

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Arbitration Appeal No.16 of 2018**

M/s Shivam Infrastructure, a partnership firm registered under the Indian Partnerships Act, 1935, Having its office at Sharda Sadan, Behind Gayatri Mandir, Vinoba Nagar, Talapara Road, Bilaspur (CG) Through its Partner Shri Shailesh Agrawal, S/o Shri Madanlal Agrawal aged about 47 years

----Appellant**Versus**

1. South East Central Railway, (SECR), through its General Manager, GM/SECR's Officer Complex, Bilaspur (CG)
2. Divisional Railway Manager, Bilaspur Division, South East Central Railway, Bilaspur (CG)
3. Additional Divisional Railway Manager, Bilaspur Division, South East Central Railway, Bilaspur (CG)
4. Sr.Divisional Engineer (Co-ordination) Titli Chowk, Railway, Settlement, Bilaspur (CG)
5. Sr.Divisional Engineer (Central), Office of Sr.Divisional Engineer (Co-ordination) Titli Chowk, Railway, Settlement, Bilaspur (CG)
6. Additional Divisional Engineer (ADEN) South East Central Railway, Pendra Road, Pin - 495 117 District Bilaspur (CG)

---- Respondents

 For Appellant : Mr.Harsh Wardhan, Advocate
 For Respondents : Mr.Abhishek Sinha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****29.06.2018**

1. The appellant had preferred an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter called

as “Act of 1996”) claiming direction to the respondents to refund amount of ₹ 1,23,945/-, amount of ₹ 1,10,000/- and also payment of ₹ 26,16,665/- before learned District Judge, which was rejected by order dated 4.5.2017, which was challenged by the appellant in Arbitration Appeal No.29 of 2017 before this Court and ultimately, after hearing the parties this Court on 21.6.2017 upheld the order passed by learned District Judge. However, liberty was reserved to the appellant to invoke Section 17 of the Act of 1996. The appellant instead of invoking the jurisdiction of the Arbitral Tribunal under Section 17 of the Act of 1996 again filed an application under Section 9 of the Act of 1996, which was rejected by learned District Judge by the impugned order holding that the appellant's earlier application under Section 9 of the Act of 1996 has already been rejected and duly upheld by this Court in Arbitration Appeal No.29 of 2017. Questioning that order, this arbitration appeal has been preferred.

2. Mr.Harsh Wardhan, learned counsel for the appellant, would submit that since mandate of the Arbitral Tribunal has already been terminated by learned District Judge, therefore, the appellant has no option except to file an application under Section 9 of the Act of 1996. Therefore, the application filed by the appellant is maintainable and learned District Judge is absolutely unjustified in rejecting the said application.

3. Mr. Abhishek Sinha, learned counsel for the respondents, would oppose the appeal and submit that application under Section 9 of the Act of 1996 was not maintainable on the same facts and same grounds, same relief was also claimed, which have already been rejected by learned District Judge and duly upheld by this Court, therefore, the appeal deserves to be dismissed.
4. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
5. In the first application under Section 9 of the Act of 1996, the appellant claimed following interim directions:-

“7. Whereas, the appellant claimed following interim directions in the application under Section 9 of the Act, 1996: -

“3.1 To restrain the respondents from taking any step towards execution of the remaining work in respect of the contract executed with the applicant, till the proceedings of the arbitration are finally concluded and an award is passed.

3.2 To restrain the respondents from undertaking any step, work and from executing the Tender No. DRM-ENGG-T-09-16-17 issued in respect of the remaining work awarded to the respondent no. 7, during the pendency of the arbitration proceedings.

3.3 To direct the respondents to refund amount Rs.1,23,945/- (which has been recovered in excess), amount of rebate of Rs. 1,10,000/- (wrongly withhold) and also payment of Rs. 26,16,665/- (Final Bill) with applicable Price Valuation Escalation, without prejudice to the rights and claims of the applicant, without any delay.

3.4 To grant any other relief which this Court deems fit and proper in the facts and circumstances of the present case.”

6. In the second application filed after order of this Court the appellant claimed the following interim direction:-

“3.1 To direct the respondents to refund amount Rs.1,23,945/- (which has been recovered in excess), amount of rebate of Rs.1,10,000/- (wrongly withhold) and also payment of Rs.26,16,665/- (Final Bill) with applicable Price Valuation Escalation, without prejudice to the rights and claims of the applicant, without any delay.”

7. From perusal of the aforesaid two applications filed under Section 9 of the Act of 1996, it is clear that the reliefs claimed in both the applications are one and same.

8. This Court in Arbitration Appeal No.29 of 2017 held as under:-

“14. Thus, in the instant case, the reliefs claimed by the appellant in the application under Section 9 of the Act, 1996 are over and above the final relief claimed before the Arbitral Tribunal, therefore, the said reliefs are not grantable to the appellant in shape of interim direction under Section 9 of the Act, 1996.”

Not only this, in para 18 it has clearly held as under:-

“18. As a fallout and consequence of aforesaid discussion, it is held that the learned District Judge is absolutely justified in rejecting the application filed by the appellant under Section 9 (1) of the Act, 1996. However, this will not bar the appellant herein to invoke the jurisdiction of the Arbitral Tribunal under Section 17 of the Act, 1996, as these reliefs were not claimed before the Arbitral Tribunal and if such relief is claimed, the Arbitral Tribunal shall decide the same strictly in accordance with law.”

9. Thus, this Court has clearly upheld the earlier order of learned District Judge dated 4.5.2017. However, liberty was granted to the appellant to move under Section 17 of the Act of 1996 as the reliefs claimed in the application under

Section 9 of the Act of 1996 were not claimed before the Arbitral Tribunal, but for whatever reason the appellant did not file an application under Section 17 of the Act of 1996 before that Tribunal and claimed all interim directions under Section 9 of the Act of 1996 which has been claimed and rejected earlier by learned District Judge and affirmed by this Court. The appellant cannot be allowed to claim the interim direction which has been considered and rejected by this Court on the principle of a finality of judgment. Therefore, I am of the considered opinion that learned District Judge is absolutely justified in rejecting the application filed under Section 9 of the Act of 1996.

10. Accordingly, the arbitration appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-