

(2002) 04 SC CK 0106

In the Supreme Court Of India

Case No : Civil Appeal; Special Leave Petition (Civil) 2862 of 2002, 18877 of 2001

Rampur Engineering Co. Ltd.

APPELLANT

Vs

Punjab State Electricity Board and Another

RESPONDENT

Date of Decision : 22-04-2002

Acts Referred:

Arbitration Act, 1940 — Section 30, 33
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2002) 6 JT 52

Hon'ble Judges : R. C. Lahoti, J; Doraiswamy Raju, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.

2. Between the parties there were arbitration proceedings wherein an award has been made under the Arbitration Act, 1940. Proceedings for making the award a rule of the court are pending in the court of additional civil judge, senior division, Patiala. Objection petition u/s 30/33 of the Arbitration Act has been filed by the appellant. On 9.4.2001, the appellant moved an application under Order 6 Rule 17 of the CPC seeking amendment in the objection petition by incorporating additional grounds of objection. This prayer for amendment has been rejected by the trial court on the ground that on the date of moving of the application for amendment the limitation for filing objections had expired and that the grounds, which were sought to be added by way of amendment cannot be termed as left out earlier by 'typographical errors' as was the cause mentioned in application for amendment.

3. During the course of hearing, the learned counsel for the appellant has submitted that out of the several amendments sought for in the application, the appellant would press only one ground for being incorporated in the objection petition, and that is, that there being no arbitration agreement between the

parties all the proceedings were incompetent.

4. The original objection petition was filed within the prescribed period of limitation. Undoubtedly, on the date of moving of the application for amendment the limitation for filing the objections had expired. However, the additional plea which is now sought to be urged goes to the root of the matter and therefore ought to have been permitted to be incorporated by way of amendment by the trial court without taking too technical a view of the application. May be that after affording the parties an opportunity of hearing the plea may not find favour with the court and so will be liable to be rejected but that cannot be a ground for shunting out the plea at its threshold. In our opinion, the amendment to the extent pressed by the appellant should have been allowed to be incorporated.

5. Accordingly, the appellant (objector before the trial court) is permitted to incorporate only the following plea by way of amendment in the objection petition:-

"That there is no arbitration clause in agreement dated 21.12.1989 covering the subject matter for which the impugned award has been given."

6. The amendment shall be incorporated subject to payment of Rs. 5,000/- by way of costs payable to the opposite party.

7. We make it clear that we have not expressed any opinion on the merits of the objection sought to be raised by the appellant and the trial court would be free to form its own opinion on the merits of the plea.

8. The appeal stands disposed of in the above said terms.

9. The trial court shall now expeditiously proceed with the hearing of the matter before it.