

State of Punjab

Vs

M/S Geeta Iron & Brass Works Ltd.

Special Leave Petition (Civil) No. 1781 Of 1977

(Jaswamat Singh, V. R. Krishna Iyer JJ )

14.10.1977

ORDER

KRISHNA IYER, J. -

1. This special leave to appeal is sought against a discretionary order passed by the Subordinate Judge declining to stay a suit under Section 34 of the Arbitration Act. This order was challenged in appeal and the High Court, after an exhaustive consideration, felt that the exercise of discretion was not so improper as to deserve interference.

2. Shri Hardev Singh is right to the limited extent that where parties have by contract agreed to refer their disputes to arbitration the Courts should as far as possible proceed to give an opportunity for resolution of disputes by arbitration rather than by judicial adjudication. Even so, there is a residual discretion in the Court to stay or not to stay having regard to the totality of circumstances. One weighty factor obviously is to find out whether the party, who invokes the arbitration clause has expressed his readiness to rely on it at the earliest stage. We are not investigating the merits of the matter under Article 136 but are satisfied that there is no gross error justifying grant of leave. We make it clear however that as a matter of law mere silence on the part of the defendant when a notice under Section 80 CPC is sent to him may not, without more, disentitle him to move under Section 34 and seek stay. In the present case, other circumstances have also been pressed into service by the Court.

3. While dismissing the special leave petition for the reasons mentioned above, we would like to emphasize that the deserved defeat of the State in the Courts below demonstrates the gross indifference of the administration towards litigative diligence. In the present case a notice under Section 80 CPC was sent. No response. A suit was filed and summons taken out to the Chief Secretary. Shockingly enough, the summons was refused. An ex parte proceeding was taken when the lethargic Government woke up.

4. We like to emphasize that Governments must be made account able by Parliamentary social audit for wasteful expenditure inflicted on the community by inaction. A statutory notice of the proposed action under Section 80 CPC is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now Section 80 has become a ritual because the administration is often unresponsive and hardly lives up to the Parliament's expectation in continuing Section 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for settling the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of government disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a

directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in Court. We are constrained to make these observations because much of the litigation in which Government are involved adds to the case load accumulation in Courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon government litigation so as to avoid waste of public money and promote expeditious work in Courts of cases which deserve to be attended to. Dismissed.

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