

Court No. - 19

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 2 of 2020

Appellant :- Indian Potash Ltd. Bahraich Thru Anoop Kumar Singh

Respondent :- M/S Gupta And Company Thru Prop. Tarun Kumar Gupta And Others

Counsel for Appellant :- Anil Kumar Singh Visen, Baljeet Singh

Counsel for Respondent :- Sudhanshu Chauhan

ALONGWITH

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 3 of 2020

Appellant :- Indian Potash Ltd. Bahraich Thru Anoop Kumar Singh

Respondent :- M/S Gupta And Company Thru Prop. Tarun Kumar Gupta And Others

Counsel for Appellant :- Anil Kumar Singh Visen, Baljeet Singh

Counsel for Respondent :- Sudhanshu Chauhan

ALONGWITH

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 4 of 2020

Appellant :- Indian Potash Ltd. Bahraich Thru Anoop Kumar Singh

Respondent :- M/S Gupta And Company Thru Prop. Tarun Kumar Gupta And Others

Counsel for Appellant :- Anil Kumar Singh Visen, Baljeet Singh

Counsel for Respondent :- Sudhanshu Chauhan

Hon'ble Jaspreet Singh, J.

Heard Shri Anil Kumar Singh Visen, learned counsel for the appellants and Shri Sudhanshu Chauhan, learned counsel for the respondents.

The instant three appeals have been preferred by the Indian Potash Limited under Section 37 of the Arbitration and

Conciliation Act, 1996 assailing the order passed by the District Judge, Bahraich in the petitions filed by the appellants under Section 34 of the Act of 1996 which was dismissed on 27.09.2019.

Learned counsel for the appellants has primarily urged that the District Judge while passing the impugned order dated 27.09.2019 non-suited the appellants on hyper-technical ground inasmuch as the petitions filed before the District Judge, Bahraich in the nomenclature had used the word "appeal" under Section 34 of the Arbitration and Conciliation Act, 1996 and the District Judge taking that as a ground that no appeal is provided under Section 34 of the Act of 1996, consequently, the were not maintainable, however, District Judge, Bahraich also observed that no such appeal was also provided under the Old Act of Arbitration Act, 1940 and thus for the aforesaid reasons, the petitions under Section 34 of the Act of 1996 has been dismissed which prompted the appellants to invoke the jurisdiction of this Court under Section 37 of the Act of 1996.

Shri Sudhanshu Chauhan, learned counsel appearing for the respondents on the other hand points out that this is not what the correct facts are and it has been stated that the private-respondents had entered into an agreement in February, 1989 for construction of factory building and machine foundation at the U.P. State Sugar Corporation situate at Jarwal Road, Bahraich. Certain supplement agreements were also executed and work was done.

On 20.04.1995 the accounts were finalized, however, the respondents were issued a notice in pursuance whereof the arbitration proceedings were initiated under the Arbitration Act, 1940 and three petitions came to be filed before the District Judge, Dehradun under Section 20 of the Arbitration Act, 1940. The said petitions came to be returned by the District Judge, Dehradun on 22.08.2005 on the ground that the provisions of Arbitration and Conciliation Act, 1996 would be applicable though the suit had been filed on 30.06.1997. The District Judge, Dehradun further held that the Court had no territorial jurisdiction to entertain the suit. This order was assailed in appeal and by means of the order dated 11.07.2007, the appeal was allowed with the observations that in the instant case, the provisions of Arbitration Act, 1940 would be applicable, however, it also observed that the District Judge, Dehradun had no jurisdiction.

This matter went up before the Apex Court wherein the Apex Court on 16.03.2010 passed an order directing the Managing Director of the U.P. State Sugar Corporation to appoint an

Arbitrator in terms of the agreement within 15 days from the date of communication of the said order.

Once an order was passed by the Apex Court, the arbitration proceedings were commenced and ultimately the award came to be passed by the sole arbitrator Shri Pramod Kumar dated 23.07.2014. Since, the proceedings of arbitration were conducted under the Old Act of 1940, consequently, the respondents moved a petition under Section 14(2) of the Arbitration Act, 1940 for making the award rule of the Court. It is in the aforesaid backdrop that the appellants preferred petitions under Section 34 of the Act of 1996 before the District Judge, Bahraich for setting aside the award dated 23.07.2014.

The said petitions were accompanied by an application seeking condonation of delay and on 19.11.2014, the delay was condoned. Thereafter, the respondents filed their objections under Section 34 raising all the aforesaid facts also that the petitions were not maintainable under Section 34 of the Act of 1996 since the award was passed under the Old Act of 1940.

It has also been pointed that an effort was also made to get the petitions transferred to Dehradun which also came to be dismissed by the Apex Court on 16.12.2015. It is thereafter that the District Judge, Bahraich taking note of the factual matrix has dismissed the petitions under Section 34 of the Act of 1996 as not maintainable.

In the aforesaid backdrop, a specific query was put to the learned counsel for the appellants as to how the instant proceedings would be maintainable under Section 37 of the Act of 1996 when the arbitrator was appointed under the proceedings under the Old Act of 1940, the award was passed under the Old Act of 1940, the same has been filed before the competent Court under Section 14(2) of the Act of 1940 to be made as a rule of the Court.

Shri Visen, learned counsel for the appellants, at this stage, submits that the order passed by the District Judge, Bahraich is hyper-technical and the same cannot be sustained. Accordingly, the order may be set aside and be remitted so that the District Judge may reconsider the issue including whether the proceedings would be maintainable or not.

Having heard learned counsel for the parties and also from the perusal of the material on record, this Court finds that once the petitions was preferred under Section 20 of the Act of 1940 for the appointment of arbitrator which culminated an award which has been filed before the competent authority for being made as

a rule of the Court. Under such circumstances, it is not open for the appellants to have invoked the jurisdiction under Section 34 of the Act of 1996 for setting aside the award passed under the Old Act of 1940.

Even though this Court does not approve the reasoning given by the District Judge, Bahraich while dismissing the petitions under Section 34 of the Act of 1996 irrespective of the word used in the nomenclature as a petition or appeal will not make any difference especially in view of the fact that the proceedings initiated under Section 34 of the Act of 1996 are not maintainable. Consequently, the instant appeals would also not come to aid of the appellant as the arbitral proceedings were under the Old Act of 1940, hence, the appellants if aggrieved was at liberty to invoke the provisions as well as remedy provided under the Act of 1940.

Shri Visen, learned counsel for the appellants, at this stage, submits that he may be permitted to withdraw the aforesaid appeals with liberty to the appellants to invoke the correct proceedings before the appropriate forum for agitating their rights.

Having considered the aforesaid, all the aforesaid appeals are **disposed of** with the aforesaid observations and with liberty to the appellants to invoke the jurisdiction of appropriate forum in terms of Arbitration Act, 1940 in accordance with law where they may agitate their grievances before the appropriate forum subject to and in accordance with law.

It is made clear that this Court has not considered the case on merits and the appropriate Court before whom the appellants approach shall consider and decide the matter on its own merits.

Order Date :- 30.10.2023

Rakesh/-