
(1976) 04 CAL CK 0003
In the Calcutta High Court
Case No : A.O.D. No. 350 of 1973

Union of India

APPELLANT

Vs

Consultants for Industries (P) Ltd.

RESPONDENT

Date of Decision : 09-04-1976

Acts Referred:

Arbitration Act, 1940 — Section 10, 11, 11(1), 12, 16

Citation : 80 CWN 662

Hon'ble Judges : S.K. Mukherjee, J; Masud, J

Bench : Division Bench

Advocate : D.K. Sen and Saraf, for the Appellant; S. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Masud, J.—This appeal has been preferred against an order of S. K. Roychowdhury, J. dated July 14, 1975, removing an arbitrator under an arbitration agreement between the parties and appointing a new arbitrator. The facts of the case may briefly be stated as follows:

On June 30, 1965, an agreement was entered into between the parties for supply of two floating Cranes in respect of construction work of the Farakka Barrage Project. The said agreement contains an arbitration clause, material portions of which read as follows: -

Arbitration Clause: -

(a) In the event of any question, dispute or difference arising under the conditions or any special conditions of contract or in connection with this contract. the same shall be referred to the sole arbitration of the Chief Engineer, Far-rakka Barrage Project or of some other person appointed by him. the award of the arbitrator shall be final and binding on the parties to the contract.

(b)....

(c) In this clause the expression "Chief Engineer, Farskka Barrage Project", means the Chief Engineer, Farakka Barrage Project for the time being and includes, if there be no Chief Engineer, Farakka Barrage Project, the Officer who is for the time being the administrative head of the Farakka Barrage Project Organisation whether in addition to other functions or otherwise.

The respondent Contractor claimed a sum of Rs. 14,29,460.46 p. as damages. The appellant disputed the liability. By a notice dated December 20, 1967, the dispute was referred to Sri D. P. Roychowdhury, Superintending Engineer, who was appointed by the Chief Engineer as the arbitrator under the said agreement. At a meeting held by the said arbitrator on April 8, 1968, the parties agreed that the arbitration proceeding should remain stayed for the time being to enable them to settle the claim. As the parties failed to settle the said claim and Shri Roychowdhury retired from service, Shri G. K. Dutta, Superintending Engineer, Planning and designing Circle, was appointed by the General Manager, Farakka Barrage Project as the arbitrator in place of Shri D. P. Roychowdhury. The date to make and publish the award was extended from time to time. The appellant did not choose to file its counter-statement of facts inspite of the fact that the date to file the counter-statement was extended finally till October 17, 1974. On September 19, 1974, the Contractor called upon Shri Dutta to make his award within the said extended date. The Contractor Company came to know from a copy of the letter forwarded to it whereby Shri Dutta requested the Chief Engineer, Farakka Barrage Project, to apply to the Court for an extention of time to make his award, by two months from October 17, 1974. In the meantime, Shri Dutta was transferred from the post of Superintending Engineer, Kara-kka Barrage Project to the post of Member North Bengal Flood Control Commission under Govt, of West Bengal. As the time to make the award expired on October 17, 1974 and the appellant also did not file its counter-statement of facts, the Contractor made the present application before the trial Court on December 23, 1974, for leave to revoke the authority of Shri Dutta, for removing him as arbitrator and also for appointment of a new arbitrator by Court. On February 5, 1975, the appellant made a statement in its counter-affidavit that Shri Motiram of Delhi had been duly appointed to be the new arbitrator, and that the arbitration proceedings should continue before Shri Moti Ram. In the amdavit-m-reply filed on February 12, 1975 on behalf of the respondent the validity of appointment of Shri Moti, Ram was challenged

2. Mr. S. Mukherjee, appearing on behalf of the respondent, has raised a preliminary point of law that this appeal is not maintainable having regard to the provisions of Section 39 of the Arbitration Act.

