

Hombanana Nagappa Alur

Vs

Food Corporation of India

Civil Appeal No. 3631 of 1998

(S. C. Agarwal, B. N. Kirpal, V. N. Khare JJ)

03.08.1998

ORDER

1. Special leave granted.

2. This appeal arises out of a suit filed by the respondent for the recovery of Rs. 6587.80 towards the value of short supply of rice. The said suit was dismissed by the trial court. An appeal filed by the respondent was dismissed by the appellate court on the ground that the matter should have been referred for arbitration. The High Court in second appeal has disagreed with the said view of the appellate court and has held that since steps had not been taken under Section 34 of the Arbitration Act, 1940, the defendant should be deemed to have submitted jurisdiction to the civil court. But instead of remitting the matter to the appellate court for considering the appeal on merits, the High Court while allowing the second appeal has decreed the suit of the respondent. In our opinion, the said course was not permissible since the appellate court had not considered the matter on merits and had decided the appeal on a short point of matter being referred for arbitration. The only course which was open to the High Court in the circumstances was to remand the matter to the appellate court for considering the appeal on merits. In the circumstances, we are unable to uphold the judgment of the High Court. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the appeal filed by the respondent is remitted to the appellate court for considering on merits. No order as to costs.