

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.119 of 2015

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1. Managing Director, Bihar State Cooperative Milk Producers Federation Ltd., a Multi - State Cooperative Society registered under the Multi-State Cooperative Societies Act, 2002, having its office at Dairy Development Complex, P.O. Bihar Veterinary College, District & Town Patna.
 2. General Manager, Bihar State Cooperative Milk Producers Federation Ltd. a Multi - State Cooperative Society registered under the Multi-State Cooperative Societies Act, 2002, having its office at Dairy Development Complex, P.O. Bihar Veterinary College, District & Town Patna.
 3. Chief Manager, Bihar State Cooperative Milk Producers Federation Ltd., a Multi - State Cooperative Society registered under the Multi-State Cooperative Societies Act, 2002, having its office at Dairy Development Complex, P.O. Bihar Veterinary College, District & Town Patna.
 4. Deputy General Manager, Bihar State Cooperative Milk Producers Federation Ltd., a Multi - State Cooperative Society registered under the Multi-State Cooperative Societies Act, 2002, having its office at Dairy Development Complex, P.O. Bihar Veterinary College, District & Town Patna.
 5. Assistant Engineer (Civil), Bihar State Cooperative Milk Producers Federation Ltd., Unit Bhagalpur Dairy, Mayaganj, Hospital Road, Bhagalpur.

.... Petitioner/s

Versus

1. Purshottam Das son of late Sewak Ram resident of Mohalla - Tilka Manjhi, P.S. Barari, Town & District - Bhagalpur, Partner M/s Nandlal & Company, Branch Office Tilka Manjhi, P.S. Barari, District Bhagalpur.
2. Resident Representative, National Dairy Development Board, Salt Lake, Kolkata.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nikesh Kumar
Mr. Amit Pandey
For the Respondent/s : Mr. Bimlendu Mishra

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

- 04 03.08.2017 1. Heard learned counsel for the petitioners as well as learned counsel for the opposite party.
2. Petitioners have prayed for setting aside the order dated 4.7.2015 passed by learned Sub Judge VII, Bhagalpur in Misc. Judicial Case no. 2/1994 by which and whereunder he rejected the



petition dated 16.5.2015 refusing to dismiss the aforesaid Misc. Judicial Case being infructuous and also directed the parties to address the court for adjudication of the dispute.

3. It would appear from perusal of the record that opposite party filed Misc. Judicial Case no. 2/1994 praying therein to appoint an Arbitrator under section 12(1) of the Arbitration Act, 1940 and referred the dispute of the parties to the Arbitrator for decision on the dispute and for submission of the award.

4. On the basis of prayer of opposite party, one Arjun Singh was appointed as Arbitrator and dispute was referred to him who, in his turn, submitted award dated 7.10.1994 before the court but on prayer of both parties of the aforesaid Misc. Judicial Case, award was remitted back to the Arbitrator on 21.1.2013 under section 16(1) (c) of the Arbitration Act, 1940 for reconsideration with a direction to him to submit the report within two months but the Arbitrator, namely, Arjun Singh vide letter dated 23.2.2013 expressed his inability to do anything for his personal reason. After response of the Arbitrator, petitioners filed petition for dismissal of the above stated misc. judicial case treating the same being infructuous but the aforesaid prayer was rejected by learned Sub Judge VII, Bhagalpur passing the impugned order. It is also pertinent to note here that on 20.4.2013, a petition under section 151 of the CPC was filed on behalf of the opposite party praying before the court for settlement of the dispute by the court itself.

5. Learned counsel appearing for the petitioners submits that learned Sub Judge VII, Bhagalpur has no power to go beyond the



prayer made in the petition filed by opposite party but the court below decided to hear the dispute of the parties without appointing another Arbitrator, particularly, in the circumstances, when there was only prayer for appointment of Arbitrator.

6. On the other hand, learned counsel appearing for the opposite party submits that Misc. Judicial Case was pending since 1994 and that was the reason, learned Sub Judge VII, Bhagalpur decided to hear the dispute of the parties himself.

7. In my view, when opposite party prayed only for appointment of Arbitrator and agreed to get resolve the dispute through Arbitrator and admittedly, the court appointed Arbitrator who subsequently, submitted award but later on, award was remitted back to Arbitrator for making fresh award and admittedly, Arbitrator did not submit fresh award, there was only option before the court to appoint a new Arbitrator. At this juncture, I would like to refer to section 16 (3) of the Arbitration Act, 1940 which says that an Award remitted under sub-section (1), Court shall become void on the failure of the Arbitrator or umpire to reconsider it and submit his decision within the time fixed.

8. In the present case, admittedly, Arbitrator did not submit fresh award after order of remit of the award and, therefore, in view of section 16 (3) of the Arbitration Act, 1940, previous award submitted by Arbitrator had already lost its force being void and the court below had no option but to appoint a new Arbitrator and refer the dispute to the Arbitrator for submission of the award because the opposite parties had only made prayer for settlement of their dispute through an



Arbitrator.

9. On the basis of the aforesaid discussions, the impugned order dated 4.7.2015 passed by learned Sub Judge VII, Bhagalpur in Misc. Judicial Case no. 2/1994 stands modified to this extent that learned Sub Judge VII, Bhagalpur shall pass fresh order for appointment of new Arbitrator in accordance with law keeping the observations made in this order and take steps for appointment of new Arbitrator so that dispute of the parties could be referred to him. However, it is made clear that the court below shall fix a specific time for submission of the award by the Arbitrator and in special circumstances the court below may extend the time of submission of the award by the Arbitrator.

10. In the aforesaid manner, this revision petition stands disposed off.

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(Hemant Kumar Srivastava, J)

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