

(2013) 08 MP CK 0062

In the Madhya Pradesh High Court

Case No : Civil Revision No. 2475 of 2000

M/s. Tripathi Construction Co.

APPELLANT

Vs

The Union of India and Another

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 85
Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Section 14, 5

Citation : (2013) 08 MP CK 0062

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Shekhar Sharma and Mr. Sanjay Kumar Patel, for the Appellant; Atul Choudhary, Learned Counsel, for the Respondent

Judgement

U.C. Maheshwari, J.—In compliance of the earlier order this case is listed today for final disposal at the motion stage. Pursuant to it, the same is taken for consideration. The applicant - firm has filed this revision u/s 115 of the CPC being aggrieved by the impugned arbitration award dated 9.8.2000 passed by the respondent no. 2 in Case No. M.T./C.E./AKG-Tripathi whereby the claim of the applicant - firm has been dismissed in part by the Arbitrator.

2. Initially the case was argued at length by the applicant's counsel for admission and allowing this revision but in view of the provision of Section 85 of the Arbitration & Conciliation Act 1996, in short "The Act", on asking the counsel present that on which date the arbitration proceeding was initiated in the matter on which they fairly submit that the same was initiated in the year 1999, subsequent to enforcement of aforesaid Act.

3. In view of such submission as per aforesaid provision of Section 85 of the Act repealed and Saving Clauses the impugned award could be challenged before the Arbitration Court constituted u/s 34 of the aforesaid Act because any proceeding which has been instituted or commenced after coming into force the aforesaid

new enactment of the Arbitration, then the same could be entertained and held under the new enactment. So in such premises, on asking the applicant's counsel regarding entertainability of this revision before this court, on which he seeks permission to withdraw the same with liberty to file the proceeding u/s 34 of the Act before the designated Arbitration Court at Khandwa.

4. Considering the aforesaid prayer without expressing any opinion on merits of the matter, this revision is hereby dismissed as withdrawn and not pressed by extending a liberty as prayed by the applicant's counsel.

5. Office is directed that on furnishing a photocopy of the impugned order, the original copy of the same be given to the applicant's counsel enabling him to file the aforesaid proceeding before the Arbitration Court.

6. Apart the aforesaid in view of the decision of the Apex Court in the matter of Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, , it is observed that alongwith aforesaid proceeding, if an application u/s 14, r/w Section 5 of the Limitation Act is filed on behalf of the applicant before the Arbitration Court, then the applicant shall be entitled to get the benefit of exclusion of the period in limitation to file such proceeding, which has been spent by it in prosecuting the present revision before this court. The revision is dismissed as withdrawn and not pressed with aforesaid observation, liberty and direction.