

Union of India and Another Vs. M/S East Coast Boat Builders and Engineers Ltd.

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Court : Delhi

Decided On : Aug-25-1998

Reported in : 1999IVAD(Delhi)222; AIR1999Delhi44

Judge : A.K. Srivastava, J.

Appeal No. : I.A No 9209/98 in OMP No. 162/98

Appellant : Union of India and Another

Respondent : M/S East Coast Boat Builders and Engineers Ltd.

Advocate for Def. : Mr. Shiv Dayal and ; Mr. D.K. Kapur, Senior Advocates, ; Mr

Advocate for Pet/Ap. : Mr. A.S. Chandhiok,; Ms. Anupam K. Sanghi,; Mr. Ajit Nair

Judgement :

ORDER

A.K. Srivastava, J.

1. This is an application on behalf of petitioner No. 2 (Industrial Credit and Investment Corporation of India Limited) in OMP No. 162/98 for review of this Court's order dated August 25, 1998. Before this application for review could be heard and decided, the applicant moved an application for amendment of the

review application which was allowed by his Court vide order dated April 30, 1999. The amended review petition as it stands now makes the following prayers :-

(a) Review and recall the order dated 25.8.1998 and hold that the Petition is entertainable under Section 34(2)(iv) of the Arbitration and Conciliation Act, 1996;

(b) Pass any such other and further orders as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.'

2. Shri A.S. Chandhiok submitted arguments for the applicant and Shri Shiv Dayal, Senior Advocate submitted arguments for the respondent.

3. At the very outset, learned counsel for the applicant submitted that the applicant does not seek review of this Court's order dated August 25, 1998 in respect of the finding given that the impugned order is not an interim award and thus not challengeable under Section 34 of the said Act. He, however, vehemently argued that the petitioner has a remedy of appeal under Section 37 of the Arbitration and Conciliation Act, 1996 against the impugned orders of learned Arbitrator. He submitted arguments to show that upon a constructive interpretation of section 37 of the said Act, even if an Arbitrator holds that he has jurisdiction to entertain the arbitration reference that order will as well be appealable under that section despite that section worded differently. When he was asked that if according to him the legal position was so why the applicant did not prefer to file an appeal, he submitted that the appeal could not be filed in view of the observations of this Court that Mr. Dushyant Dave appearing for the petitioner had accepted that no appeal against the impugned order could lie under Section 37 of the Act.

4. Upon hearing learned counsel for the parties and on careful consideration of their submissions on merits of this application, I have come to a conclusion that this application for review cannot be allowed. There does not appear to be any mistake or error apparent on the face of the record and also there does not appear any other sufficient reason to review order dated August 25, 1998 passed by this Court. So I reject prayer (a).

5. So far as the alternative prayer for treating the main petition as an appeal under Section 37 of the said Act and thereafter the same be decided on merits is concerned, I may say that at this stage, such alternative prayer may also not be allowed. The main petition which was moved under Section 34 of the Act has been disposed of and during the course of arguments not even a whisper was made by learned counsel appearing for the petitioner that if the petition under Section 34 was not maintainable then the petition be treated as an appeal under Section 37 of the Act. therefore, after the petition under Section 34 of the Act has been disposed of it would absolutely not be appropriate to reopen the matter and treat the petition under Section 34 as an appeal under Section 37 and then hear the same as an appeal. Accordingly, the alternative prayer is also not allowed.

6. However, in the interest of justice, it may be observed that even though Mr. Dushyant Dave, Senior Advocate appearing for the petitioner in the main petition had during the course of the arguments accepted that no appeal against the impugned order could lie under Section 37 of the Act and the same being so recorded in the judgment of this Court dated August 25, 1998 at page 6, the same should not come in the way of the applicant taking appropriate steps and filing an appeal under Section 37 of the Act. The concedement was on law and, herefore, if by change of counsel and by other legal advise, the applicant wishes to take recourse to any remedy under Section 37 of the Act, if available, then in the interests of justice I relieve the applicant from the above concedement. However, I make it clear that I am not reviewing any opinion of mine given in the order dated August 25, 1998 in OMP No. 162/98.

7. With the aforesaid observations, the review application is disposed of.

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