
(2014) 06 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : LPA No. 233 of 2011

Fozal Power Pvt. Ltd.

APPELLANT

Vs

Kamal Rishi Contractor Pvt. Ltd.

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 45, 49, 50
Civil Procedure Code, 1908 (CPC) — Section 104, 104(1), 104(2)
Constitution of India, 1950 — Article 225
Government of India Act, 1919 — Section 108
Government of India Act, 1935 — Section 223

Citation : (2014) 06 SHI CK 0004

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Bhupender Gupta, Senior Advocate, Mr. Janesh Gupta, Advocate for the Appellant; Sumeet Raj Sharma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. This appeal is directed against the judgment and order dated 27th April, 2011, made by learned Single Bench in OMP No. 3 of 2011 in Civil Suit No. 97 of 2010, titled as M/s. Kamal Rishi Contractors, Pvt. Ltd. vs. M/s. Fozal Power Pvt. Ltd., whereby and whereunder, the application was dismissed, on the grounds taken in the memo of appeal.

2. Learned Counsel for the respondent submitted that the appeal is not maintainable as per the law applicable read with the judgment passed by the Apex Court in Fuerst Day Lawson Ltd. and Others Vs. Jindal Exports Ltd. and Others etc. etc., .

3. The Apex Court has discussed the provisions of Arbitration and Conciliation Act, 1996, particularly Sections 45, 49 & 50 of the Act in the aforesaid judgment and held that the appeal is not maintainable.

4. It is apt to reproduce paragraphs 36, 90, 91 and 92 of the judgment, supra, which read as under:-

36. The decisions noticed so far lay down certain broad principles that may be stated as follows:

(i) Normally, once an appeal reaches the High Court it has to be determined according to the rules of practice and procedure of the High Court and in accordance with the provisions of the charter under which the High Court is constituted and which confers on it power in respect to the method and manner of exercising that power.

(ii) When a statute merely directs that an appeal shall lie to a court already established then that appeal must be regulated by the practice and procedure of that court.

(iii). The High Court derives its intra-court appeal jurisdiction under the charter by which it was established and its powers under the Letters Patent were recognized and saved by section 108 of the Government of India Act, 1915, section 223 of the Government of India Act, 1935 and finally, by Article 225 of the Constitution of India. The High Court, therefore, cannot be divested of its Letters Patent jurisdiction unless provided for expressly or by necessary intendment by some special statute.

(iv) If the pronouncement of the single judge qualifies as a "judgment", in the absence of any bar created by a statute either expressly or by necessary implication, it would be subject to appeal under the relevant clause of the Letters Patent of the High Court.

(v) Since section 104(1) CPC specifically saves the letters patent appeal it could only be excluded by an express mention in section 104. In the absence of any express mention in section 104(2), the maintainability of a letters patent appeal is saved by virtue of section 104(1).

(vi) Limitation of a right of appeal in absence of any provision in a statute cannot be readily inferred. The appellate jurisdiction of a superior court cannot be taken as excluded simply because a subordinate court exercises its special jurisdiction.

(vii) The exception to the aforementioned rule is where the special Act sets out a self-contained code and in that event the applicability of the general law procedure would be impliedly excluded. The express provision need not refer to or use the word "letters patent" but if on a reading of the provision it is clear that all further appeals are barred then even a letters patent appeal would be barred.

90. We, thus, arrive at the conclusion regarding the exclusion of a letters patent appeal in two different ways; one, so to say, on a micro basis by examining the scheme devised by sections 49 and 50 of the 1996 Act and the radical change that it brings about in the earlier provision of appeal u/s 6 of the 1961 Act and the other on a macro basis by taking into account the nature and character of

the 1996 Act as a self-contained and exhaustive code in itself.

91. In light of the discussions made above, it must be held that no letters patent appeal will lie against an order which is not appealable u/s 50 of the Arbitration and Conciliation Act, 1996.

92. In the result, Civil Appeal No. 36 of 2010 is allowed and the division bench order dated May 8, 2007, holding that the letters patent appeal is maintainable, is set aside. Appeals arising from SLP(C) No. 31068 of 2009 and SLP(C) No. 4648 of 2010 are dismissed. SLP(C) Nos. 13626-29 of 2010 and SLP(C) Nos. 22318-21 of 2010 are dismissed insofar as they seek to challenge the orders of the division bench holding that the letters patent appeals were not maintainable. These two SLPs may now be listed only in regard to the challenge to the orders passed by the single judge.

5. In view of the judgment, *supra*, this LPA is not maintainable. Hence, it is dismissed as such.