
(1994) 11 KL CK 0066
In the High Court Of Kerala
Case No : M.F.A. No. 755 of 1994

T.K. Poullose

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 07-11-1994

Acts Referred:

Citation : (1994) 11 KL CK 0066

Hon'ble Judges : M.M. Pareed Pillay, Acting C.J.; T.V. Ramakrishnan, J

Bench : Division Bench

Advocate : O. Balanarayanan, for the Appellant; M.C. John, Government Pleader, for the Respondent

Judgement

M.M. Pareed Pillay, A.C.J.

1. Appellant put forward claims in respect of earth work, extra cutting and extra filling and contended that these claims were not covered by the earlier award or decree. Respondents took up the stand that the claims presently put forward by the Appellant were included in the claim statement submitted by him in the prior proceedings before the Arbitrator and as an arbitration award was passed in full and final settlement of all dues in the work he cannot raise any more dispute.

2. The learned Sub Judge held that the disputes (23 in number) were detailed as (a) to (w) in the claim statement and disputes (e) and (f) cover the present claims. Accordingly, petition filed by the Appellant was dismissed and the order dated 6th February 1985 of the Arbitrator that the claim is unsustainable was confirmed.

3. The learned Sub Judge held that as the claims regarding earth excavation along with other disputes were raised by the Appellant in the prior arbitration proceedings and as the Arbitrator passed an award directing the Respondents to pay Rs. 1,77,900 in full and final settlement of all his dues and as that award was accepted by the Court and a decree has been passed consequently directing the Respondents to pay the award amount and as that decree was satisfied by

the Respondents by payment, the present claim is without any justification. Appellant could have raised all his contentions in the first arbitration proceedings. Inasmuch as the final bill was prepared and presented by the Respondents "at the time of final hearing before the award was published there was enough opportunity for the Appellant (claimant) for raising further claims, if any, arising out of the final bill at the time of final hearing and as he did not raise any such claims, he cannot legally raise the present claim belatedly. Appellant's contention that his present claims were not in issue in the earlier claim and so the Arbitrator was not justified in rejecting his claim outright is not tenable.

4. Principles of res judicata and constructive res judicata are applicable to arbitration proceedings as well. As the Appellant could have raised all his contentions before the Arbitrator at the first instance and as he did not raise it at the appropriate time, he cannot be heard to say that the present claim was not an issue in the earlier arbitration proceedings and therefore he is not precluded from raising it afresh. In *K.V. George Vs. Secretary to Government, Water and Power Department, Trivandrum and Another*, the Supreme Court held that the principles of res judicata or for that matter the principles of constructive res judicata apply to arbitration proceedings and as such the award made in the second arbitration proceedings cannot be sustained. Even if the contention of the Appellant that the present claim was not a matter in issue in the earlier arbitration proceedings is assumed to be correct, it would not be of any help to him as the claim is barred by constructive res judicata.

We see no merit in the M.F.A. and hence the same is dismissed with no order as to costs.