

(2004) 05 JH CK 0028
Jharkhand High Court
Case No: Civil Review No. 6 of 2002

State of Jharkhand

APPELLANT

Vs

Chhotanagpur Brick Works and
Another

RESPONDENT

Date of Decision: May 20, 2004

Acts Referred:

- Arbitration Act, 1940 - Section 34
- Civil Procedure Code, 1908 (CPC) - Section 114

Citation: (2004) 4 JCR 752

Hon'ble Judges: P.K. Balasubramanyan, C.J

Bench: Single Bench

Advocate: Indrani Sen Choudhuri, for the Appellant; Ananda Sen and Amresh Kumar Sao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.K. Balasubramanyan, C.J.

Heard.

2. Even before the arbitrator had filed the award in Court, the first respondent herein and the parties to the contract had filed an application which was registered as Miscellaneous Case No. 4 of 1997 in the Subordinate Judge's Court at. Seraikella raising objections to the award. That miscellaneous application was numbered as Title Suit No. 11 of 1997. It was dismissed on the ground that it was premature and that an objection to the award cannot be filed in Court before the award itself was filed in Court. That order was challenged by the first respondent herein in Civil Revision No. 421 of 1999.

3. It is seen that, subsequently the award was filed in Court by the arbitrator. Then the first respondent sought to file another objection which was registered as

Miscellaneous Case No. 9 of 1997 objecting to the award. Civil Revision No. 421 of 1999, meanwhile, came-up. for hearing. This Court by order dated 14.1.2000 dismissed the revision but it directed that the objection filed by the first respondent herein, converted as Title Suit No. 11 of 1997, will be treated as an objection to the award filed in Court and be dealt with as such. The review petitioner, the State, sought a review of that order taking the ground that Title Suit No. 11 of 1997 could not be treated as a valid objection to the award within the meaning of the Arbitration Act, 1940. By order dated 29.11.2000, this Court refused to review the order and reiterated that the objection numbered as Title Suit No. 11 of 1997 alone would be treated as the objection to the award filed in Court. The orders of this Court were sought to be challenged in the Supreme Court by the State of Jharkhand. The petition for Special Leave to Appeal to the Supreme Court was dismissed as withdrawn on 14.12.2001. It will be appropriate to quote that order which reads as under :-

"Learned counsel for the petitioner seeks leave to withdraw the special leave petitions so as to able to move the High Court in review to point out that Miscellaneous Case No. 4/1997 (Title Suit No. 11/1997) had been dismissed on 24th August, 1999.

The special leave petitions are dismissed as withdrawn."

It is thereafter that the present review petition is filed by the State.

4. The fact that the objection filed by the first respondent numbered as Miscellaneous Case No. 4 of 1997 and renumbered as Title Suit No. 11 of 1997, stood dismissed was clear to this Court even when it passed the original order, since the revision itself was against the order of dismissal of that suit or objection on the ground that it was premature. Therefore, the fact that Title Suit No. 1-1 of 1997 stood dismissed when this Court passed the order, is not a fact which was not within the knowledge of this Court when it passed the original order, on 14.1.2000 and the subsequent order on 29.11.2000. It may be remembered that the dismissal of Title Suit No. 11 of 1997 was only on the ground that it was premature in the sense that an objection to an award was sought to be filed even before the award itself was filed in Court. Therefore, this Court, on application of mind, had directed that the said premature objection should be treated as an objection to the award which was subsequently filed in Court. May be, the objection should have been filed within thirty days of the notice of the filing of the award. Here what had happened was that one of the parties to the award had rushed-to the Court with an objection even before the award itself was filed in Court. This Court obviously thought that since the objection had been filed with due diligence, possibly with too much diligence, in the sense it was filed even before the award itself Was filed, the same could be treated as on objection to the award filed in time. Therefore, nothing turns on the fact now projected that .Title Suit No. 11 of 1997 stood dismissed on the day this Court disposed of the revision on 14.1.2000.

5. 11 is also seen that a subsequent objection filed, by the first respondent as Miscellaneous Case No. 9 of 1997 stands dismissed by the order of this Court, as reiterated by this Court in its order on 29.11.2000. In that order, this Court had directed that the only objection, Title Suit No. 11 of 1997, need be treated as an objection to the award. In this situation, the stand taken in the review petition that the order of this Court be also reviewed on the basis that this Court was not aware of the dismissal of Title Suit No. 11 of 1997 as premature cannot be sustained. It was a fact that was within the knowledge of this Court and this Court had directed that the said objection be treated as the objection to the award. Obviously, that amounts to interference with the dismissal of that objection or Title Suit No, 11 of 1997 on the ground that it was premature and the reviving of that objection as an objection to the award filed in Court.

6. In this view of the matter, I see no reason to modify the order of this Court. I direct the trial Court to treat Title Suit No. 11 of 1997 as the objection to the award subsequently filed in Court and dispose-of the same in accordance with law, after hearing both parties of the suit.

7. This civil review petition is disposed of with the aforementioned observations and directions.