
(2005) 10 UK CK 0013
In the Uttarakhand High Court
Case No : Civil Revision No. 85 of 2005

State of Uttaranchal and Others

APPELLANT

Vs

Sri Mahesh Das and Another

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Arbitration Act, 1940 — Section 20
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2006) 2 UC 868

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : L.K. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Heard learned Counsel for the parties.

2. By means of this revision, preferred u/s 115 of Code of Civil Procedure, 1908, the revisionist/Defendant has challenged order dated 09-04-2003, passed by learned Civil Judge, Senior Division, Pauri Garhwal in Misc. Case No., 22 of 1998, whereby review application was allowed, restoring original suit No. 10 of 1997 between the parties.

3. Brief facts of the case are that M/s Das Enterprises (Plaintiff/ Respondent), instituted original suit No. 10 of 1997 against Defendant (present revisionist) u/s 20 of the Arbitration Act, 1940, claiming Rs. 23,21,837 and alternatively prayed for referring the dispute to arbitration under Clause 34 of the agreement between the parties. It appears that in the plaint, it was clear that a notice dated 20-07-1994 was earlier given to the Defendant to appoint arbitrator in terms of the agreement. From the perusal of the record, it appears that aforesaid plaint was returned by the trial court on 07-11-1998 on the ground that the Arbitration and Conciliation Act, 1996, has come into force. Thereafter, it appears that review application was filed by the Plaintiff, which was registered as Misc. Case

No. 22 of 1998, for the restoration of the suit on the ground that the enforcement of Arbitration and Conciliation Act, 1996 had no effect over the pending matters commenced under the Arbitration Act, 1940. Learned trial court, after hearing the parties, found that in returning the plaint, it has apparently erred in law. Undoubtedly, since the notice (dated 20-07-1994) to refer the matter to the arbitrator was given before Arbitration and Conciliation Act, 1996 came into force and thereafter suit was instituted before the learned Civil Judge (Senior Division) for referring the matter to the arbitrator. The Arbitration and Conciliation Act, 1996, came into force on 22-08-1996.

4. In State of West Bengal Vs. Amritlal Chatterjee, , the Apex Court has held that for determination of arbitration proceedings as to its commencement depends on its date of request for reference is made to the Respondent. In said case, it was further held that if such notice has been received by Respondent prior to enforcement of Act No. 26 of 1996, the proceedings would be governed by Arbitration Act, 1940. Again in Milk Food Ltd. v. G.M.C. Ice-cream Pvt. Ltd. AIR 2004 S.C. 3145, same view has been repeated. In view of principles of law contained in aforesaid referred cases, the learned trial court has not erred in law in allowing the review application.

5. Therefore, for the reasons as discussed above, there is neither jurisdictional error nor any material illegality in the impugned order, which requires interference by this Court under the revisional jurisdiction. Accordingly, the revision is liable to be dismissed. The same is dismissed.