

State of West Bengal and Ors. Vs. M/S M.S Engineering

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Court : Kolkata

Decided On : Jul-21-2016

Judge : Indira Banerjee

Appellant : State of West Bengal and Ors.

Respondent : M/S M.S Engineering

Judgement :

ORDER

SHEET APO No.472 of 2015 AP No.195 of 2015 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE STATE OF WEST BENGAL & ORS.Versus M/S M.S ENGINEERING BEFORE: The Hon'ble JUSTICE INDIRA BANERJEE The Hon'ble JUSTICE SAHIDULLAH MUNSHI Date : 21st July, 2016.

Appearance: Mr.Samrat Sen, Sr.Adv.Mr.Paritosh Sinha, Adv.Mr.Arindam Kandal, Adv.Mr.Malay Ghosh, Sr.Adv.The Court : This appeal is against the judgment and order dated 17th June, 2015 passed by the learned Single Bench under Section 34 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as the 1996 Act, refusing to set aside an award dated 13th November, 2014 passed by the learned Arbitrator in an arbitration between the appellant-State and the respondentcontractor.

It appears that the respondent an enlisted class-I contractor was awarded the contract for improvement of riding quality of road stretc.from 132 Km to 150 Km of National Highway No.6 in the District of Medinipur, West Bengal. The work in question was completed and final bill was paid on 28th June, 2002.

In terms appellant-State of the and the contract executed by and respondent-contractor, between the the respondent- contractor was required to make security deposit of 10% of the total contract value.

The security deposit was to secure maintenance and/or rectification of defects for a period of one year from the date of completion of the contract after which the security money was liable to be refunded.

It is not in dispute that the appellant-State deducted a total sum of Rs.39,30,494/- towards security deposit out of which a sum of Rs.11,31,817/- Rs.27,98,677/- was not was refunded.

refunded by the The balance amount appellant-State to of the respondent-contractor.

The contract executed by and between the appellant-State and the respondent-contractor contained an arbitration clause.

The arbitration clause was invoked by a letter dated 6th September, 2003.

An application was made to the Honble Chief Justice for appointment of Arbitrator under Section 11 of the 1996 Act whereupon a retired Judge of this Court was appointed Arbitrator.

In the proceedings before the learned Arbitrator it was not disputed that the security deposit amounting to Rs.27,98,677/- had been retained by the appellant-State.

The claim of the respondent-contractor was resisted on the sole ground that the claim became barred by limitation on 22nd August, 2003 i.e.the date on which a year expired from the date of completion of the contract job.

The learned Arbitrator on consideration of the submissions made by the respective parties and on consideration of the evidence placed before him in effect construed a statement dated 22nd September, 2003 as an acknowledgment of liability.

Mr.Sen, learned Senior Advocate appearing on behalf of the appellant-State argued that the statement could not possibly have been construed as an acknowledgment of liability.

However, the scope 1996 of limited.

Arbitral an application under Section 34 of the Act is The Court does not sit in appeal over an award of the Tribunal.

It is not for the Court to reassess the evidence and/or the materials on record.

Mr.Sen cited a Single Bench Judgment of Nanak Prasad and ORS.versus Bahadur Suraj Baksh Singh reported in 1943 O.W.N.302 where the Court held that there would have to be a conscious acknowledgment of liability to save limitation.

We agree that an acknowledgment of liability acknowledgment of liability.

Allahabad High Court in would have to be a conscious The view of the Division Bench of Ishri Prasad Kishun Tewari versus Chandrabhan Prasad Kishun Tiwari reported in AIR1939 All 177 that whether any particular endorsement amounts acknowledgment or not within the meaning of to an Section 19 of the Limitation Act would depend on the actual words which had been employed is to be construed in the context of the facts of the particular case.

In the aforesaid judgment the Division Bench held, and in our view rightly, that acknowledgment could either be expressed or implied.

learned Single respondents.

In the judgment and order under appeal the Bench has dealt with the contention of the The relevant part of the judgment and order under appeal is extracted hereinbelow for convenience: A commercial document commercial sense.

indicate a form highest judicial acknowledgement has to be read with an element of Section 18 of the said Act of 1963 does not in which the authorities of a jural admission must instruct be that relationship as is made and the long as the discerned from a document, the same may be regarded as an appropriate document within the meaning of such provision and a fresh tax and period of limitation would begin to count therefrom.

Since components the added security to the deposit, income amounts actually sales tendered to tax the petitioner as indicated in the document of September 22, 2003 cover the total final payment shown in the last column thereof, there is a glaring statement made by the document that the amounts on account of income tax and sales tax had been withheld for payment to the appropriate authorities in accordance with law and that the security deposit component was retained by the employer, subject to the contractors entitlement to receive it in accordance with the terms of the contract.

creditor security as between deposit the is The jural relationship of debtor and employer firmly and the established contractor from the qua the document.

However, the document cannot be regarded as an admission of the quantum indicated therein.

Section 18 of the said Act of 1963 does not require any quantum to be specified.

There is a distinction between an admission under order 12 Rule 6 of the Code and an acknowledgment amounting to an admission for the purpose of limitation under Section 18 of the said Act of 1963.

The document of September 22, 2003 is eloquent in its acknowledgement of the jural relationship and more than suffices for the purpose of Section 18 of the said Act of 1963. We are in complete agreement with the view of the learned Single Bench which does not call for interference in appeal.

In our in view the learned Arbitrator did not commit any holding that the claim was not barred by limitation.

error The learned Single Bench rightly rejected the contention of the appellantState that the claim was barred by limitation.

Mr.interest Sen of appearing 12% on awarded behalf by the of the learned State Single submitted Bench on that the security deposit of 12% might be reduced.

However, in our view, interest of 12% is quite reasonable considering the commercial lending rates of banks.

In our view, the judgment and the order of the learned Single Bench does not warrant any interference.

The appeal is, therefore, dismissed.

(INDIRA BANERJEE, J.) (SAHIDULLAH MUNSHI, J.) cs.

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