
(1994) 09 MP CK 0012
In the Madhya Pradesh High Court
Case No : Civil Revision No. 12 of 1993

M.P. Electricity Board

APPELLANT

Vs

Harnam Singh Iqbal Singh

RESPONDENT

Date of Decision : 08-09-1994

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : (1995) 40 MPLJ 103 : (1995) MPLJ 103

Hon'ble Judges : M.V. Tamaskar, J

Bench : Single Bench

Advocate : L.S. Baghel, for the Appellant; Y.K. Munshi, for the Respondent

Final Decision : Allowed

Judgement

M.V. Tamaskar, J.

This is a revision against the order passed by the Fifth Addl. Judge to the Court of the District Judge, Bilaspur, in Civil Suit No. 5-B of 1990. A suit was filed by the non-applicant/plaintiff claiming Rs. 1,14,555.52 paise towards to work performed.

The dispute arose and the plaintiff filed a civil suit. An objection was filed by the defendant/applicant stating that the civil suit cannot proceed in view of the Arbitration Clause. The District Judge rejected the said application stating that the said objection can be taken in a written statement and the issue can be decided as preliminary issue. Against the same this revision has been filed.

The argument of the learned counsel for the applicant is that such a procedure is not contemplated u/s 34 of the Arbitration Act. The objection has to be taken before filing a written statement. It has been held in Indian Oil Corporation Ltd. Vs. Nainsukdas Baldeodas, that an application for stay of the proceedings should be made promptly before filing of a written statement. In Rachappa Gurudappa Bijapur Vs. Gurudiddappa Nurandappa and Others, the Supreme Court held as under :

"In view of Section 34 of the Arbitration Act in order to have the proceedings in the suit stayed, there must be an arbitration agreement between the parties covering the disputes in question. The section stipulates that in order that stay may be granted under the section, it is necessary that the following conditions are fulfilled :-

- (i) The proceedings must have commenced by a party to an arbitration agreement against any other party to the agreement;
- (ii) The legal proceeding, in this case the suit, which is sought to be stayed must be in respect of a matter agreed to be referred;
- (iii) The applicant for stay must be a party to the legal proceeding, the suit in this case;
- (iv) The applicant must have taken no steps in the proceeding after appearance;
- (v) The applicant must satisfy that only the applicant was at the time when the proceedings were commenced, ready and willing to do everything necessary for the proper conduct of the arbitration; and
- (vi) The Court must also be satisfied that there was no sufficient reason why the matter should not be referred to arbitration.

The Supreme Court held that Section 34 requires that the application for stay of legal proceedings must be filed before the filing of the written statement or taking any other step in the proceeding. In order to be entitled to stay u/s 34 of the Arbitration Act it is imperative to find out whether "any other steps in the proceedings have been taken before making an application for stay apart from the written statement."

It has been further held in paras 9, 10 and 11 by the Supreme Court as under :-

"Some other step mentioned in the section must indisputably by such step as would manifestly display an unequivocal intention to proceed with the suit and to give up the right to have the matter disposed of by arbitration. The expression "taking any other steps in the proceedings" does not mean that every step in the proceedings would come in the way of enforcement of the arbitration agreement."

In view of the aforesaid reason the trial Court was clearly in error in directing to file written statement and the issue to be decided as a preliminary issue. The order is patently illegal and set aside. The revision is allowed. There shall be no order as to costs.