

State of West Bengal and anr. Vs. Dilip Kumar Saha and ors.

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Court : Kolkata

Decided On : Apr-13-1982

Reported in : AIR1983Cal213

Judge : Chittatosh Mookerjee and ;Ramkrishna Sharma, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 17, 19 and 39

Appeal No. : A.F.O.D. No. 218 of 1975

Appellant : State of West Bengal and anr.

Respondent : Dilip Kumar Saha and ors.

Advocate for Def. : Mohan Lal De, Adv.

Advocate for Pet/Ap. : A.N. Banerjee and ;P.K. Samanta, Advs.

Disposition : Appeal dismissed

Judgement :

Chittatosh Mookerjee, J.

1. The State of West Bengal having accepted the tender submitted by Sri Dilip Kumar Saha, Proprietor of M/s. Associated Engineers and Contractors, an agreement was executed between the parties for construction by the latter of a portion of a diversion road of National Highway No. 34 Group-VI from three mile-

posts to four mile-posts situated in the district of Malda. The Chief Engineer, P. W. D., West Bengal had referred to Sri S. K. Chakraborty, Superintending Engineer, Road Construction, Circle-VI, P. W. D. Roads Directorate of West Bengal to arbitrate five items of dispute which had arisen in connection with the execution of the said contract.

2. After Sri S. K. Chakraborty, arbitrator had filed his award in the said dispute case, the State had prayed before the Subordinate Judge's Court, Malda for passing a decree in terms of the said award. Dilip Kumar Sana, on the other hand, made a petition before the said Court under Section 30 of the Arbitration Act for setting aside the said award, inter alia, on the ground that the learned arbitrator had misconducted himself.

3. The learned Subordinate Judge, Malda by his judgment dated 14th Feb., 1975 allowed in part the petition under Section 30 of the Act filed by Dilip Kumar Saha which was registered as a misc. case and set aside the award in question, The learned Subordinate Judge remitted the arbitration agreement to the Chief Engineer for fresh determination of the dispute either by himself or by any other competent authority to be appointed by him excluding Sri S. K. Chakraborty, the previous arbitrator. The State, being aggrieved by the said decision, has preferred this appeal from Original Decree. Dilip Kumar Saha has also obtained Civil Rule No. 1752 of 1975,, inter alia praying that the directions given by the learned Subordinate Judge for remitting the arbitration agreement to the Chief Engineer be not set aside and the reference be superseded under Section 19 of the [Arbitration Act, 1940](#).

4. I uphold the preliminary objection raised on behalf of Dilip Kumar Saha, the respondent in the appeal that the appeal from Original Decree preferred by the State is not maintainable in law. The Court below in terms of Section 17 of the Arbitration Act did not pronounce its judgment according to the award and did not also direct that the decree would follow. Therefore, in the instant case no appeal under Section 17 of the Arbitration Act would lie on the grounds specified in the said section. Section 39 of the Arbitration Act specifies the orders passed under the said Act which would be appealable. The appeal no doubt lies against the

order setting aside or refusing to set aside the award. According to the practice and procedure of this Court such appeals under Section 39 of the Arbitration Act are classified as Appeals from Original Orders and are required to be heard for admission under Order 41, Rule 11 of the Civil P. C. Therefore, in a proper case we might have permitted the appellant-State to amend the cause title of the Memorandum of Appeal by classifying the same as Memorandum of Appeal from Original Order. In that event, the appeal would be placed for hearing under Order 41, Rule 11 of Civil P. C. but in the facts of this case we do not consider it necessary to grant such leave to the appellant-State.

5. The learned Subordinate Judge has pointed out the material defects which vitiated the award. The learned arbitrator had left undetermined some of the points referred to arbitration. Further, although the arbitrator was not required to give reasons for his decision, but he cannot act arbitrarily and he ought to give his award in respect of all the matters of dispute referred to him. In the instant case, the learned arbitrate failed to fulfil his said obligations.

6. The revisional application filed by Dilip Kumar Saha is also without any merit. No ground has been made out by him for superseding the reference under Section 19 of the Arbitration Act. In the contract between the parties there was a provision for reference of the disputes in question to arbitration. After the award of Sri S. K. Chakraborty was set aside, the provision in the contract for reference to arbitration still subsisted and no ground has been made out for superseding the reference. The petitioner of the revisional application has not established any ground for superseding the reference. In the instant case, the arbitrator did not fail to consider and submit his decision within the time fixed. Therefore, Sub-section (3) of Section 16 of the Arbitration Act was not attracted to the facts of the present case. The petitioner, Dilip Kumar Saha, cannot consider himself aggrieved by the order complained of because the learned arbitrator has allowed his prayer for setting aside the award and we find the Court below has rightly remitted the case for fresh arbitration of all the points. The learned Subordinate Judge has also further directed that the fresh arbitration would be either by the Chief Engineer himself or by any other officer to be nominated by turn except the previous arbitrator.

7. In the circumstances, both the appeal and the revisional application fail. We express no opinion on the merits of the cases of the respective parties. The learned arbitrator will decide the case in accordance with law.

8. We, accordingly, dismiss the appeal and discharge the Rule without any order as to costs. Let the records be sent down expeditiously.

R.K. Sharma, J.

9. I agree.

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