 . There the question was whether an appeal under clause 10 of the Letters Patent of Lahore High Court lay against the judgment of single judge notwithstanding the prohibition of second appeal as provided in sub-section (2) of Section 39 of the Act. Their lordships of the Supreme Court have held that the appeal was not competent, and observed as follows :-

'under section 39(1) the appeal lies from the orders specified in that sub-section and from no others. The legislature has plainly expressed itself that the right of appeal against the order passed under the Arbitration Act may be exercised only in respect of certain orders. The right of appeal against other orders is expressly taken away. If by express provision contained in S. 39(1) a right to appeal from a judgment which may otherwise be available under the Letters Patent is restricted, there is no ground for holding that clause (2) does not similarly restrict the exercise or appellate power granted by the Letters Patent.'

(3) The Supreme Court, therefore, has clearly held that appeal against orders passed under the Act will only lie if the same are specified within Section 39(1) the Act. The only argument to distinguish this authority urged by Mr. Sen, the learned counsel for the appellant, was that Section 10 of the Act of 1966 should be taken to be a special provision and therefore, must be held to confer a right of appeal even against those orders which are not covered by Section 39(1) of the Act as according to him section 10 of the Act of 1966 being a special provision would over-ride Section 39(1) of the Act which is general provision. In our view the argument is plainly untenable. The Act is a specific Code dealing with the arbitration matters and Section 39(1) is a special provision indicating the orders which alone are appealable. It is wrong, therefore, to say that Section 10 of the Act of 1966 which only provides for a forum of appeal is a special provision and will over-ride Section 39(1) of the Act. Mr. Sen referred us to *Municipal Council Palai through the Commissioner of Municipal Council, Palai v. T. J. Joseph* : [1964]2SCR87 . We do not think that that authority in any way helps the appellant. In that case the Municipal Council purporting to Act under Sections 286 and 287 of the Travancore District Municipalities Act had passed a resolution providing turn the use of public, a bus stand within the municipal limits. This resolution was

challenged on the ground that Section 286 and 287 of the Travancore District Municipalities Act stood repealed by virtue of the provisions of Section 72 of the Travancore Cochin Motor Vehicles Act which also gave power to the government to determine places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers. This argument had been accepted by the High Court and the Municipal Council had come up in appeal to the Supreme Court. Judgment of the High Court was set aside and it was observed that being a special provision section 286 cannot readily be considered as having been repealed by the more general provision of Section 72 of the Travancore Cochin Motor Vehicles Act. Now section 39 of the Act which is a special provision dealing with the right of appeal in arbitration matters cannot be said to have been repealed by implication by Section 10(1) of the Act of 1966. We therefore, hold that the appellant cannot derive any assistance from Section 10(1) of the Act of 1966 to contend that the appeal is maintainable.

(4) Mr. Sen had, however, also contended in the alternative that the order passed by the learned single judge was one of those specified in Section 39(1) of the Act and, therefore, the appeal was competent. As the reference to the Full Bench was not necessitated by this argument, we refrain from dealing with this aspect. It will, however, be open to Mr. Sen to urge this point when the appeal goes back to the Division Bench, after the answer has been returned by the Full Bench. The appeal will now be posted for hearing before a Division Bench.