

M/S Nalanda Ceramic and Industries Ltd

Vs

M/s N. S. Choudhury and co. (p) ltd

Civil Appeal No. 883(N) of 1976

(Y. V. Chandrchud, P. S. Kaliasam JJ)

03.08.1977

JUDGMENT

CHANDRACHUD, J. –

1. On September 26, 1973 the appellants and respondents entered into an agreement at Ranchi under which the latter agreed to construct the appellant's factory at Getaulsud, Ranchi. That contract contained a clause providing that if any dispute or differences arose out of or in connection with the contract, the same shall be referred to an arbitrator. The contract was terminated on March 19, 1975 by another agreement which was entered into at Calcutta. Thereafter on December 30, 1975 the parties agreed to refer their differences to the arbitration of one A. K. Sen, a consulting engineer. This agreement was entered into within the Ordinary Original Civil Jurisdiction of the Calcutta High Court. On April 19, 1976 the arbitrator made an award under which the appellants became liable to pay to the respondent a sum of Rs. 6,56,740.

2. On May 1, 1976 the appellants filed an application under Section 33 of the Arbitration Act in the Court of the learned Subordinate Judge, Patna, challenging the existence, legality and validity of the agreement dated September 26, 1973, which was entered into at Ranchi.

3. The award, which the arbitrator made on April 9, 1976 was filed in the Calcutta High Court on May 7, 1976 whereupon, the appellants filed an application in the High Court praying that the award be taken off the file or in the alternative that an injunction be issued restraining the parties from taking any steps in regard to matters arising out of the award.

4. Two questions appear to have been argued before the Calcutta High Court in the petition filed by the appellants. The first of these can be disposed of with a self-evident answer. That question relates to the jurisdiction of the Calcutta High Court to entertain the proceedings arising out of the filing of the award by the Arbitrator. The award was made in pursuance of an agreement dated December 30, 1975 which was entered into by the parties in Calcutta. There can, therefore, be no doubt that the High Court of Calcutta has jurisdiction to entertain the present proceedings arising out of the filing of the award before it. In fact the judgment of the High Court shows that eventually the appellant's Counsel conceded that the High Court had jurisdiction to entertain the proceedings.

5. The other question which requires consideration is whether by reason of the provisions contained in Section 31(4) of the Arbitration Act, the Calcutta High Court can proceed with the matter arising out of the filing of the award Section 31(2) of the Arbitration Act provides, in so far as is relevant, that all questions regarding the validity, effect or existence of an arbitration agreement shall be decided by the court in which the award may be filed and by no other Court. The relevant part of

sub-section (4) of that section says that where in any reference, any application under the Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and that such proceedings shall not be taken in any other Court. It is urged on behalf of the appellants by Mr. Mukherji that since an application under Section 31(2) has already been filed by the appellants in the Court of the learned Subordinate Judge, Patna no further proceedings can be taken in the High Court of Calcutta by reason of the injunction contained in Section 31(4). The short answer to this contention is that the application filed by the appellants in the Patna Court relates expressly to the agreement of September 26, 1973 and not to the agreement of December 30, 1975 in pursuance of which the award has been made. In other words, whereas the application in the Patna Court arises out of the agreement of 1973 the present proceedings in the Calcutta High Court arise out of the agreement of 1975. The subject-matter of the two proceedings being different, Section 31(4) can have no application and the Calcutta High Court is therefore competent to proceed with the matter before it.

6. For these reasons we confirm the judgment of the High Court and dismiss the appeal with costs.

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