

SUPREME COURT OF INDIA

Garg Trading Co.

Vs.

Union of India (Uoi)

(V.N. Khare, H.K. Sema and S.B. Sinha JJ.)

19.08.2003

ORDER

1. The appellant herein moved an application under Section 8 read with Section 20 of the *Arbitration Act, 1940* (hereinafter referred to as 'the Act') for appointment of Arbitrator. The said application was rejected by the Court on the ground that the said petition is barred by time.
2. Aggrieved, the appellant preferred an appeal under Section 39 of the Act to the High Court. The High Court rejected the application on the ground that the same is not maintainable as it is barred by limitation.
3. After we heard learned counsel for the parties, we find that the view taken by the High Court in rejecting the appeal preferred by the appellant was patently erroneous.

Section 39 runs as under:

"Appealable Orders:

(1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order:

An Order:

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;

(v) staying or refusing to stay legal proceedings where there is an arbitration agreement;

(vi) setting aside or refusing to set aside an Award:

Provided that the provisions' of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

4. Clause (iv) of Sub-section (1) of Section 39 clearly provides that filing or refusing to file an arbitration agreement is an order under Section 39, which is appealable. We are of the view that the rejection of petition under Section 20 of the Act on the ground of limitation by the Court tantamounts to refusing to file an arbitration agreement. For that reason, the appeal deserves to be allowed.

5. We accordingly set aside the judgment under challenge. The appeal is sent back to the High Court to decide the same on merits. There shall be no order as to costs.