3. Mr. D. K. Sen appearing with Mr. Saraf on behalf of the appellant has replied to the objections to the maintainability of the appeal on three grounds: First, removal of Shri Moti Ram, the arbitrator appointed under the arbitration clause, and the appointment of a new arbitrator by the Court amount to an order superseding the arbitration and, as such, the appeal lies from the said order u/s

39(1) (i). Secondly, under the arbitration agreement between. the parties the disputes between the parties have to be decided by the Chief Engineer or his nominee. The learned Judge by appointing an arbitrator of his own choice has passed an order which amounts to filing of a new arbitration agreement or refusing to file the arbitration agreement dated June 30, 1965. He has. therefore, concluded that the appeal is maintainable u/s 39(1) (iv) as well. Thirdly, the order passed by the learned Judge is not justified under any of the provisions of the Arbitration Act and, as such, the Court has no jurisdiction to pass the said order. The impugned order having been passed by the Learned Judge without jurisdiction this appeal is maintainable.

4. In our view, the point of demurrer roust be accepted. The reason why we have come to the conclusion may be stated:-

(a) Material portions of Section 30 of the said Act read as follows:

39 (1). An appeal shall lies from the following orders passed under this Act (and from no others") to the Court authorised by law to hear appeals from original decrees of the Court passing the order-

(i) superseding an arbitration; (ii) *****

(iii) *****

(iv) filing or refusing to file an arbitration agreement;

(v) *****

(vi) * * * * *

The word "superseding" in Section 39 (1) (i) has been mentioned in Sections 19, 25 and 30. Section 19 reads as follows;

Where an award has become void under sub-section (3) of section 16 or has been set aside, the Court, may by order supersede the reference, and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

5. Section 39 has used the words "superseding an arbitration". Whereas, Section 19 uses the words "the Court may by order supersede the reference". The word "reference" has been defined in Section 2(e) as "a reference to arbitration". In section 2(2) "arbitration agreement" has been defined. Thus, although "arbitration" has not been defined, a distinction is sought to be made between a "reference", "arbitration" and "arbitration agreement". In our view, arbitration only indicates a mode by which the disputes between the parties are finally determined. It is quite possible that although initially there is no "arbitration agreement", yet, subsequently there may be a reference to an arbitration. This contingency is set out in Chapter IV of the Act where the parties to a suit may apply for a reference. In a Bench decision of this Court in Pannalal Krishnalal v. Lachmv-chand Swakia, 58 C.W.N. 26, an observation has been made that there

is no difference between "superseding an arbitration" and "superseding a reference". The learned Judge also stated at page 28 : "If, however, it is assumed that there is a difference between "superseding an arbitration" and "superseding a reference", which we do not think there is, it is quite clear the order made by the learned Judge against which this appeal has been directed does not come within either expression". There "is no doubt that in the context of a particular section superseding a reference may mean "superseding an arbitration agreement". u/s 19, the Court has the discretion to make an order superseding the reference. But once such an order is passed in exercise of that discretion, it is the mandatory duty of the Court to pass an order to the effect that the arbitration agreement shall cease to have effect with respect to the difference between the parties. The marginal note in Section 19 has been set out as "power to supersede arbitration when award becomes void or is set aside." Thus, it is clear that in cases where Section 19 is attracted, superseding a reference entails cessation of the "arbitration agreement" which respect to the difference between the parties. It is quite possible to contemplate cases where, u/s 19 the arbitration agreement is not set aside. With respect to particular disputes under the "arbitration agreement" the reference of that dispute under the "arbitration agreement" shall cease. But it does not follow that the arbitration agreement does not survive with respect to some future disputes between the parties in respect of the transaction under the contract itself which includes the arbitration agreement. In Section 25, however, the Court has been empowered to make an order superseding the arbitration and to direct the parties to proceed with the suit in specified cases. In this Section, the words used are "superseding the arbitration". The Section has made it clear in its proviso that in any of the circumstances mentioned in Sections 8, 10, 11 and 12 the Court may, instead of filling up the vacancy or making the appointment, make an order superseding the arbitration. Thus, u/s 25, the Court may fill up the vacancy or appoint an arbitrator when any of the circumstances mentioned in Sections 8, 10, 11 and 12 exist. If, however, the Court does not choose to do so, it may make the order superseding the arbitration. Thus, the power to fill up the vacancy or to appoint an arbitrator is different from the Court's power to make an order superseding the arbitration. Section 30 also, uses the words "superseding the arbitration" and not "superseding the reference". Under this Section an award can be set aside in cases where such award has been made after the issue of an order by the Court superseding the arbitration. Construing section 39 in the Context of Sections 2(a), (e), Section 19, 25 and 30, we hold that although "superseding an arbitration" may mean "superseding a reference", the words "superseding an arbitration" in Section 39(1)(i) do not mean "superseding an arbitration agreement".

