

(1992) 02 DEL CK 0071
In the Delhi High Court
Case No : Suit No. 548a of 1989

Union of India

APPELLANT

Vs

Vipal Kumar Jain and Others

RESPONDENT

Date of Decision : 13-02-1992

Acts Referred:

Arbitration Act, 1940 — Section 20
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1992) 22 DRJ 582

Hon'ble Judges : Sat Pal, J;G.C. Mittal, J

Bench : Division Bench

Advocate : S.K. Mahajan, S.N. Mehta and S.K. Khanna, for the Appellant;

Judgement

Gokal Chand Mital, C.J.

(1) This appeal is directed against the order dated 4th December, 1989 passed by the learned Single Judge of this Court in Suit No. 548-A/89 directing the appellant to remit a sum of Rs. 44,06,251.00 to the Registrar of this Court and order dated 10th August, 1990 passed in is No-322/90, in the same suit, by which the application filed by the appellant for recalling the aforesaid order dated 4th December, 1989 regarding deposit of Rs. 44,06,251.00 by the appellant was dismissed.

(2) The facts of the case briefly stated are that the Delhi Electric Supply Under Taking (hereinafter referred to as "DESU") decided to install two number power generating sets of 67.5 Mw capacity each in place of old power plant at Rajghat. Desu entrusted the job of disposal of "B" Thermal Power Station of Rajghat Power House to the appellant so that the premises occupied by "B" Thermal Power Station could be vacated and two new power generating sets be commissioned. The appellant invited tenders for sale of the said power station at Rajghat. The tender of Shri Vivek Jain, proprietor of M/s. Devender & Sons (respondent No. 2 herein) was accepted and sale letter was issued to him. The old power plant at Rajghat was agreed to be sold at price of Rs. 1,65,61,007.00

plus local taxes as applicable. AsumofRs. 1,00,000.00 was received by the appellant along with the tender.

(3) Respondent No. 2 is alleged to have committed a breach in the performance of his obligations under the agreement by which he had agreed to purchase the said power plant and the appellant by letter dated 16.9.1988 cancelled the contract at the risk and cost of the said respondent. The earnest money of Rs. 1,00,000.00 paid by respondent No. 2 was forfeited. After forfeiture of the said earnest money, balance sum of Rs. 44,06,251.00 was withheld by the appellant for adjustment against the loss which the appellant might suffer in conducting resale at the risk of the said respondent. It is the case of the appellant that in the risk resale, the appellant suffered losses to the extent of Rs. 46,32,652.45 paise.

(4) Respondent No. 2 filed a writ petition bearing C.W.No. 2400/88 in this Court challenging the cancellation of his contract, forfeiture of earnest money of Rs. 1,00,000.00 and withholding of the amount of Rs. 44,06,251.00 by the appellant. The said writ petition was dismissed by a Division Bench of this Court by order dated 2nd December, 1988. Against this order respondent No. 2 filed SLP in the Supreme Court, which was also dismissed vide order dated 7th December, 1988. While dismissing the SLP the Supreme Court, however, observed that respondent No. 2 may approach the appropriate authority for refund of the said amount.

(5) Thereafter, respondent No. 2 filed a suit bearing No. 3074/88 in this Court and also filed an application for interim stay. Initially ex-parte stay was granted by a learned Single Judge of this Court but after hearing the counsel for the parties, the learned Single Judge by his order dated 21st December, 1988 vacated the interim stay passed in favor of respondent No. 2. Aggrieved by this, the said respondent filed an appeal before this Court bearing FAO(OS) 199/88, which was also dismissed by a Division Bench of this Court by judgment dated 6th February, 1989. Against this judgment respondent No. 2 filed a SLP in the Supreme Court which was also dismissed by the Supreme Court vide order dated 15th February, 1989.

(6) During the course of arguments we were, however, informed that the dispute between the appellant and respondent No. 2 was referred to an arbitrator who has since given his award but the award has not yet been filed by the arbitrator for making it a rule of the Court.

