

Present : the Hon'Ble Justice Vs. Structcon

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Court : Kolkata

Decided On : Sep-22-2011

Appellant : Present : the Hon'Ble Justice

Respondent : Structcon

Judgement :

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Original Side

Present :

The Hon'ble Justice Sengupta

And

The Hon'ble Justice Joymalya Bagchi

22.09.2011

APOT 421 of 2011

GA 2821 of 2011

AP 235 of 2010

State Bank of India

Vs.

Structcon

The Court :- There will be an order in terms of prayer (a) of the Notice of Motion. This appeal is sought to be preferred against the order dated 15th March, 2011 by which the learned Trial Judge has been pleased to pass an order under Section 11 of the Arbitration and Conciliation Act, 1996 holding that there has been an arbitral dispute. As such the matter has been referred to the Hon'ble designated Judge for appointment of Arbitrator. The question of appealability has been raised. We think that this order is not appealable in view of Section 37 of the said Act which reads as follows :- (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely :- (a) granting or refusing to grant any measure under section 9; (b) setting aside or refusing to set aside an arbitral award under section 34. (2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.- (a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or (b) granting or refusing to grant an interim measure under section 17. 2

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

We hold taking note of the words "and from no others" and applying golden rule of interpretation that this provision is mandatory. The nature of the orders mentioned in the said sub-section only would come within the purview of the aforesaid section. The order passed under Section 11 of the said Act is not covered by the Section. Learned counsel for the appellant submits that it is true that it may not appealable under Section 37 nonetheless appeal under Clause 15 of the Letters Patent may lie. We are of the view Clause 15 is also not applicable in this case. In view of the legal position that the provision of Clause 15 of the Letters Patent has to be applied subject to Clause 44 of the Letters Patent which reads as follows :-

"44. Powers of Indian Legislature preserved.- And we do further ordain and declare, that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council and also of the Governor- General in Council under Section 71 of the Government of India Act, 1915, and also of the Governor-General in cases of Emergency under Section 72 of that Act, and may be in all respects amended and altered thereby." On reading of Clause 44 it appears to us power of the competent Legislator to legislate has been preserved and Clause 15 has to be read subject to the aforesaid provision. Consequently if any Legislation is made inconsistent with the Clause 15 the same will prevail.

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Under these circumstances we hold that no appeal lies under Clause 15 also against the order passed under Section 11 of the said Act. We accordingly dismiss the appeal. Obviously the appellant would be at liberty to approach the appropriate forum for redressal of his grievance. There will be no order as to costs.

Appeal and the application are thus disposed of. Let xerox certified copy of this order be given to the parties, if applied for, upon compliance of all formalities.

(Sengupta, J.)

(Joymalya Bagchi, J.)

ANC.

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