

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 1449 of 2000**

Steel Authority of India Limited, a Company registered under the Company's Act, 1956, head office at Lodhi Road, New Delhi, under the name & style, Bhilai Steel Plant, Bhilai

---- Appellant**versus**

Jitendra Bhandari, s/o Late Shri Ramswroop Bhandari, Civil Contractor, Durg, M.P. (now C.G.)

---- Respondent

For Appellant	:	Dr. N.K. Shukla, Senior Advocate along with Ms. Priya Misha, Advocate
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For Respondent	:	Shri Rahul Tamaskar, Advocate
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Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****03/02/2017**

1. This appeal is directed against the judgment and decree dated 8.2.2000 passed by the learned District Judge, Durg in Civil Suit No. 85-A/97, whereby he set aside the award of the learned Arbitrator.
2. Undisputed facts are that late Shri Ramswroop, predecessor in interest of Respondent Jitendra Bhandari entered into a contract with Steel Authority of India Limited, Bhilai Steel Plant for work of widening of forest avenue from Borla Circle to 'E' pocket of Maroda sector including construction of culvert and widening of bridge (Phase II) – conversion of Macadam road to carpeting of road from Borla Circle to Risali Tal circle on forest avenue. The Claimant claimed that the

Respondent had not refunded the earnest money and the security deposit to the Claimant. This matter was referred to Arbitration in terms of Arbitration Agreement. The Arbitrator passed the award in the following terms:

- “(a) The claim of the Petitioner/Claimant for refund of Earnest Money of Rs.70,658/- and Security Deposit of Rs.2,02,516/- is found admissible. This amount, however, shall be subject to adjustment towards the payment to the Respondent, Bhilai Steel Plant as stated in para (b) below. The rest of the claim of the Petitioner/Claimant including interest is rejected.
- (b) The Respondent SAIL, Bhilai Steel Plant is declared entitled to recover and realise from the Petitioner/Claimant Rs.13,16,151.77/-. The Respondent, Bhilai Steel Plant is further entitled to adjust and appropriate the Earnest Money of Rs.70,658/- and Security Deposit of Rs.2,02,516/- as stated in para (a) above towards payment of Rs.13,16,151.77 and the Petitioner/Claimant is directed to pay the balance amount of Rs.10,42,987.77 to SAIL, Bhilai Steel Plant within 30 days from today the 25th April, 1997, failing which the above awarded balance amount of Rs.10,42,987.77 shall carry interest at the rate of Rs.18% per annum in favour of Respondent till payment”

3. An application was filed before the learned District Judge under Section 14 of the Arbitration Act, 1940 for making the award rule of court and objections under Sections 30 and 33 of the Act of 1940 to the award were filed by Jitendra Bhandari insofar as the award made in favour of the Steel Authority of India Limited. The learned District set aside the entire award only on the ground that while passing the award (b), quoted above, the Arbitrator had erred inasmuch as no counter claim had been filed by the Steel Authority of India Limited before the Arbitrator claiming these amounts.
4. The appeal has been filed against this portion of the judgment and it is submitted by Dr. Shukla that the trial Court has erred in setting aside

the award of the Arbitrator. I am unable to accept the argument of Dr. Shukla.

5. After perusing the award, it is apparent that the learned District Judge was right in holding that no counter claim had been filed by the Steel Authority of India Limited claiming any amount. Even in the written statement filed by the Steel Authority of India, this amount was not claimed. It was only after the evidence was led by the parties and the case was fixed for arguments, at that stage in the written submissions, this amount was claimed. An award has to be based on the basis of initial claim and counter claim and the evidence led by the parties. It cannot be based on written submissions alone. Therefore, the learned District Judge was justified in setting aside the award.
6. I find no merit in the appeal. The same is dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE