
(2014) 03 JH CK 0006
In the Jharkhand High Court
Case No : L.P.A. No. 402 of 2013

M/s. Ravindra Mohan Tiwari and Another	APPELLANT
Vs	
The State of Jharkhand and Others	RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Arbitration Act, 1940 — Section 39, 39(1)
Arbitration and Conciliation Act, 1996 — Section 34, 34(3), 37, 37(3), 39
Civil Procedure Code, 1908 (CPC) — Section 4

Citation : (2014) 2 ARBLR 582 : (2014) 2 JLJR 195

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Manoj Tandon, Advocate for the Appellant; V.K. Prasad and Vineet Prakash, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. This Letters Patent Appeal is directed against the order passed by the learned Single Judge dated 11.1.2013 in Arbitration Appeal No. 2 of 2010 by which the appeal preferred by the respondents-appellants was allowed setting aside the order passed by the Sub-Judge-I, Giridih in Title Suit (Arbitration) No. 9 of 2004 dated 26.2.2007 and directing the court below to decide the delay condonation application preferred by the respondent-State of Jharkhand as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of that order. Being aggrieved by the order passed by the learned Single Judge, in Arbitration Appeal No. 2 of 2010 dated 11.1.2013, the appellants-respondents have preferred this appeal. The facts of the case are as under:--

A dispute arose between the appellants and the respondents with respect to the payment of amount for the works executed under the agreement was referred for arbitration. Accordingly, an arbitration proceeding was initiated and an arbitrator was appointed. The arbitration proceeding was concluded through arbitration and the award was delivered on 17th October, 2003. The said

arbitrary award was challenged u/s 34 of the Arbitration and Conciliation Act, 1996 before the Sub-Judge-I, Giridih by the present respondents. The Sub-Judge-I, Giridih vide Title Suit (Arbitration) No. 9 of 2004 dismissed the Suit by order dated 26th February, 2007 on the ground inter alia that application filed by the respondents-appellants u/s 34 of the Arbitration and Conciliation Act, 1996 was barred by limitation and also on merits holding that there was no error on the face of the impugned award dated 17.10.2003 and cannot be said to exceed the jurisdiction in granting the award.

2. Thereafter, the respondents-appellants preferred an Arbitration Appeal No. 2 of 2010 against the judgment and order dated 26.2.2007 passed by Sub-Judge-I in Title Suit (Arbitration) No. 9 of 2004 before this Court and the learned Single Judge allowed the said Arbitration Appeal and hence, this L.P.A. has been preferred by the appellants-respondents.

3. The learned counsel appearing for the appellants-respondents submitted that there were two issues before the trial court, one was as to whether the suit was barred by limitation and the other was as to whether the suit filed by the respondents was coming within its jurisdiction so as to set aside the award passed by the arbitrator and accordingly, the trial court decided both the issues against the respondents. The learned counsel further submits that the trial court held at one hand that no sufficient ground was shown to condone the delay and on the other hand the learned trial court was also of the view that even on merit the Suit was fit to be dismissed for which reasons have been assigned in the impugned judgment and order dated 26.2.2007 and therefore, the trial court has committed no error of law while passing the judgment. The learned counsel placed reliance on various judgments of the Apex Court including the judgment reported in *U.P. State Electricity Board Vs. M/s. Searsole Chemicals Ltd.*, , *Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Others*, , *Inder Sain Mittal Vs. Housing Board, Haryana and Others*, , *Chief Engineer of B.P.D.P./ R.E.O. Vs. Scoot Wilson Kirkpatrick India Pvt. Ltd.*, and (2011) 8 SCC 207. It is also stated that in a suit several issues can be raised and the trial court is bound to consider all those issues collectively and decide in favour or against one or other parties as it is well settled that in a suit several issues including limitation can be decided simultaneously and there was no illegality thereby committed by the trial court in the impugned judgment dated 26.2.2007.

4. On the other hand, the learned counsel appearing for the respondents-appellants have submitted that the delay in preferring an application u/s 34(3) of the Arbitration and Conciliation Act, 1996 can be condoned looking to the facts and circumstances of the case and the trial court has wrongly decided the application u/s 34 of the Act on merit of the case and on the condonation of delay simultaneously without appreciating the grounds upon which the condonation of delay was sought for or application on merit was challenged. The respondents-appellants placed reliance on the judgment reported in *Assam Urban Water Supply and Sew. Board Vs. Subash Projects and Marketing Ltd.*, .

5. As against the order passed by the learned Single Judge in the Arbitration Appeal, as per Section 37(3) of the Arbitration and Conciliation Act, 1996, no second appeal shall lie from an order passed in the Arbitration Appeal. Section 37(3) of the Act reads as under:--

No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

6. In *P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others*, , the Hon''ble Supreme Court has held that in arbitration proceedings right of appeal is available only u/s 39 of the Act of 1940 (Section 37 of the new Act). After taking note of decision in *Union of India (UOI) Vs. Mohindra Supply Company*, , the Hon''ble Supreme Court has held thus;

10. This Court however noticed that in the Arbitration Act, there was no provision similar to Section 4 of the CPC which preserved powers reserved to courts under special statutes. Under the Code of Civil Procedure, the right to appeal under the Letters Patent is saved both by Section 4 and the clause contained in Section 104(1), but by the Arbitration Act, 1940, the jurisdiction of the courts under any other law for the time being in force is not saved. The right of appeal could therefore be exercised against orders in arbitration proceedings only u/s 39, and no appeal lay from the appellate order (except an appeal to this Court). The provisions in the Letters Patent providing for appeal, insofar as they related to orders passed in arbitration proceedings, were -held to be subject to the provisions of Sections 39(1) and (2) of the Arbitration Act, as the same is a self-contained Code relating to arbitration.

7. In *Fuerst Day Lawson Ltd. and Others Vs. Jindal Exports Ltd. and Others etc. etc.*, , the Hon''ble Supreme Court has discussed the issue thus;

89. It is, thus, to be seen that Arbitration Act, 1940, from its inception and right through to 2004 (in *P.S. Sathappan*) was held to be a self-contained Code. Now, if the Arbitration Act, 1940 was held to be a self-contained Code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the UNCITRAL Model must be held only to be more so. Once it is held that the Arbitration Act is a self-contained Code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it "a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done". In other words, a letters patent appeal would be excluded by the application of one of the general principles that where the special Act sets out a self-contained Code the applicability of the general law procedure would be impliedly excluded.

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.

8. In view of the clear bar u/s 37(3) of the Act, the Letters Patent Appeal is not maintainable. The Arbitration and Conciliation Act has been held to be a complete Code and since Section 37(3) bars intra-court appeal, the Letters Patent Appeal would not be maintainable. Accordingly, this Letters Patent Appeal is dismissed as not maintainable.