
(2012) 03 KL CK 0242
In the High Court Of Kerala
Case No : Arbitration A.No. 7 of 2012

State of Kerala

APPELLANT

Vs

Somdatt Builders Ltd.

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37, 37(1)

Citation : (2012) 3 ARBLR 151 : (2012) 2 KarLJ 58 : (2012) 2 KLJ 58

Hon'ble Judges : Thottathil B. Radhakrishnan, J;C.T. Ravikumar, J

Bench : Division Bench

Advocate : T.T. Mohammed GP, for the Appellant; Aravind Minocha and Millu Dandapani, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—This appeal by the State of Kerala is filed invoking Section 37 of the Arbitration & Conciliation Act, 1996, hereinafter referred to as the "Act". The only provision in the Act for an appeal to this Court from the order of the court dealing with an application for setting aside an arbitral award u/s 34 is subsection (1) of Section 37, which enumerates the orders which are appealable under that provision. The legislature, in its wisdom, has-categorically expressed that an appeal shall lie from the orders enumerated in clauses (a) and (b) of sub-section (1) of Section 37 "and from no others". The use of the phrase "and from no others" within brackets in sub-section (1) of section 37 is a legislative device used to keep reminding that no appeal other than that which would fall in clauses (a) and (b) of Section 37 (1) would lie. Learned counsel for the respondent also refers to section 5 which restricts the extent of judicial intervention. This appeal is, admittedly, against an order by which the Court refused to grant leave to amend an application filed u/s 34 of the Act.

2. The sequence of events would show that O.P(Arb).71/04 filed by the State before the court below seeking to set aside the award dated 20.12.2003 was

dismissed on 23.3.2005. That led to MFA. 16/05 to this Court. That appeal was allowed in part. The parties went to the Apex Court. Civil Appeals 3089/06 and 3090/06 were decided as per judgment dated 17.9.2009 ordering as follows:

i. "The judgment of the High Court dated June, 2005 and the judgment dated February 23, 2005 passed by the 2nd Additional District Judge, Ernakulam are set aside.

ii. The petition (O.P.Arb.71/2004) by the State of Kerala against the award dated December 20, 2003 is restored to the file of the 2nd Additional District Judge, Ernakulam for fresh hearing and consideration of the objection in respect of claim Nos. 1, 4B, 5 and 6.

iii. However, the 2nd Additional District Judge, Ernakulam shall list emit the award to the Arbitral Tribunal for stating their reasons in support of Claim Nos. 1 and 4B and after receipt of the reasons from the arbitral tribunal proceed with the hearing and disposal of objections.

iv. Parties shall bear their own costs.

3. Following that, the court below remitted the award to the Arbitral Tribunal to state their reasons in support of claim No. 1 and 4B in terms of directions (iii) in the judgment of the Apex Court. The Arbitral Tribunal has since stated reasons and forwarded it to the court below. State, being aggrieved by the reasons stated by the Arbitral Tribunal in support of claim Nos. 1 and 4B, applied for leave to amend the application O.P (Arb).71/04. That interlocutory application stands dismissed. This order is the one that is now challenged before us.

4. In terms of what is noted on the issue of jurisdiction referable to the provisions under sections 37 and also, 5 of the Act, no appeal lies against an order refusing leave to amend applications u/s 34 of the Act.

5. In the result, this appeal is dismissed without expressing anything on the merits of the impugned order and without prejudice to the right, if any, of the appellant to pursue other remedies against the impugned order, in accordance with law. Having dismissed the appeal, any interlocutory order granted in this appeal, including in the nature of stay, will stand automatically vacated.

The Office will re-transmit LCR to the court below forthwith.