6. Admittedly, the application has been made under Sections 11 and 12 of the Act. Although in the petition prayers include one of leave for revocation of the authority of the arbitrator which is the usual prayer in the application u/s 5, the application has been made u/s 11 and 12. The learned Judge has removed the

appointed arbitrator and appointed a new arbitrator but in doing so he has also revoked the authority of the appointed arbitrator. But that does not make any difference inasmuch as, no order has been passed by the trial Court superseding the arbitration. On the contrary, Section 25 makes it clear that the Court has got the power to fill up the vacancies or to make an appointment of an arbitrator in the circumstances mentioned in Sections 8, 10, 11 and 12 without making an order for "superseding the arbitration". Relying upon *Satya Narayan Agarwall Vs. Baidyanath Mandal and Others*, Mr. Sen has strenuously contended that the appointment of a new arbitrator by the Court in place of the appointed arbitrator under the arbitration agreement amounts to an order "superseding an arbitration" and, as such, the appeal is maintainable u/s 39(1) (i). In the facts of that case there was no question of appointment of an arbitrator by Court. Under the arbitration agreement the disputes were to be referred to two arbitrators being the nominees of the two parties. It was claimed that one of the parties failed to appoint an arbitrator as provided under section 9 within 15 clear days after the service by the other party of a notice in writing to make the appointment and on the expiry of 15 days a sole arbitrator was appointed by the party under sec. 9 (b) of the Act. There the respondents filed an application for setting aside the appointment of the sole arbitrator and for staying the arbitration proceedings. The Court did not stay the arbitration proceeding. Thereafter, the arbitrator made and filed this award. The respondents contended that as the appointment of the arbitrator was invalid, no decree should be passed on the award. The Court set aside the appointment and refused to pass the decree. Against these orders, an appeal was preferred. It was submitted on behalf of the respondents that the appeal was not maintainable. The Bench found that the sole arbitrator was appointed before the expiry of the 15 days. Under these circumstances, the learned Judge, who delivered the judgment of the appellate Court made the following observation at p. 35 :

In my view, the impugned order amounts to supersession of an arbitration. Therefore, the appeal was maintainable. Even if I was to hold that the appeal was not maintainable, this Court has ample power to entertain the application under revisional jurisdiction.

7. In that case the alleged sole arbitrator had also passed an award. It is clear from the Patna case that the learned Judges by using the words "supersession of an arbitration" did not mean supersession of an arbitration agreement. The facts in the present case are clearly distinguishable. By the impugned order the appointed arbitrator Mr. Dutta has been removed and Mr. G. K. Mitter has been appointed as the new arbitrator by the Court under Sections 11 and 12 of the "Act. There is no question of any supersession of the arbitration or of the arbitration agreement. The learned Judge has himself referred the disputes between the parties to the arbitration of Mr. G. K. Mitter. In fact, it seems that to avoid any possible argument that by appointment of a new arbitrator by Court in substitution of an appointed arbitrator by the parties, the arbitration agreement as originally entered into is superseded, the legislature thought that the words in

section 39 (1) (i) should be "superseding an arbitration" and not "superseding an arbitration agreement". Further, if Mr. Sen's contention is accepted then in every case appointment of a new arbitrator by Court would amount to supersession of an arbitration and therefore, in every such case an appeal would be maintainable. As discussed above, the scheme of the Act does not justify the construction put by Mr. Sen on the words "superseding an arbitration" in Section 39(1) (i).

