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RASHTRIYA ISPAT NIGAM LTD.

v.

M/S. PRATHYUSHA RESOURCES & INFRA PRIVATE
LIMITED AND ANR.

B

(Civil Appeal No. 3699 of 2006)

FEBRUARY 12, 2016

[PINAKI CHANDRA GHOSE AND R.K. AGRAWAL, JJ.]

C

Limitation – Notice of Arbitration – Whether beyond limitation – Held: The cause of action arises when the real dispute arises i.e. when one party asserts and the other party denies any right – In the facts of the present case, the date when the cause of action arose, was not beyond limitation period – Hence the notice of arbitration was not barred by limitation -- Appeal is dismissed.

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3699 of 2006

From the Judgment and Order dated 16.12.2005 of the Division Bench of the High Court of Judicature for Andhra Pradesh at Hyderabad in C.M.A. No. 254 of 2005.

E

Chander Uday Singh, Sr. Adv., Pratap Venugopal, Ms. Surekha Raman, Anuj Sarma, Ms. Niharika, (For M/s. K. J. John & Co.), Advs. with him for the Appellant.

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Mohan Parasaran, Sr. Adv., K. Raghavacharyulu, Sridhar Potaraju, Kailash Pandey, Gaichang Pou Gangmei, Ranjit Singh, Arjun Singh, A. Mukunda Rao Angara, Ms. Arunima Pal, Advs. with him for the Respondent.

The Order of the Court was delivered by

ORDER

G

1. The present appeal is filed by the appellant challenging the judgment and order dated 16.12.2005 passed by the Division Bench of the High Court of Judicature for Andhra Pradesh at Hyderabad, whereby the order dated 6.7.2004, passed by the learned District Judge, Vishakhapatnam, was set aside and the arbitration award was confirmed.

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2. The appellant - Rashtriya Ispat Nigam Ltd., which is popularly

known as Visakhapatnam Steel Plant, is a Government of India A
Undertaking, inter alia, engaged in manufacture and sale of steel products
and pig iron in the domestic and export markets. Respondent No.1 is a
transporter, stevedoring, clearing & forwarding agent at Visakhapatnam.
The appellant floated a tender vide Notification dated 31.03.1992 for
transportation of pig iron etc. from its Visakhapatnam Steel Plant to the B
Visakhapatnam Port area. Respondent No.1 being the successful bidder,
was awarded the work order on 28.07.1992. An Agreement was entered
into between the appellant and respondent No.1 on 24.02.1993 which
was to expire on 31.03.1993. But owing to circumstances, the work was
extended several times and the contract was finally completed on
23.10.1997. Issues arose as to the rate of escalation based on the base C
year 1992 or 1994. Respondent No.1 submitted final bill having three
annexures out of which first two were admitted, however, the appellant
rejected the third one which was as to deciding the base year for
calculating escalation.

3. The Arbitration Tribunal (consisting of a retired Judge of the D
High Court) decided the five issues framed in favour of the respondent/
claimant whereby the base year was adjudged as 1992, the bar of limitation
was negated and the calculations made by the Claimant were upheld.
The appellant challenged the said award under Section 34 of the Arbitration
Act, 1996 before the Ld. District Court which set aside the award as the
relief was barred by limitation. Upon appeal under Section 37 of the Act E
by the respondent/claimant, the High Court set aside the order of the
District Judge and upheld the award of the Arbitrator.

4. The appellant/ Employer herein have challenged the said Order
of the High Court. The bone of contention in this appeal is the question
of relief being barred by the law of limitation. The appellant submits that F
the High Court has arrived at a wrong conclusion by invoking Article
137 of the Limitation Act, 1963, and since the contract was in the nature
of work contract, Article 18 would apply. This Article would thereby
provide that the right to sue accrued when the contract was completed
i.e. 23.10.1997 and hence notice for arbitration was beyond the period G
of limitation. The respondent/claimant also argued that the dispute as to
determination of base year for calculating escalation arose vide letter
dated 15.7.1996 and hence the notice for arbitration was issued beyond
the period of limitation. Either ways the cause of action in favour of the
respondent/claimant accrued, if any, is an imperfect right.

A 5. We shall now consider the settled law on the subject. This
Court in a catena of judgments has laid down that the cause of action
arises when the real dispute arises i.e. when one party asserts and the
other party denies any right. The cause of action in the present case is
the claim of the respondent/claimant to the determination of base year
for the purposes of escalation and the calculation made thereon, and the
B refusal of the appellant to pay as per the calculations.

6. We find that the view taken by the High Court is correct as to
when the real dispute arose between the parties to be adjudicated by the
Arbitrator. It is nobody's case that the contract came to an end on
23.10.1997, but the difference on determination of base year first arose
C in the letter dated 15.7.1996. The said letter is already controverted as
the service of the same was seriously contested before in Arbitration.
However, the said letter was there even before completion of the work
and prior to that the respondent/claimant had reserved his right to claim
money later since the contract was still subsisting then. In light of the
D above reservation by the respondent/claimant, bills were raised in 1998
vide letter dated 4.9.1998, which actually resulted into exchange of letters
which formed the base of dispute between the parties. It is an admitted
fact that the bills were not finalized as could be seen from the letters
dated 7.2.2000 and 9.5.2000. Therefore, we find that the findings of the
learned Arbitrator and concurrently affirmed by the High Court are
E correct on the point that the cause of action arose on or after 4.9.1998.
Hence, the said letter by the respondent/claimant to the appellant to
initiate arbitration was not barred by the law of limitation.

7. Accordingly, the civil appeal is dismissed with no order as to
costs.

F Kalpana K. Tripathy

Appeal dismissed.