

Supreme Court of India

Damodar Engg. & Construction & Co vs Board Of Trustees on 16 November, 1993

Equivalent citations: 1994 AIR 1141, 1994 SCC (1) 370

Author: M Venkatachalliah

Bench: Venkatachalliah, M.N.(Cj)

PETITIONER:

DAMODAR ENGG. & CONSTRUCTION & CO.

Vs.

RESPONDENT:

BOARD OF TRUSTEES

DATE OF JUDGMENT 16/11/1993

BENCH:

VENKATACHALLIAH, M.N. (CJ)

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VENKATACHALLIAH, M.N. (CJ)

AGRAWAL, S.C. (J)

ANAND, A.S. (J)

CITATION:

1994 AIR 1141

1994 SCC (1) 370

JT 1993 (6) 335

1993 SCALE (4) 414

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. By this petition, the petitioner, as proprietor of M/s Damodar Engineering & Construction Company, is seeking special leave to appeal against the judgment dated July 17, 1992 of the learned Single Judge of the Calcutta High Court whereby the application filed by the respondent, namely, the Board of Trustees for the Port of Calcutta, challenging a reference to an arbitrator and for removal of the arbitrator under Sections 5, 11 and 33 of the Arbitration Act, 1940 (hereinafter referred to as 'the Act') has been allowed and the reference has been superseded and the appointment of the arbitrator, (respondent 2 in the said application of the respondent), was revoked.

2. The petitioner entered into a contract with the respondent in the year 1976 for construction of a

permanent road between Ranichak and the Main Feeder Road at Haldia. The said contract contained an arbitration clause. The petitioner, invoking the arbitration clause, referred the disputes arising out of the contract to the arbitration of an arbitrator appointed by the Institute of Engineers India. The Statement of Claim filed by the petitioner before the arbitrator covered a number of matters including refund of security deposit amounting to Rs 60,940 as well as compound interest at the rate of 18 per cent per annum on the said amount from February 10, 1977 till date of payment. The arbitrator made an award on September 26, 1984 whereby he awarded a sum of Rs 4,95,000 to the petitioner. The said award was, however, set aside, in appeal, by a Division Bench of the Calcutta High Court by judgment dated December II, 1989. Special Leave Petition (Civil) Nos. 2929-30 of 1990 filed by the petitioner against the said judgment of the Calcutta High Court were disposed of by this Court by order dated July 23, 1990, whereby it was directed that:

"... in all these matters a sum of Rs 7,50,000 (Rupees Seven lakhs and fifty thousand only) should be paid to the petitioner in full and final settlement of these matters within 3 months from today. If the said sum is not paid within the prescribed period the petitioner shall be entitled to interest at the rate of 12% per annum."

3. While the aforementioned proceedings for setting aside the arbitral award were pending the petitioner invoked the arbitration clause for a second time and the same arbitrator was appointed again to arbitrate on the dispute. The Statement of Claim for Rs 5,85,456.71 in the said reference related to refund of the security deposit of Rs 60,943. The claim for Rs 2,92,526.40 for loss of profit in business on account of withholding of the sum of Rs 60,943 as well as claim for Rs 1,94,132.31 by way of compound interest at the rate of 18 per cent per annum on the said amount of Rs 60,943 from 1978 to October 1986 and certain other incidental claims. The second reference to the arbitration was challenged by the respondent by filing an application under Sections 5, 11 and 33 of the Act which has been allowed by the learned Single Judge of the High Court.

4. We have heard the petitioner, who appeared in person, as well as Shri N.N. Gooptu, Advocate-General for the State of West Bengal who, on the request of the Court presented his case, as well as the learned Solicitor General for the respondent.

5. Having regard to the claim made by the petitioner in the first reference to arbitration which included the claim for refund of security deposit of Rs 60,943 as well as the claim for interest on the said amount and the order dated July 23, 1990 passed by this Court on the special leave petitions filed by the petitioner whereby it was directed that a sum of Rs 7,50,000 should be paid to the petitioner "in full and final settlement of these matters", we do not find any merit in the case of the petitioner. No ground is made out for interference with the order passed by the learned Single Judge of the High Court.

6. Special leave petition is, therefore, dismissed. No orders as to costs.