8. The second contention of Mr. Sen logically follows from his first contention. According to him, the Court by the impugned order has in fact allowed the parties to file a new arbitration agreement by appointment of a new arbitrator or in the alternative, refused to file the original agreement under which only a nominee of the Chief Engineer Farakka Barrage Projects could be appointed. In the present case, no party has made any application for filing an arbitration agreement and the question of refusal to file an arbitration agreement does not arise. In the scheme of the Arbitration Act it is difficult to accept the contention that on the appointment of an arbitrator by Court under the Arbitration Act the Court impliedly permits or directs filing of a new agreement or refuses to file the original agreement. The question of filing or refusing to file an arbitration agreement must arise out of an act of a party who intends to file an arbitration agreement between the parties. Such a situation is contemplated in section 20 of the Act. It is conceded by Mr. Sen that Section 20 in Chapter III has no application to a case where a proceeding has already been started under Chapter II. Admittedly, in the present case, the parties proceeded under Chapter II and no party has in fact made an application to the Court for filing an arbitration agreement. There is only one arbitration agreement between the parties and the disputes between the parties have to be determined under the said agreement. Appointment of a new arbitrator by the Court per se does not indirectly or impliedly result in the filing of a new arbitration agreement or refusing to file the earlier agreement. Reliance has been placed by Mr. Sen on Union of India (UOI) Vs. Himco (India) Private Ltd., . The facts of the said case are distinguishable. There, the Union of India applied for filing of the arbitration agreement u/s 20. The trial Court held that the parties entered into an arbitration agreement upon the terms contained in Clause 21 of Form W.B. 133 with the modification that the name of the arbitrator was left undetermined or alternatively with the modification that the arbitrator should be an unattached person to be appointed by the Director General of Supplies and Disposals. The trial Court, Proceeding on the basis of the modification, appointed a new Arbitrator. The appellate Court, however, found that the parties had agreed to the terms of the contract under clause 21 and disagreed with the Court below that the parties had agreed to a modified form of agreement. Under those circumstances, the learned Judges set aside the judgement of the trial Court and held that the Court had no power to appoint an arbitrator outside the provisions of the subsisting arbitration agreement. The principles of law laid down in the said decision have no application to the facts of this case inasmuch as there is no implied or modified

agreement to be filed or acted upon in the instant case.

9. The last contention of Mr. Sen is that the impugned order has not been passed under any of the sections of the Arbitration Act and, as such, such order is a nullity and has been passed without jurisdiction. It is true that Section 39, as set out earlier, provides that an appeal shall lie from the orders passed under the said Act and from no others and the orders which are appealable have been specifically set out in section 39(1) (i) to (vi). It is therefore necessary to examine whether the order passed by the trial Court has been made under the said Act. Admittedly, in the present case, the application has been made by the respondent before the trial Court under sections 11 and 12 of the Act. u/s 11(1) the Court may, on the application of the party to a reference, remove an arbitrator who fails to use all reasonable despatch in entering on and proceeding with the reference. It is provided in sub-section (2) that the Court may remove an arbitrator who has misconducted himself or the proceedings. The application was made on December 23, 1974 and at that time the respondent alleged that Shri G. K. Dutta had failed to proceed with the reference with reasonable diligence. Shri G. K. Dutta was appointed as an arbitrator on July 10, 1972. As stated earlier, the date to make the award was extended on several occasions and the last order was to make and publish the award on or before October 17, 1974. Shri Dutta in the meantime was transferred from the post of Superintending Engineer, Farakka Barrage Project to the post of Member, North Bengal Flood Control Commission, Jalpaiguri. On September 19, 1974, the respondent's solicitor wrote a letter to the arbitrator calling upon him to make and publish the award within the extended date, i.e., October 17, 1974 and also informed the arbitrator that in default the petitioner would apply to the Court for his removal on the ground of unusual delay. It was the case of the appellant that Shri G. K. Dutta was removed as an arbitrator on or about November 12, 1974 and in the vacancy caused in the office of the arbitrator appointed Shri Moti Ram as the arbitrator. The respondent's case is that the Contractor company had no knowledge of the new appointment. Admittedly, Shri G. K. Dutta had not effectively proceeded with the reference. Union of India did not even file its counter-statement. It is also the case of the appellant that Shri G. K. Dutta had already been removed from the office of the arbitrator and, as such, the impugned order removing Shri G. K. Dutta cannot be said to have been passed without jurisdiction. Further, Mr. Sen's argument is that as Moti Ram has already been appointed on November 12, 1974, the order removing Shri Motiram on the application of the Contractor company affirmed on December 3, 1974 cannot be sustained, especially in the absence of a prayer in the petition to that effect. According to Mr. Sen, Shri G. K. Dutta had vacated his office as an arbitrator and Shri Moti Ram was appointed in the said vacancy before the application was made. The vacancy having been filled up by the appointment of a new arbitrator under the Arbitration Agreement, the Court has no jurisdiction to remove Shri Moti Ram, the appointed arbitrator, under the arbitration agreement and to appoint Shri G. K. Mitter as a new arbitrator. The answer to this contention would

depend upon the question whether Shri Moti Ram was validly appointed. This question involves a mixed question of law and fact.

