
(2013) 06 SHI CK 0144
In the High Court Of Himachal Pradesh
Case No : Arbitration Appeal No. 3 of 2013

R.N. Madan

APPELLANT

Vs

Executive Engineer

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2013) 06 SHI CK 0144

Hon'ble Judges : A.M. Khanwilkar, C.J.; R.B. Misra, J

Bench : Division Bench

Advocate : Suneet Goel, for the Appellant; Neeraj Gupta, for the Respondent

Judgement

A.M. Khanwilkar, C.J.—Heard counsel for the parties. The appellant has essentially challenged the conclusion reached by the learned Single Judge in the impugned judgment, dated 21st December, 2012, remanding the matter to the Arbitrator for reconsideration of the matters in issue.

2. According to the appellant, in view of the express provisions contained in Section 34 of the Arbitration and Conciliation Act, 1996, the High Court, at best, by virtue of subsection (4) of the said provision, if requested by any party, could adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award. This is the only limited option available to the High Court besides the power to set aside the arbitral award on grounds specified in sub-section (2) of Section 34 of the said Act.

3. Counsel for the respondent has placed reliance on the decision of the Apex Court in McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, . We are afraid that this reported decision is not an authority on the proposition that arises for consideration. On the contrary it reinforces the contention of the appellant that the Court may only defer the proceedings for a limited period to

give opportunity to the arbitral tribunal to resume the arbitral proceedings or to take such other action as in its opinion will eliminate the grounds for setting aside the arbitral award.

4. In the circumstances, we deem it appropriate to quash and set aside the impugned decision of the learned Single Judge and instead restore the Arbitration Case No. 51 of 2009 for examining all the other matters in issue on its own merits. We do not intend to examine the same for the first time in the present appeal. Therefore, the parties are relegated before the learned Single Judge for reconsideration of the entire matter afresh in accordance with law. Accordingly, this appeal succeeds. The impugned decision is set aside and Arbitration Case No. 51 of 2009 is restored to the file to its original number to be proceeded afresh before the learned Single Judge. All questions are left open to be decided in accordance with law. The parties shall appear before the learned Single Judge on 8th July, 2013, when the restored Arbitration Case will be listed under caption "orders" for issuing appropriate directions by the learned Single Judge. Pending application(s), if any, also disposed of.