

Union Of India And Others Vs Abadhuta Jena And Another

Court: Orissa High Court

Date of Decision: July 26, 2022

Acts Referred: Code of Civil Procedure, 1908 " Section 80
Arbitration Act, 1940 " Section 23, 30, 30(a)

Hon'ble Judges: Arindam Sinha, J

Bench: Single Bench

Advocate: P.K. Parhi, J. Nayak, S. Palit

Final Decision: Dismissed

Judgement

Arindam Sinha, J

1. Mr. Parhi, learned advocate and Assistant Solicitor General appears on behalf of appellants (Union of India). He submits, this appeal is against

order dated 31st August, 2002 passed by the Court below refusing to set aside award dated 14th August, 1995.

2. Two grounds are urged. First, the Court at Cuttack had no jurisdiction to receive, try or determine the suit, from which there was reference to

arbitration. Second ground is, no notice under section 80 in Code of Civil Procedure was given on filing of the suit.

3. Mr. Parhi submits on the first ground regarding appointment of arbitrator in the suit, his client preferred appeal to this Court and being unsuccessful

had taken the challenge to the Supreme Court. Unfortunately, the challenge in the Supreme Court was dismissed for default. He submits, since it was

a dismissal for default, his client is entitled to urge on merits, the ground of jurisdiction.

4. Mr. Palit, learned senior advocate appears on behalf of respondents.

5. It appears from impugned order there is recital that in course of time disputes arose between the parties, for which respondents had filed T.S.

no.359 of 1980 before the Sub-Judge, Cuttack. There was appeal preferred in the suit on interlocutory order(s) and as per direction of this Court,

Justice J. K. Mohanty (Retired) was appointed as arbitrator with consent of both the parties. The arbitrator entered into the reference on 6th

February, 1991. Appellant has urged in the first ground invitation and acceptance of tender was at Visakhapatnam. The work was done at Chilika. As

such, the Court at Cuttack did not have jurisdiction. This ground does not appear to have been urged before the Court below since, in the adjudication

by impugned order, there is record that three issues were framed. The issues framed are reproduced below.

“(1) Whether the award of Rs. 12,62,994.00 given by the arbitrator in favour of the plaintiff/claimant, is valid, legal and proper or not?

(2) Whether the award is liable to be set-aside or to be made as rule of the court and decree to be drawn up accordingly?

(3) Whether plaintiff/claimant is entitled for any interest and the award of interest at the rate of 9%, 12% and 15% per annum for different period by the arbitrator

is legal, valid and proper in the eye of law ?”

6. Section 30 in Arbitration Act, 1940 as applicable to the controversy in this appeal, provides for, inter alia, setting aside of award on the ground that

an arbitrator or umpire misconducted himself or the proceeding. Section 23 provides for order of reference by Court. The reference appears to have

been upon consent of the parties. It follows that points of controversy in the reference was regarding claims and counter claims. In the circumstances,

clause (a) under section 30 as a ground does not appear to be present in the award for appellant to urge, setting aside of it.

7. So far as notice under section 80 in Civil Procedure Code is concerned the requirement of issuance of notice is in respect of filing of suit. Aforesaid

suit filed by respondent gave way to an order under section 23 (Arbitration Act, 1940) for reference to arbitration. The objection on issuance of notice

for filing of suit does not survive to be carried in respect of arbitration proceedings held and concluded by the award.

8. There is no merit found in the appeal, it is dismissed.

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