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**(1976) 08 DEL CK 0013**

**In the Delhi High Court**

**Case No : Suit Appeal No. 742-A of 1975**

Kashmira Singh and Co.

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 19-08-1976

**Acts Referred:**

**Citation :** (1976) RLR 645

**Hon'ble Judges :** M.S. Joshi, J

**Bench :** Single Bench

**Advocate :** P.N. Kumar and J.D. Jain, for the Appellant;

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## **Judgement**

M.S. Joshi, J.

(1) plaintiff contracted with Northern Railway to execute certain earth work. Work was to be finished by 12.9.72 but it was actually done on 31.3.73. The plaintiffs were not satisfied with payment and after notice, they filed this application. Claim 1 was deduction of amount due to short measurement, claims 2 to 6 were for extra expense, deduction due to credit to another contractor, damages for defendant's lapses, interest etc. Defendants opposed the application on the plea that matters sought to be referred were "excepted matters and the agreement did not contemplate their reference and that some of these did not arise out of the contract. The Court held that only claim 1 was covered by excepted matter and claim 7 did not arise out of contract. Claim 2 to 6 were ordered to be referred. Paras 4 to 10 of the judgment are :-

(2) The work in question was to be carried out under "General Conditions of Contract" of the Northern Railway and it is provided by clause 64 (1) of the said General Conditions that "in the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties, on any matter in question, dispute or differences on any account, or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway

fails to make a decision within a reasonable time, then and in any such case, but except in any of the excepted matters referred to in clause 63 of these conditions, the Contractor after 90 days of his final claim on disputed matters, may demand in writing that the disputes or difference be referred to arbitration...." It is submitted on behalf of the plaintiffs that the claim put forward by them has raised a dispute and that dispute pertains to construction or operation of the contract between the parties and their respective rights and liabilities there under and, Therefore, the same has to go to the arbitrator for its resolution. The arbitration clause provided by the contract between the parties is very comprehensive in scope, but it carries a condition