

[2009] 9 S.C.R. 579

HINDUSTAN COPPER LIMITED
v.
M/S. NICCO CORPORATION LTD.
(Civil Appeal No. 5630 of 2008)

MAY 20, 2009

[DR. MUKUNDAKAM SHARMA AND DR. B.S.
CHAUHAN, JJ.]

Arbitration and Conciliation Act, 1996 – ss. 21(1)(e), 34 and 37(1)(b) - Arbitration award – Petition u/s. 34 challenging the award – Petition held as not maintainable by Single Judge of High Court – Appeal u/s. 37 also dismissed as not maintainable by Division Bench of High Court – Held: Petition and the appeal were not maintainable – Matter remitted to the competent civil court as envisaged u/s. 2(1)(e).

A petition was filed by the appellant u/s. 34 of Arbitration and Conciliation Act, 1996 challenging the award passed by the sole arbitrator. Single Judge of High Court dismissed the same as not maintainable on the ground that the petition should have been filed before appropriate court as defined u/s. 2(1)(e) of the Act. The appeal thereagainst u/s. 37 was also dismissed by the Division Bench of High Court, holding that neither the petition u/s. 34 nor the appeal u/s. 37 were maintainable. Hence the present appeal.

Disposing of the appeal, the Court

HELD: 1. The application u/s. 34 of Arbitration and Conciliation Act, 1996, is to be filed before a court which is empowered and has jurisdiction to entertain and decide such objection. The expression 'Court' is defined under the provision of Section 2(1)(e) of the Act, meaning the Principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary

A original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration. Section 37 of the Act applies only when the pre-conditions mentioned therein are satisfied. It is not correct to say that since the Single Judge refused to set aside the arbitration award, therefore an appeal could be preferred by the appellant as envisaged u/s. 37 (1)(b), as the petition filed u/s. 34 was dismissed on the ground of maintainability of the petition and not on the ground by refusing to set aside the arbitration award. [Para 6] [582-B-H; 583-A]

C 2. The matter and the petition filed u/s. 34 is remitted to the civil court, competent to hear and decide the same as envisaged u/s. 2(1)(e) of the Act. The matter is pending for a very long period and shuttling from one court to other court. Therefore, the court to which the matter is entrusted to by the District Judge shall make all endeavor to dispose of the same as expeditiously as possible. [Paras 6 and 7] [583-C-E]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5630 of 2008.

F From the Judgment & Order dated 4.1.2008 of the High Court of Jharkhand at Ranchi in an Arbitration Appeal No. 22 of 2007 under Section 37(1) of the Arbitration and Conciliation Act, 1996.

D. Roy Chowdhury, Nandini Sen (for Deba Prasad Mukherjee) for the Appellant.

Rahul Gupta, Pinkai Addy (for Chiraranjan Addey) for the Respondent.

G The Judgment of the Court was delivered by

H **DR. MUKUNDAKAM SHARMA, J.** 1. This appeal is directed against the Judgment and Order passed by the learned Chief Justice of the Jharkhand High Court taking up the appeal and disposing of the said appeal by his Order dated 4.1.2008.

The appellant herein filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the legality of the Award dated 28.9.2006 passed by the Sole Arbitrator with a prayer to set aside the same. The learned Single Judge before whom the petition was filed held the same to be not maintainable. On appeal filed the Chief Justice held that such an appeal is also not maintainable.

2. We have heard learned counsel appearing for the parties.

3. It is disclosed from the records that an application was filed by the respondent herein before the Jharkhand High Court at Ranchi under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying for appointment of an Arbitrator to adjudicate upon and decide the disputes arising between the parties in terms of the arbitration agreement. The Jharkhand High Court entertained the said application and appointed Justice P.K. Sarkar, who is a retired Judge of the Patna High Court to adjudicate upon and decide the disputes between the parties. Pursuant to the said order, the learned Arbitrator entered into the Reference and passed the Award on 28.9.2006. After the Award was passed, the appellant herein filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Award dated 28.9.2006 passed by the Sole Arbitrator. The Registry filed an objection regarding the maintainability of the aforesaid petition under Section 34 of the Act. According to the Registry, against the aforesaid Arbitration Award, a petition under Section 34 of the Act should have been filed before the appropriate court as defined under Section 2(e) of the Arbitration and Conciliation Act, 1996. The learned Single Judge considered the aforesaid objection raised by the Registry of the High Court and agreed with the said objection and held that the aforesaid petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996, is not maintainable.

4. Being aggrieved by the said order, the appellant filed an appeal invoking the provision of Section 37 of the Act. The

A said appeal was entertained by the then Chief Justice of the High Court of Jharkhand. After hearing the then Chief Justice dismissed the said appeal on the ground that the aforesaid application under Section 34 or appeal under Section 37 of the Arbitration and Conciliation Act, 1996, is not maintainable before the High Court. In other words, according to the Chief Justice the same should have been filed before an appropriate court as envisaged under the provision of the Arbitration and Conciliation Act, 1996.

C 5. Counsel appearing for the appellant has submitted before us that since the aforesaid appeal which the appellant had filed was an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, it should have been entertained and decided by a Division Bench, since the Order of the learned Single Judge was under challenge.

D 6. We are unable to accept the aforesaid contention which is found to be prima facie untenable in view of and in the light of the provisions of the Arbitration and Conciliation Act, 1996. The said application under Section 34 is to be filed before a court which is empowered and has jurisdiction to entertain and decide such objection filed under Section 34 of the Act. The expression 'Court' is defined under the provision of Section 2(1)(e) of the Act, meaning the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration. Section 37 of the Act on which emphasis was given by counsel for the appellant applies only when the pre-conditions mentioned therein are satisfied. The submission of the learned counsel appearing for the appellant is that since the learned Single Judge refused to set aside the arbitration award, therefore an appeal could be preferred by the appellant as envisaged under Section 37 (1)(b) of the Arbitration and Conciliation Act, 1996. We are again unable to persuade ourselves to accept the aforesaid contention of the counsel appearing for the appellant for petition filed under Section 34

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of the Arbitration and Conciliation Act, 1996, was dismissed on the ground of maintainability of the petition and not on the ground by refusing to set aside the arbitration award. Being faced with the aforesaid situation, the counsel appearing for the appellants states that he would not like to delay the proceeding and rather would desire that the proceedings are expedited. In terms of his statement and prayer and also in view of the submission of the counsel appearing for the respondent who has submitted that the matter requires urgent attention of the court, we remit the matter and the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, filed by the appellants to the civil court competent to hear and decide the same as envisaged under Section 2(1)(e) of the Act.

7. The petition under Section 34 of the Act filed by the appellants shall now be listed before the District Judge, East Singhbhum, where the parties shall appear on 29th of May, 2009, when the District Judge shall allot the petition under Section 34 to an appropriate court in terms of the provision of Section 2(1)(e) of the Act. We also feel that the matter is pending for a very long period and shuttling from one court to other court. Therefore, the court to which the matter is entrusted to by the District Judge shall make all endeavor to dispose of the same as expeditiously as possible preferably within a period of six months from the date of receiving the records.

8. The orders of the learned Single Judge as also of the then Chief Justice of Jharkhand High Court stand modified to the aforesaid extent.

9. We are informed that the petition under Section 34 of the Arbitration and Conciliation Act, 1996, is now lying in the Registry of the High Court of Jharkhand. The same shall be transmitted immediately to the District Judge in terms of this order.

10. The appeal is disposed of accordingly.

11. Copy of this order be given dasti to the parties.

K.K.T.

Appeal disposed of. H