

# **M/S Indian Farmers Fertilizer ... vs M/S Manish Engineering Enterprises on 9 March, 2021**

**Bench: A.M. Khanwilkar, Dinesh Maheshwari, Sanjiv Khanna**

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 837 OF 2021  
(Arising from SLP(C) No.4932 of 2019)

M/S INDIAN FARMERS FERTILIZER  
COOPERATIVE LIMITED & ORS.

APPELLANT(S)

VERSUS

M/S MANISH ENGINEERING ENTERPRISES

RESPONDENT(S)

O R D E R

Leave granted.

This appeal emanates from the judgment and order passed by the High Court of Judicature at Allahabad dated 22.01.2019 in Arbitration and Conciliation Application No.112/2004, whereby the High Court allowed the application and appointed Dr. Y.P. Gupta, Chairman, Yash Krishi Takniki Evam Vigyan Kendra and a Retired Professor, Department of Civil Engineering as Arbitrator to resolve the dispute between the parties.

This direction came to be issued despite the serious objection taken by the appellant(s) regarding the existence and genuineness of the purported arbitration agreement. Further, according to the appellant(s), the claim or disputes raised was clearly barred by limitation.

The High Court vide impugned judgment observed that these issues ought to be examined by the Arbitrator and need not be dealt with at this stage.

Our attention has been invited to the recent three Judge Bench decision of this Court in “Vidya Drolia & Ors. vs. Durga Trading Corporation”, reported in (2021) 2 SCC 1, which is directly on the point. Amongst others, it has been held that the High Court in a given case while deciding an application under Section 11(4) of the Arbitration and Conciliation Act, 1996, can undertake ‘the prima facie test’ examination to check manifest cases of non-existent and invalid arbitration agreements and ex facie time barred and dead claims. This limited exercise is to weed out and stop

barefaced and pellucid meritless, frivolous and dishonest litigation at the threshold. However, the principle 'when in doubt, do refer' applies. Therefore, when the contentions are arguable, when consideration in summary proceedings would be insufficient and inconclusive, when facts are contested etc., the matter/disputes should be referred to the Arbitrator.

The counsel for the respondents vehemently submitted that they have placed on record the document, namely, the arbitration agreement, which is a genuine document. However, we need not elaborate on the arguments advanced before us for the nature of the order we propose to pass as we are of the opinion that the issue and contentions require reconsideration in accordance with law keeping in mind the legal ratio in Vidya Drolia (supra). These contentions can be considered by the High Court in the remand proceedings.

We accordingly set aside the impugned order and the judgment and relegate the parties to the High Court by restoring the application for appointment of the arbitrator to its original number for being considered afresh. The examination would be in terms of the ratio in Vidya Drolia (supra).

We may not be understood to have expressed any opinion either way on any of these contentions, or as may be available to the parties in the remanded proceedings. All contentions are left open.

The parties to appear before the High Court on 22nd March, 2021, when the Court may proceed to pass appropriate directions and dispose of the application expeditiously as the same has been instituted in the year 2004.

The appeal and pending applications are disposed of accordingly.

.....,J.

(A.M. KHANWILKAR) .....,J.

(DINESH MAHESHWARI) .....,J.

(SANJIV KHANNA) NEW DELHI MARCH 09, 2021.

ITEM NO.9

Court 5 (Video Conferencing)

SECTION XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C)

No(s). 4932/2019

(Arising out of impugned final judgment and order dated 22-01-2019 in ARBCA No. 112/2004 passed by the High Court Of Judicature At Allahabad) M/S Indian Farmers Fertilizer Cooperative Limited & Ors. APPELLANT(S) Versus M/S Manish Engineering Enterprises RESPONDENT(S) IA

No. 61921/2020 - APPLICATION FOR PERMISSION IA No. 61922/2020 - EXEMPTION FROM FILING AFFIDAVIT IA No. 102794/2020 - EXEMPTION FROM FILING O.T. IA No. 31332/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES IA No. 99798/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES IA No. 102798/2020 - PERMISSION TO FILE SUPPLEMENTARY ADDITIONAL COUNTER AFFIDAVIT/AFFIDAVIT IA No. 102796/2020 - STAY APPLICATION) Date : 09-03-2021 These matters were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR HON'BLE MR. JUSTICE DINESH MAHESHWARI HON'BLE MR. JUSTICE SANJIV KHANNA For Petitioner(s) Mr. K.K. Venugopal, Ld. A.G. Mr. Alok Kumar, Adv.

Ms. Chinmayee Chandra, Adv. Ms. Somya Yadav, Adv.

Ms. Drishti Harpalani, Adv. Mr. Balaji Srinivasan, AOR For Respondent(s) Mr. V.K. Shukla, Sr. Adv.

Ms. Parul Shukla, AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal and pending applications are disposed of in terms of the signed order.

(NEETU KHAJURIA)  
COURT MASTER

(VIDYA NEGI)  
COURT MASTER

(Signed order is placed on the file.)