

(1993) 03 SC CK 0026

In the Supreme Court Of India

Case No : Civil Appeal No. 1503 of 1993 (Arising out of S.L.P. (C) No. 7169 of 1983)

Bhargabi Cold Storage and Another

APPELLANT

Vs

Orissa State Electricity Board

RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Arbitration Act, 1940 — Section 20, 8

Citation : (1993) 3 JT 638 : (1993) 2 SCALE 353 : (1993) 2 SCC 618

Hon'ble Judges : N. P. Singh, J;J. S. Verma, J

Bench : Division Bench

Advocate : P.N. Mishra and Raj Kumar Mehta, for the Appellant;

Final Decision : Dismissed

Judgement

1. Leave granted.

2. The appellants filed an application under Sections 8 and 20 of the Arbitration Act before the Subordinate Judge, Puri, in view of a dispute having arisen between them and the Orissa State Electricity Board (hereinafter referred to as 'The Board'). A prayer was made in the said application for a direction to the Board to file the agreement dated 7-2-1963 and to appoint an Arbitrator to decide, the dispute in question. That application was dismissed by the learned Subordinate Judge saying that as there was no agreement between the appellants and the said Board, it was not possible to entertain the application aforesaid. The High Court affirmed the said order by dismissal of the Civil Revision filed on behalf of the appellants.

3. The learned Counsel appearing for the appellants pointed out that the Board itself had filed a suit in the year 1976 in the Court of Subordinate Judge, Puri, for recovery of electrical charges amounting to Rs. 12,997.97 against the appellants on basis of the agreement dated 7.2.1963. In this connection attention was drawn to Paragraph 1 of the plaint of the said suit filed on behalf of Board which

is as follows:

That M/s. Bhargabi Cold Storage, Pipili executed an agreement with Orissa State Electricity Board (OSEB) on 7.2.63 for a period of 20 years from the date of power supply. As per the contract and demand 27 K.W. power was given during February 1964. The agreement is, therefore, valid till 1984.

4. When it is the admitted position, that electricity was being supplied to M/s. Bhargabi Cold Storage, appellant No. 1l by the Board on basis of the aforesaid agreement dated 7.2.1963 and suit has been filed against them for recovery of electrical charges in terms of the said agreement, how a plea could have been taken in the proceeding under Sections 8 and 20 of the Arbitration Act that there was no agreement between the appellants and the Board. The learned Counsel who appeared for the Board could not point out as to how when the Board has been filing suit, for realization of the dues in respect of electric charges, from the appellants on basis of the agreement dated 7.2,1963 which was valid according to their own case for a period of 20 years i.e upto January 1984, the application under Sections 8 and 20 of the Arbitration Act filed on behalf of the appellants could have been dismissed by the learned Subordinate judge on 21.9.1978, saying that there was no agreement between the parties and as such it was not possible to entertain an application under Sections 8 and 20 of the Arbitration Act.

5. Accordingly, the orders passed by the learned Subordinate Judge and the High Court are set aside. The learned Subordinate Judge shall proceed with the application aforesaid filed on behalf of the appellants. However, we make it clear that we are not expressing any opinion on the merit of the said application. No costs.