

N.K. Modi Vs. Fair Air Engineers Pvt. Ltd. and anr.

N.K. Modi Vs. Fair Air Engineers Pvt. Ltd. and anr.

SooperKanoon Citation : sooperkanoon.com/698695

Court : Delhi

Decided On : Nov-13-1992

Reported in : 1993(25)DRJ282

Judge : V.B. Eradi,; Y. Krishna and; B.S. Yadav, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 34

Appeal No. : First Appeal No. 62 of 1991

Appellant : N.K. Modi

Respondent : Fair Air Engineers Pvt. Ltd. and anr.

Advocate for Pet/Ap. : Kapil Sibal,; Ranjeet Kumar,; W.A. Qudri,;

Judgement :

V. Balakrishna Eradi, J.

(1) The complainant in case No. C-98 of 1990 on the file of the State Commission, Delhi is the appellant before us. He had filed the complaint petition against the respondent herein seeking the recovery of Rs. 3,75,000.00 as compensation from the latter for alleged deficiency on his part in carrying out the work of installation of a centrally air-conditioning plant in the residential house of the appellant at New Delhi. On receipt of notice of the complaint, the respondent filed an application before the State Commission under Section 34 of the Arbitration act stating that

the agreement of contract between the parties contained an arbitration clause -and hence the proceedings before the State Commission should be stayed under Section 34 of the Arbitration Act. This plea was resisted by the complainant by contending that Section 34 of the Arbitration Act had no application to proceedings under the Consumer Protection Act, 1986 (hereinafter called the 'Act').

(2) The State Commission after hearing the parties on the question of applicability of Section 34 of the Arbitration Act to the proceedings before it overruled the objections raised by the complainant and held that Section 34 of the Arbitration Act applied to the proceedings before it under the Consumer Protection Act and allowed the prayer of the respondent for stay of proceeding under the said section. This appeal has been preferred by the complainant against the said order passed by the State Commission.

(3) The only question arising for determination by us is whether a proceeding before a Consumer Forum constituted under the Consumer Protection Act is liable to be stayed under Section 34 of the Arbitration Act or not.

(4) Section 34 of the Arbitration Act is in the following terms:

'SECTION 34 of Arbitration Ad-Power to stay legal proceedings where there is an arbitration agreement:-Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and until remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.'

(5) In order to attract the applicability of section, there should be a 'legal proceeding' pending before a 'judicial authority'. Even if it is to be assumed that the

proceeding for adjudication of the complaint before the Consumer Forum is a 'legal proceeding', we are clearly of opinion that a Consumer Forum is not a 'judicial authority' as contemplated by the section. In order to be a 'judicial authority', it is necessary that at least some part of the 'judicial power' of the State should be transferred to and vested in said authority. Under the Constitution of India the judicial power of the State has been invested in the regular hierarchy of Civil and Criminal Courts of the land and also in Certain Special Court specifically established for the purpose under special Enactments. In our view it is not possible to hold that any part of the judicial power of the State has been transferred in favor of the Forums constituted under the Act. Though these Forums are vested with the function of adjudicating disputes concerning certain categories of the grievance of consumers, they are to function in an informal manner conforming only to the principles of natural justice. We are unable to agree with the view expressed by the State Commission that these Forums have the 'trappings of a Court'. As we see it the endeavor of Parliament has been to ensure that these Forums function in a totally informal manner free from the shackles and trappings, of Courts. The proceedings before the Forum are not governed by the Evidence Act or the Civil Procedure Code (except certain provisions enumerated in Section 13(4) of the Act which relate only to the summoning and enforcing the attendance of any witness, taking evidence on oath, the reception of evidence on affidavits, requisitioning of the report of analysis from any appropriate laboratory and the issuing of any commission for the examination of any witness). The provisions of Limitation Act are also not, in terms, applicable to proceedings before the Consumer Forums and it is only by virtue of the decisions of this Commission that stale claims which have become unenforceable in Courts under the General Laws are not entertained by Consumer Forums.

(6) Such being the situation, it is wrong to say as the State Commission has stated that the Consumer Forum 'has got trappings of a Court' and hence it is included in the term 'judicial authority'. We reverse the said finding of the State Commission and hold that Section 34 of the Arbitration Act has no applicability to proceedings before Consumer Forums.

(7) We may point out that the very object and purpose of the Act in setting up of these Forums namely, that of ensuring expeditious redressal of consumer disputes, would be totally defeated if proceedings before the Forums are to be stayed under Section 34 of the Arbitration Act and matters may be further protracted by proceedings that may be instituted for challenging the award.

(8) In the light of our foregoing conclusion, this appeal is allowed, the order of the State Commission is set aside and the complaint petition is remanded to the State Commission for disposal on the merits in accordance with law. The parties will bear their respective costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com