(7) Respondent No. 1, who alleges himself to be a partner of respondent No. 2 claims certain amounts and filed a suit bearing No.S. 548-A/89 u/s 20 of the Arbitration Act against respondent No. 2 in this Court for appointment of an arbitrator to adjudicate upon the disputes allegedly arisen between respondent No. 1 and 2. It has been alleged by the appellant that the aforesaid suit was filed by respondent No. 1 in collusion with respondent No. 2. In this suit it was contended on behalf of respondent No. 1 that a sum of Rs. 44,06,251.00

belonging to respondent No. 2 stands deposited with the appellant in connection with the proposal to purchase of "B" Thermal Power Station at Rajghat. Though the appellant was not a party in the suit, the learned Single Judge of this Court vide order dated 4th December, 1989 directed the appellant to remit the aforesaid amount of Rs. 44,06,251.00 to the Registrar of this Court within two weeks. After the service of the aforesaid order, the appellant filed an application u/s 151 of the CPC on 11th January, 1990 for recalling the order dated 4th December, 1989 directing the appellant to deposit the aforesaid sum of Rs. 44,06,251.00 with the Registrar of this Court. The learned Single Judge vide order dated 10th August, 1990 dismissed the application of the appellant and directed to deposit the amount in question within fifteen days from the date of the order. The aforesaid two orders dated 4th December 1989 and 10th August, 1990 passed by the learned Single Judge have been challenged in this appeal.

(8) In Civil Writ No-2440/88 filed by respondent No. 2, inter alia, relief claimed was "issue an appropriate writ, order/direction in the nature of certiorari and/or otherwise quashing the letter dated 16-9-1988 cancelling the contract of "B" Thermal Power Station and forfeiting the petitioner's money of Rs. 1,00,000.00 and the letter of respondent dated 16-9-1988 withholding the amount of Rs. 44,06,251.00 and the action of respondent No. 2 in accepting the tender offered by respondent No. 4". As stated above the said writ petition was dismissed by a Division Bench of this Court on merits by a detailed judgment dated 2nd December, 1988. In the SLP filed by respondent No. 2 against the said judgment on 7th December, 1988 it dismissed the petition with the following order:-

"AFTER hearing the learned counsel for the petitioner we find no merit in the petition. The petitioner's contentions that the amount deposited by him is liable to be refunded to him cannot be covered in the present petition. If the petitioner made approach the appropriate authority this may be considered. SLP is dismissed."

(9) Relying on counsel for respondent No. 1 submitted that the matter regarding refund of the amount deposited by respondent No. 2 with the appellant was left open by the Supreme Court and in view of this, the impugned, orders passed by the learned Single Judge were legal and justified. We, however, find no merit in the submission made by the learned counsel.

(10) From the orders passed by the Supreme Court it is clear that it was respondent No. 2 who alone could approach the appropriate authority regarding refund of the amount of Rs. 44,06,251.00 . In fact as stated hereinabove the dispute between the appellant and respondent No. 2 which indeed the matter regarding refund of the aforesaid amount was referred to an arbitrator who has since given his award. But respondent No. 1 has no locus standi to approach any authority or court of law regarding refund of the said amount. In fact respondent No. 1 in Suit No. 548-A/89 has imp leaded only respondent No. 2 as defendant and has not imp leaded the appellant as one of the defendants. The approach of the learned Single Judge is I totally wrong as no such order could be passed

against the appellant who is not at party in the suit. In view of these facts the impugned order dated 4th December, 1989 passed by the learned Single Judge directing the appellant to remit the sum of Rs. 44,06,251.00 in Suit No. 548-A/89 filed by respondent No. 1 against respondent No. 2 at sustainable in law.

(11) On the same grounds the order dated 10th August, 1990 passed by the learned Single Judge rejecting the application filed by the appellant for recalling the order dated 4th December, 1989 is also liable to be set aside.

(12) In view of the aforesaid discussion we allow the appeal with costs and set aside the impugned orders dated 4th December, 1989 and 10th August, 1990.