

# SUPREME COURT OF INDIA

Dulal Poddar

Vs.

Executive Engineer, Dona Canal Division

(V.N. Khare and S.B. Sinha JJ.)

12.11.2003

## ORDER

1. The appellant, who was a contractor, entered into an agreement with the respondent for carrying on construction of a canal. The agreement provided that in case of any dispute arising under the contract, the matter would be decided by an Arbitration who would be the Superintending Engineer. Disputes and differences having been arisen between the parties, the Arbitration Agreement was invoked by the appellant pursuant where to the respondent herein appointed the Superintending Engineer as the Arbitrator. The said Arbitrator passed an interim award. In spite of several requests made by the appellants herein the Arbitrator did not consider his claims and pass a final award.

2. The appellant herein, thereafter filed an application under Section 8 of the Arbitration Act, 1940 in the Court of Subordinate Judge I, Bettiah. It appears that the said Court without issuing an notice to the respondents appointed a retired Chief Engineer as an Arbitrator. When the respondents came to know about the appointment of the said Arbitrator, they filed a revision petition before the High Court challenging the appointment of the said Arbitrator as illegal. In the revision petition, no order of stay, however, was passed and as a result of that the Arbitrator proceeded to make an ex-parte award. In the meantime, when the Civil Revision Petition came up for hearing before the High Court, it with view that since an award had already been made by the Arbitrator, it would be open to the respondents to challenge the appointment of the Arbitrator by means of an objection under Section 30 of the Act before the Civil Court. Accordingly, the respondent filed an objection before the Civil Court. The Civil Court rejected the said objection. The respondents, thereafter, preferred an appeal against the said order of the Civil Court before the High Court. The High Court allowed the said appeal and set aside the appointment of the Arbitrator as well as the award given by the Arbitrator. It is against the said judgment the Contractor is before us in appeal by means of special leave petition.

3. We have heard the learned counsel for the parties and we are of the view that the view taken by the High Court does not suffer from any legal infirmity. It is not disputed that no notice at all was sent to the respondent before appointing Arbitrator. It is also not disputed that the award given by the arbitrator was an ex-parte one. Furthermore, such an award which have been made by the Arbitrator having been passed without giving an opportunity of

hearing to the respondent herein, was illegal and void. We, therefore, do not find any merit in the appeal. Hence, it is dismissed. there will be no order as to costs.

4. We, however, having regard to the facts and circumstances of this case are of the opinion that the Civil Court may consider the desirability of appointing a new Arbitrator in terms of the provisions of the Act as expeditiously as possible.