

**Kalicharan and Co. Vs. State of Uttar Pradesh**

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**SooperKanoon Citation :** [sooperkanoon.com/685204](http://sooperkanoon.com/685204)

**Court :** Delhi

**Decided On :** Feb-20-1985

**Reported in :** AIR1985Delhi389; 1985RLR396

**Judge :** Jagdish Chandra, J.

**Acts :** [Arbitration Act, 1940](#) - Sections 11

**Appeal No. :** Original Miscellaneous Petition No. 58 of 1951

**Appellant :** Kalicharan and Co.

**Respondent :** State of Uttar Pradesh

**Advocate for Pet/Ap. :** V.P. Singh and; Rajni Kant, Advs

**Judgement :**

**Jagdish Chandra, J.**

(1) By means of this O.M.P. the petitioner Kalicharan Sharma, sole proprietor of M/s. K.C. Sharma & Co. Engineers & Contractors, prays for the revocation of the authority of respondent No. 2, the Superintending Engineer, Construction Circle, Hindan Works Khand, Irrigation Deptt. Okhla, as arbitrator and for his removal as such as also for the appointment of an independent person to act as arbitrator. The grounds for his removal as arbitrator, as alleged in this petition, are that he has not used reasonable dispatch in entering upon and proceeding with the

reference and making the award for more than two years and that he was the in charge of the work in question and in his capacity as such he expressed his opinion against the petitioner in respect of the payment of the lawful and legal dues of the petitioner.

(2) This petition has been resisted by respondents 1 and 3 and the only answer given by them to the grounds alleged by the petitioner for the removal of the arbitrator is that there was no valid arbitration clause for which reason arbitrator did not enter upon reference. The reason that there was no valid arbitration agreement between parties was hardly a justification for the arbitrator to defer his entering upon the reference proceeding with the arbitration proceedings and to make the award. This was not a matter to weigh with the arbitrator and it was entirely for respondents 1 and 3 to challenge the validity of the arbitration clause in the appropriate forum allowed to them under the law. The delay of two years on the part of the arbitrator to enter upon the reference is palpably and obviously a gross neglect in that regard, and he has failed to use all reasonable dispatch in entering upon and proceeding with the arbitration proceedings and thereby he is liable to be removed as arbitrator u/s 11(l) of the [Arbitration Act, 1940](#). The submission now made by the learned counsel for respondents 1 and 3 that the arbitrator is now willing to take up the matter of arbitration between the parties, is hardly a justification for keeping his position as arbitrator intact.

(3) For the aforesaid reasons the O.M.P. is accepted with costs and respondent (No. 2 is removed from his position as arbitrator. So, in view of the provision of law contained in S. 12(2) of [Arbitration Act, 1940](#) a new arbitrator is to be appointed by the court. Shri M.S. Joshi, retired judge of the High Court is appointed a new arbitrator to resolve the disputes and differences between the parties.