10. The material portions of sec. 8 (1) (b) reads as follows: Section 8 (1) (b), "if any appointed arbitrator or anyone neglects or refuses to act, or is incapable of acting or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties or the arbitrators, as the case may be, do not supply the vacancy; any party may serve to the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy". Mr. Sen has submitted that Shri Moti Ram has been appointed by a formal letter on November 12, 1974 in the vacancy of Shri G. K. Dutta. The appointment of a new arbitrator by the appellant can only arise if there was a vacancy. It appears from the letter of appointment of Shri Moti Ram dated November 12, 1974 that Shri G. K. Dutta ceased to be the Superintending Engineer as he was transferred to a post under the Government of West Bengal and that he had not entered on the reference and proceeded with the case. The grounds on the basis of which the alleged vacancy is said to have arisen is not sustainable in fact or in law. First, the letter of appointment of Shri Moti Ram does not mention the fact that Sri G. K. Dutta has neglected or refused to act or is incapable of acting within the meaning of section 8(1) (b). Secondly, the transfer of Shri G. K. Dutta to a post under the Government of West Bengal cannot be a valid ground for Shri G. K. Dutta vacating his office of arbitrator. Thirdly, admittedly, Shri G. K. Dutta entered on the reference and therefore the ground shown in the said letter that he was transferred before entering on the reference is incorrect. Fourthly, assuming the vacancy had arisen, the Union of India did not appear to have served a written notice to the respondent to concur in the appointment of Shri Moti Ram or in supplying the vacancy u/s 8(1) of the Act. Mr. Sen has drawn our attention to the formal letter of appointment of Shri Moti Ram (p. 44 of the paper book) where it appears that a copy of the said letter was alleged to have been served on the respondent. The respondent, however, has denied the receipt of this letter or the knowledge of the appointment of Shri Moti Ram until January 14, 1975 when the respondent received the said letter under registered post. It is quite possible that Shri Moti Ram was appointed on November 12, 1974 but we are not satisfied that the notice of his appointment was served prior to January 14, 1975. This is also clear from the letter of Shri G. K. Dutta dated December 5, 1974 (p. 29 of the Paper Book) where Shri G. K. Dutta has written a letter to the Ministry of Agriculture and Irrigation, New Delhi on the basis that he was still continuing as the arbitrator. However we like to make it clear that non-receipt of the notice of appointment would not have made the appointment invalid if it was otherwise valid. Lastly, the letter dated September 25, 1974 written by Shri G. K. Dutta to the Zonal Manager, Farak-ka Barrage Project also shows that he was not neglecting or refusing to act or was incapable of acting as an arbitrator. The relevant portion of the letter reads as follows :

I may point out in this connection that I made repeated request to you several

times in the past to appoint some other arbitrator for taking this arbitration case as I have already been repatriated to my parent department. Unfortunately, I am not aware of any action from your side on account.

* * * * *

I, therefore, intend to go to Farakka sometime next month for examining the documents and for further actions from my side. I would, however, like to point out that all expenditure on this account will have to be borne by the project authority. ** ** *

Even if I am to continue as an arbitrator to this case it would not be possible for me to make and publish by 17th October, 1974 and as such, I am enclosing a copy of this letter to both of the partes with request to them to mutually agree or for extension of the time by two months from the above date.

It is, therefore clear that although Shri G. K. Dutta expressed his difficulty in continuing as an arbitrator he cannot be said to be incapable of acting as an arbitrator. We are therefore satisfied that there has been no vacancy in law and, as such, the appointment of Shri Moti Ram as the new arbitrator cannot be justified,

