

Orma Impex Pvt. Ltd.

Vs

Nissai Asb Pte. Ltd.

SLP (C) No. 12788 of 1998

(S. B. Majmudar, m. Jagannadha Rao JJ)

19.08.1998

ORDER

1. In this case, the High Court has taken the view that no further appeal would lie under Section 50 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") against an order under Section 45 refusing to refer parties to arbitration as passed by learned Single Judge. Therefore, the view seems to be that unless the Act expressly provides for appeal against the decision of the learned Single Judge exercising powers under Section 45 of the Act, no appeal would lie to the Division Bench. Unfortunately, Section 10 of the Delhi High Court Act, 1966 and clause 10 of the Letters Patent which apply to the High Court of Delhi have not been noticed therein. However, there is a two-Judge Bench decision of this Court in *State of W. B. v. Gourangalal Chatterjee* ((1993) 3 SCC 1) which supports the view taken by the High Court in the impugned judgment. In *State of W.B. v. Gourangalal Chatterjee* (1993) 3 SCC 1 this Court relied upon an earlier decision of the Court in *Union of India v. Mohindra Supply Co.* (AIR 1962 SC 256 : (1962) 3 SCR 497). The said decision was rendered with reference to the appealability of an order passed by the High Court in an appeal from the order of the subordinate court and not from the order passed by a learned Single Judge sitting on the Original Side of the High Court. There is also another decision of a two-judge Bench of this Court in *Vinita M. Khanolkar v. Pragna M. Pai* ((1998) 1 SCC 500 : AIR 1998 SC 424) which appears to have taken a contrary view relying upon clause 15 of the Letter Patent applicable to the High Court of Bombay. Thus, there appears to be conflict of decisions on this question.

2. Even that apart, as early as in 1953, a three-Judge Bench of this Court in *National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd.* (AIR 1953 SC 357) especially in para 7 thereof, held that when a question is stated to be referred to an established court, without more, the ordinary incidents of the procedure of that court will get attached including right of appeal from its decision and accordingly, clause 15 of the Letters Patent was held applicable to decisions rendered by learned Single Judges of the High Court exercising jurisdiction under the Trade Marks Act, even though under the said Act, no appeal was provided.

3. It is, therefore, appropriate to direct this special leave petition to be placed before a Bench of three Judges of this Court. The office may obtain appropriate order from Hon'ble the Chief Justice of India in this connection.

Court Masters