

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.4798 OF 2004

JUDGMENT: (*Per* Hon'ble Sri Justice Sanjay Kumar)

This civil miscellaneous appeal under Section 39 of the Arbitration Act, 1940 (for brevity, 'Act of 1940') arises out of the order dated 16.02.2004 passed by the learned Principal Senior Civil Judge, Guntur, in A.O.P. No.121 of 1990.

The said petition was filed by the appellant under Section 9 of the Act of 1940 to treat it as a reference to arbitration and adjudge the same in relation to the several claims made by the appellant. By the order under appeal, the Court below opined that when there was a specific clause in the agreement itself that if the claimed amount exceeded Rs.50,000/-, it must be referred to the Civil Court, the question of entertaining an arbitration reference did not arise. The petition was accordingly dismissed.

Sri Rama Krishna, learned counsel representing Sri V.Hari Haran, learned counsel for the appellant, would concede that Clause 12 of Schedule-E of the Special Conditions of Contract specified that claims above Rs.50,000/- would have to be dealt with by a Court of competent jurisdiction. However, he would point out that when the appellant issued notice dated 11.11.1989 raising various claims in the context of the final bill dated 16.09.1989 settled by the authorities, he received reply dated 22.01.1990 from the Superintending Engineer, Public Health Special Circle, Guntur, dealing with each of the claims raised by the appellant and ending with the observation that, in the event, the appellant was not convinced

with the reply furnished, the authorities had no objection to reference of the matter to arbitration. Learned counsel would therefore submit that in the light of this reply, the terms of the contract stood novated and the bar with regard to claims above Rs.50,000/- being subject to arbitration no longer remained.

Perusal of the reply dated 22.01.1990 relied upon by the appellant reflects that the authorities dealt with each of the claims raised by him individually. The claim towards jointing work was for Rs.1,07,446/- while the claim for usage of hemp yarn was for Rs.15,750/-. The claim for testing of pipeline was for Rs.55,000/- while the claim towards seigniorage charges was Rs.10,000/-. It is therefore clear that some of the claims raised by the appellant were less than Rs.50,000/- and would be amenable to resolution through arbitration in terms of Clause 12 mentioned supra. That being so, the concession made by the Superintending Engineer that in the event the appellant was not convinced, there was no objection to reference of the matter to arbitration cannot be construed to mean novation of the contract, whereby the appellant can now seek arbitration for resolution of all his claims put together for a sum exceeding Rs.50,000/-. Admittedly, his claim is for a sum of Rs.1,17,530/-. That apart, for a claim of novation of contract, it must be shown that the authority, who introduced a new term superseding the earlier term of contract, had the competence to do so. In the present case, no material was produced to show that the earlier agreement was drawn up by the Superintending Engineer, whereby he would have the authority to introduce a new term in supercession of the existing terms. The special conditions of contract are prescribed by the Government and it is not open to the claimant to assert that there is

novation of contract on the strength of mere correspondence with a lower authority. We find no error in the order passed by the Court below warranting interference in this appeal.

The appeal is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

17th August, 2017

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