

M/s. Bharat Heavy Electricals Limited, Ranipur

Vs

M/s. Amar Nath Bhan Prakash

Civil Appeals Nos. 233-234 of 1974

(Syed M. Fazal Ali, P. N. Bhagwati JJ)

12.08.1980

JUDGMENT

It appears from the order of the High Court impugned in the appeal that the High Court has not correctly appreciated the position that the question whether there was discharge of the contract by accord and satisfaction or not, is a dispute arising out of the contract and is liable to be referred to arbitration and hence the application of the respondent under Section 20 of the Indian Arbitration Act should have been allowed and the matters in dispute between the parties, including the question whether or not there was discharge of the contract by accord and satisfaction should have been referred to arbitration. We, therefore, set aside the finding of the High Court that there was no accord and satisfaction of the contract and direct that the matters in dispute between the parties, including the question whether or not there was discharge of the contract by accord and satisfaction, be referred to the arbitration of Mr. V. S. Deshpande, retired Chief Justice of the Delhi High Court, under the arbitration clause contained in the contract between the parties. The arbitrator will make his award within three months from the date of entering upon the reference. He will first determine the question whether there was accord and satisfaction between the parties and/or whether the contract was discharged and if the decision on this issue is in favour of the appellant, the arbitrator will not proceed further in the matter and dismiss the claim of the respondent. But if on the other hand, he finds that there was no discharge of the contract by accord and satisfaction or otherwise, he will proceed to determine the claim of the respondent against the appellant on merits. The fees of the arbitrator will be deposited initially but the parties in equal shares and the arbitrator will ultimately decide as to who should bear the cost of the arbitration.

This order will not be treated as a precedent in case of any other dispute between the appellant and any other party. There will be no order as to costs of the appeal.

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