

(2006) 06 JH CK 0058
In the Jharkhand High Court
Case No : C.R. No. 91 of 2005

Central Coalfields Limited

APPELLANT

Vs

Ajay Transport Company and Anil Kumar Jain

RESPONDENT

Date of Decision : 14-06-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Citation : (2007) 4 BC 17 : (2006) 4 JCR 310

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : A.K. Srivastava, for the Appellant; Manjul Prasad and Manoj Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—The petitioner has preferred this revision against the order dated 18.06.2005 passed by learned Sub Judge I, Hazaribagh in Money Suit No. 3 of 2004, whereby the petitioner's application for reference of dispute for arbitration filed under, purported provision of Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the said Act") has been rejected. According to the petitioner, there was an agreement between the parties with regard to transportation of sand from Damodar river to Sonda Colliery for the period 12.02.1994 to 11.02.1995. The agreement came to an end on 11.02.1995, but the General Manager, Central Coalfields Limited; Barkakana requested the plaintiff-opposite party to continue the transportation of sand till new tender is finalised. It has been stated that on the said request and on the agreed term that the rate will be revised with effect from 12.02.1995, the petitioner undertook the transportation work from 12.02.1995 onward till the new tender was finalized by the headquarters. The grievance of the petitioner is that though there was an agreement to revise the rate, he was given payment on the old rate also for the period from 12.02.1995 to 23.05.1995. Aggrieved by the same, the money suit was filed by the plaintiff for recovery of the balance

amount in the Court below being Money Suit No. 2 of 2004. The defendant-petitioner, appeared and instead of contesting the said suit, filed an application u/s 8 of the said Act praying for reference of the dispute for arbitration on the ground that the disputes have arisen out of the payment made to the contractor as per the agreement dated 12.03.1994 for the extended period. A rejoinder was filed to the application by the plaintiff-opposite party stating therein that the subject matter of the dispute does not come within the ambit of the agreement dated 12.03.1994, and the claim was made for the period not covered by the said agreement. The Court below, after hearing the parties, has passed the impugned order whereby the petition u/s 8 of the said Act has been rejected.

2. Learned Counsel for the petitioner submitted that the Court below failed to consider that the claim in question in the suit was for the extended period of the agreement dated 12.03.1994 and there was no separate independent agreement for the said period and has erroneously rejected the application holding that the period of claim is not covered by the agreement dated 12.03.1994 and Clause 95 of the agreement, which provides for arbitration, has no application. Learned Counsel submitted that the Court below has failed to exercise its jurisdiction properly and legally and the impugned order is unsustainable in law.

3. Mr. Manjul Prasad, learned senior counsel appearing on behalf of the opposite party, on the other hand submitted that the dispute between the parties can be referred for arbitration if such dispute is covered by the clause of agreement providing for arbitration. In the instant case the agreement of the parties was only for the period from 12.02.1994 to 11.02.1995 and the said agreement had come to an end after 11.02.1995. In the Money Suit in question; the cause of action arose after 11.02.1995 and as such the same is beyond the scope of the said agreement dated 12.03.1994. It has been submitted that learned Court below has properly considered every aspect in detail and has come to the conclusion that the period of claim, i.e., from 12.02.1995 to 23.05.1996 does not come within the ambit of the agreement dated 12th of March, 1994. The said period is not covered by the concluded agreement between the parties and Clause 95 of the agreement dated 12th of March, 1994 is not attracted in the instant case. The order of learned Court below is thus, sound and there is no illegality or jurisdictional error. Learned Counsel, in support of his submissions, also placed reliance on a decision of this Court in *Satguru Distributors Pvt. Ltd. v. Castrol India Limited* reported in 2005 (2) JCR 9.

4. After hearing the parties and considering the materials on record as also on careful perusal of the order of learned Court below, I find substance in the submission of learned Counsel for the opposite party. It appears from the record that the agreement in question was for the period from 12.02.1994 to 11.02.1995. There was no new tender/agreement, which was operative with effect from 24.05.1995 to 23.05.1997 and in between the said period, there was no concluded agreement between the parties. The claim made in the Money Suit No. 3 of 2004 is also not covered by the agreement. The same does not come

within the Clause 95 of the said agreement. Learned Court below has thoroughly considered the materials on record and has passed a reasoned order supported by the fact and relevant provision of law. It has been held by this Court in M/s. Satguru Distributors Pvt. Ltd. (supra) that any dispute arising beyond the terms of the agreement cannot be referred for arbitration and an application u/s 8 of the said Act cannot be allowed in such case. I, therefore, do not find any jurisdictional error or illegality in the impugned order of the Court below warranting an interference by this Court. There being no merit in this revision, it is, accordingly, dismissed.