

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.339 of 2001

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1. Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna.
 2. The Member (Technical) B.S.E.B., Vidyut Bhawan, Bailey Road, Patna.
 3. The Chief Engineer-cum-Chief Electrical Inspector, Department of Energy, Govt. of Bihar, Patna.
 4. The General Manager-cum-Chief Engineer, Tirhut Area Electricity Board, Muzaffarpur.
 5. The Electrical Superintending Engineer, B.S.E.B., Electric Supply Circle, Muzaffarpur.
 6. The Electrical Executive Engineer, Revenue Electric Supply Circle, Muzaffarpur.

.... Appellant/s

Versus

M/s. Ganesh Foundary & Castings Limited through its Director Ashok Kumar Bajoria having its registered office at Laxman Narain Road, Muzaffarpur.

..... Respondent/s

Appearance :

For the Appellant/s : Mr. Vinay Kirti Singh, Adv.

For the Respondent/s : Mr. Y.V. Giri, Sr. Adv.

Mr. Raju Giri, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 08-12-2015

The present appeal is arising from the order dated 30th April 2001 passed by Sub-Judge-I, Patna in Miscellaneous Case No. 8 of 1999 whereby and whereunder the learned Sub-Judge has passed the order of injunction restraining the opposite party from enforcing the Award dated 14th December 1998.

The question has been raised in the present case that Sub-Judge of Civil Courts are not the Principal Civil Courts in terms of Section 34 read with section 2 (1) (e) of the Arbitration and Conciliation Act, 1996 where the “Court” has been defined, as earlier



the cases were being filed before the Sub-Judge for the purposes of raising the objection under Section 34 of the Act. The question was raised who would be Principal Civil Court of original jurisdiction, the Subordinate Judge or the District Judge of the district within the meaning of Section 34 and 2(1) (e) of the Arbitration and Conciliation Act, 1996 came for consideration in Shivam Housing Pvt. Ltd. vs. Thakur Mitilesh Kumar Singh reported in 2015 (3) PLJR 876 and it has been held that the Subordinate Court is not the proper authority to consider the dispute arising from the arbitration proceeding. It will be relevant to quote para 33 and 34 of the said judgment, are as follows:-

Para 33 “The view taken by the learned Single Judge in the case of *Executive Engineer v. M/s. R.L. Singh* (supra), *Md. Sidique* (supra), *Thakur Prasad Singh* (supra) and *Bhopal Singh* (supra) appears to have been rendered without taking note of Section 34 read with Section 2(1)(e) of the Act as also without taking note of Section 18 of the Civil Courts Act which, inter alia, provides the extent of original jurisdiction of District, Subordinate Judge to all original suits cognizable by civil courts subject to Section 15 of the Code of Civil Procedure which provides that the suit shall be instituted in the court of



the lowest grade competent to try it. The scheme of the Act, however, is contrary to the scheme of the Code of Civil Procedure which requires a suit to be instituted, tried by the court of lowest grade competent to try the suit, as in terms of Section 34 read with sub-section (1)(e) of Section 2 the arbitral award is required to be assailed before the Principal Civil Court of original jurisdiction which will not include any civil court of a grade inferior, as such, in terms of the Act it is only the District Judge who has jurisdiction to consider the challenge made to the arbitral award.

Para 34 In view of our finding above, both the impugned orders dated 21.04.2007, 21.01.2011, passed by Sub-Judge-I, Patna City, Sub-Judge-III, Rohtas at Sasaram in Miscellaneous Application No. 03 of 2007, Miscellaneous Case No.20/06 respectively are set aside. Both the miscellaneous cases are now required to be dealt with by the District Judge in accordance with law which may also include Additional District Judge. Both the miscellaneous applications have remained pending for long, as such,



it is directed that the Subordinate Judge concerned should transfer the miscellaneous cases to the District Judge, who shall either deal with the same himself or transfer the cases to any other Additional District Judge but the matter must be disposed of as early as possible, in any case, within 60 days from the date of receipt of this judgment in the court below.”

In the present case, the order has been passed by the Subordinate Court, in terms of Division Bench judgment, Sub-Judge is not the proper Court for taking into consideration and passing the order and as such, impugned order dated 30/04/2001 is set aside.

Sub-Judge-I, Patna is directed to refer Miscellaneous Case No. 8 of 1999 to the court of District Judge, Patna, who will either hear the case himself or transfer the same to any Additional District Judge, but the matter must be disposed of within a period of six months from the date of receipt of the record.

Accordingly, this appeal is disposed of.

(Shivaji Pandey, J)

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