

SUPREME COURT OF INDIA

Neycer India Ltd.

Vs.

Gmb Ceramics Ltd.

(G Pattanaik, S Phukan and S Variava JJ.)

07.02.2002

ORDER

1. This appeal is directed against the order dated 28th August, 2000 of the Calcutta High Court on the question, whether the Calcutta High Court retains jurisdiction to entertain and decide the legality of an award passed by the arbitral tribunal?
2. The dispute centers round the "Forum Selection Clause" which was Clause 24 of the agreement to the effect. "... The city civil court, Madras shall be the only court, which shall have jurisdiction to enforce the arbitration award obtained under this clause".
3. According to the appellant, in view of the aforesaid Forum Selection Clause agreed to by the parties, it is the court at Madras which will have the jurisdiction and even if the city civil court does not have the pecuniary jurisdiction then the clause must be read to hold that the High Court at Madras only has the jurisdiction to entertain and decide the legality of an award. It transpires that way-back in the year 1990, an application had been filed by the respondent in the Calcutta High Court invoking its jurisdiction under Section 41 of the Arbitration Act and the Calcutta High Court did pass an order in that application. Subsequently, the present appellant filed an application in the Madras High Court for removal of one of the arbitrators, but the Madras High Court refused to entertain the application on the ground that the Calcutta High Court has already exercised the jurisdiction and by invoking the provisions of Section 31(4) of the Act, Madras High Court does not have any jurisdiction. Against the aforesaid judgment of the Madras High Court, the special leave petition was filed in this Court, but that stood disposed of on consent of parties. Against the order of the Calcutta High Court passed under Section 41 of the Arbitration Act, no special leave petition to this Court had been filed and, therefore, the said order attained finality. It may be further stated that on the death of the umpire, late Justice E.S. Venkataramiah, the respondent filed an application before the Calcutta High Court in November, 1997 and the appellant also filed a similar application before the Madras High Court. While the High Court of Calcutta allowed the application filed on behalf of the respondent and appointed justice M.M. Dutt as umpire, the Madras High Court rejected the application filed on behalf of the appellant on the ground that it has no jurisdiction and that order was not also assailed by the appellant by approaching this Court under Article 136 of the Constitution of India. Against the order of the Calcutta High Court appointing justice M.M. Dutt as umpire, the

appellant filed special leave petition in this Court which, however, was dismissed in limine. Subsequent to the aforesaid chain of events, award having been passed and filed before the Calcutta High Court, the present appellant filed an application before the same, contending the self-same question as to the lack of jurisdiction of Calcutta High Court to entertain the award and also decide the legality or enforceability of the same and, that having been held against the appellant, the present appeal by grant of special leave has been filed.

4. The learned counsel for the appellant vehemently urged that the issue of jurisdiction being a matter which goes to the root of the matter, it would always be open for an aggrieved party to raise the same and in the case in hand, notwithstanding several orders passed by the Calcutta High Court since the dismissal of the special leave petition in limine does not decide the matter and cannot be held to be *res judicata*, it would be open for the appellant to raise the issue. On merits, the learned counsel placed reliance on two decisions of this Court, namely, *A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem and Sant Ram & Co. v. State of Rajasthan and Ors.* , So far as the first case is concerned, suffice to say, that the question of jurisdiction had been taken up as preliminary issue and the issue having been answered one way or the other, the matter had ultimately been carried to this Court where this Court examined the question and answered the same. In the second case, the question for consideration was whether the power under Section 41 of the Arbitration Act can be exercised even when there is no initiation or pendency of proceeding before any court. In the case in hand, having regard to the circumstances and facts already narrated, we are of the considered opinion that the aforesaid decisions will have no application and, therefore, since the jurisdiction of the Calcutta High Court has already been decided by that very court itself and also by the Madras High Court in rejecting the appellant's application which the appellant never assailed in this Court, it would be futile to interfere with the impugned order at this stage. We, therefore, decline to interfere with the impugned order of the Calcutta High Court. An arbitration proceeding which was intended to be a speedy and efficacious remedy for an aggrieved party to which both the parties agreed, is protracting for this length of time on unnecessary issue on the question of jurisdiction, particularly having regard to the facts and circumstances already narrated. We, therefore, dismiss this appeal and direct that the Calcutta High Court would do well in disposing of the application pending before it at an early date.