

(2001) 01 DEL CK 0016
In the Delhi High Court
Case No : Suit No. 2695-A of 1999

M/s Uttam Singh Duggal and Company Limited	APPELLANT
Vs	
Chief Engineer, Project setuk (On behalf of Union of India)	RESPONDENT

Date of Decision : 10-01-2001

Acts Referred:

Citation : (2001) 3 AD 250 : (2001) 91 DLT 108 : (2001) 58 DRJ 336 : (2001) 2 RAJ 183

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Mr. Rajesh Lakhanpal, for the Appellant; Ms. Rekha Palli, for the Respondent

Judgement

J.D. Kapoor, J.—Three contentious points arise for determination in these proceedings. Firstly, whether the arbitrator was required to file the award in this Court for making it a rule of the Court; secondly whether the award filed by the arbitrator requires to be transferred to the District Judge, Agartala on account of the fact that the proceedings challenging the award are pending before the District Judge, Agartala and thirdly whether this Court alone has jurisdiction over the arbitral proceedings.

2. On filing of the award by the Arbitrator, the registry, registered it as a suit being S.No.2695-A/1999 and issued notices to the parties for filing objections within 30 days. Pursuant to the notice, the respondent namely Chief Engineer Project Setuk as well as the plaintiff M/s Uttam singh Duggal and Co. filed objections.

3. The objections of the respondents in brief are that defendant No.1, Union of India, has filed application before Agartala Bench of the Gauhati High Court u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as Act of 1996) for setting aside the award dated 20th August, 1999 and as per directions of the Gauhati High Court, the case has been transferred to the Court of District Judge, Agartala and since the award is already under challenge before the

District Judge, the instant suit is either liable to be dismissed or should be transferred to the Court of District Judge, Agartala.

4. On the other hand, the plaintiff has challenged the jurisdiction of the Court of District Judge, Agartala by invoking the provisions of Section 42 of the Arbitration and Conciliation Act, 1996 on the strength of the judgment dated 16.7.1967 of this Court passed on the application moved by the plaintiff u/s 11 of the aforesaid Act seeking directions to the respondents to file the arbitration agreement, and to refer the claim of the plaintiff to the independent and qualified Arbitrator.

5. I have perused the order of this court. The petition u/s 11 of the Act 1996 moved by the plaintiff was disposed of on the appointment of the arbitrator during the pendency of the petition and on the satisfaction of the petitioner/plaintiff over the appointment of the said Arbitrator. However, the grievance of the plaintiff in fixing the venue of the arbitration proceedings at Agartala was considered by this Court and the following directions were passed:-

"It appears that while the parties were agreed on the place of arbitration if they failed to decide, it will be decided by the Arbitrator according to the circumstances of the case including convenience of the parties in such circumstances. I direct the Arbitrator to consider the genuineness of difficulty of the petitioner by holding meeting for the purpose of deciding the question in the light of the foregoing observations".

6. There is no dispute that the proceedings before the Arbitrator were conducted under the Arbitration and Conciliation Act 1996 and the appointment was also made under this Act. The Arbitrator under the misconception that the proceedings were held under the old Act of 1940, filed the award for making it rule of the Court whereas the fact remains that he was appointed and conducted the proceedings under the Act of 1996. In view of this fact, the Registry also fell in error by registering it as a suit and calling upon the parties by way of notice to file their objections under the misconception that the Arbitrator was appointed under the old Act and the proceedings were also conducted under the old Act. Section 36 of the Act of 1996 provides that where the time for setting aside the award u/s 34 has expired or such application having been made it has been refused the award was enforceable under the CPC in the same manner as it were a decree of the Court. Section 34 provides a recourse to a Court against an arbitral award only by way of an application for setting aside such award in accordance with Sub Section (2) and Sub Section (3) of the Act. Thus the very act of the Registry in serving the parties with notice for filing objection was void ab initio illegal and not in accordance with the provisions of the Act of 1996. As a result the registration of the award as a suit stands quashed.

7. In view of the registration of the award as a sit having been held as void ab initio and illegal the prayer of the defendants for transferring the award tot eh Court of the District Judge, Agartala can not be allowed as it has to be deemed

as if no proceedings were pending in this Court. It is left to the parties to seek appropriate remedy in respect of the award at the appropriate forum and the question of jurisdiction over the arbitral proceedings may be raised before the said forum. With this order all pending IAs and the suit stand disposed of.