11. Mr. Sen has, however, submitted that Section 8(1) has no application to the facts of the case, inasmuch as, the appointment of Shri Moti Ram as an arbitrator has already been agreed upon by the respondent under the arbitration agreement dated June 30, 1965. The contractor comany had agreed to the sole arbitration of the Chief Engineer, Farakka Barrage Project or administrative head of the Farakka Barrage Project or any other person appointed by him. Relying upon Surendra Nath Pal v. Vnion of India AIR 1968 Cal. 183, Mr. Sen has referred to the Arbitration Clause in the instant case which itself provides that the dispute shall be referred to the sole arbitration of the Chief Engineer or the administrative head of the Farakka Project or of some other person appointed by him. Shri Moti Ram has been appointed under the same Arbitration Clause and the respondent bad agreed to the same at the time when the arbitration agreement was entered upon. Thus, Shri Moti Ram having been duly appointed under the Arbitration Clause by consent of the parties, appointment of a new arbitrator by Court is not justified in law. In this connection, Mr. Sen also wanted to make a distinction between appointment of an arbitrator by the parties and appointment an arbitrator by a third person. It is also urged by him that the power to appoint an arbitrator has not been exhausted by the appointment of Shri G. K. Dutta as contended by Mr. Mukherjee on behalf of the Contractor company. In our view, the facts in the said Calcutta Bench decision are distinguishable. In the said case, material portions of the arbitration agreement read as follows. "the disputes or difference arising daring or after the subsistence of this contract * * * * * shall be referred to the arbitration of the Secretary to the Government of India, Ministry of Works, Housing and Supply and if the Secretary to the Government of India, Ministry of Works, Housing and Supply is

unable or unwilling to act to the sole arbitration, some other person appointed by the Government of India, Ministry of Works, Housing and Supply, willing to act, as such, arbitrator". In the said case Mr. Desai was first appointed as Arbitrator by the said Secretary in September 1961. In August 1962, Mr. Desai resigned from the office of the Arbitrator in December 1962 and the Secretary appointed Mr. Iyer as the arbitrator in place of Shri Desai. It was under those circumstances, that the learned Judges made an observation that the appointment of Mr. Iyer was a valid appointment. Admittedly, in the said case, Mr. Desai being unwilling to act as an arbitrator actually resigned and the Secretary appointed Shri Iyer as his second nominee. It is true in the instant case also the Chief Engineer or the administrative head of the Farakka Barrage Project appointed (i) Mr. Chowdhury (ii) Mr. G. K. Dutta and (iii) Mr. Moti Ram. The appointment of the second arbitrator, Mr. G. K. Dutta, had not been objected to by the Contractor company on the ground that the power to appoint a second arbitrator was exhausted. It is not necessary for us to discuss whether the legal effect of the third party's power is exhausted after the appointment of the first arbitrator nor is it necessary to deal with the question whether the appointing authority being an agent of one of the parties could be strictly described as a third person. As we have held that the appointment of Shri Moti Ram is invalid for other reasons, we need not go into the question whether the power of the appointing authority to appoint a fresh arbitrator is exhausted or not. As discussed earlier, Shri G. K. Dutta has not resigned nor could it be said that he was unable to act as an arbitrator. Thus, it cannot be held that a vacancy has been caused either under the arbitration agreement itself or u/s 8(1) of the Act. Admittedly, Shri G. K. Dutta entered on the reference. In the formal letter of appointment of Mr. Moti Ram dated November 14, 1974 the reason provided for the vacancy is the transfer of Shri G. K. Dutta from the office of Superintending Engineer, Planning and Design Circle, Farakka Barrage Project to Government of West Bengal. This is not a contingency which is contemplated u/s 8(1). Even assuming that Shri G. K. Dutta was not very keen to continue as an arbitrator on account of transfer as set out in his letter dated September 25, 1974, he has made it clear that he is not unwilling to continue as arbitrator if there is an extension of time to file the award by another two months. The application before the court below was made on December 23, 1974. The date of appointment of Shri Moti Ram according to the appellant is November 12, 1974. But the letter of the appointed arbitrator Shri G. K. Dutta dated November 30, 1974 clearly shows that he did not even know about the appointment of Shri Moti Ram. For all these reasons, there is no valid appointment of Shri Moti Ram in fact or in law. Mr. Sen has conceded that he does not intend to argue that, in any event, the appeal is maintainable on the ground that the impugned order is a "judgment" within the meaning of clause 15 of the Letters Patent. As discussed above, the application has been made under Sections 11 and 12 of the Indian Arbitration Act and the learned Judge has exercised his jurisdiction under the said sections. Even assuming that the impugned order is wrong order, such order cannot be said to be an order without jurisdiction.

For all these reasons, all the contentions of Mr. Sen fail. The appeal is not maintainable and is dismissed. Cost of this appeal will be costs in the arbitration proceedings.

S.K. Mukherjee, J.

I agree.