

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 134 of 2017**

M/s. Ved Prakash Gupta, A Partnership firm registered under the Partnership Act, Having office at Contractors Colony, G.E. Road, Supela Bhilai Through its present partner Shri Surendra Kumar Gupta, S/o. Late Shri Ved Prakash Gupta, aged about 76 years, Resident of Contractors Colony, G.E. Road, Supela, Bhilai, District Durg (C.G.)

The Chandrakant Soni, the earlier partner died.

----Applicant

Versus

Union of India, Through General Manager Core (Railway Electrification)
Allahabad (U.P.)

---- Respondent/Non-applicant

For Applicant	: Shri Manoj Paranjpe, Advocate.
For Non-applicant	: Shri H.S. Ahluwalia, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/10/2018

(1) In order to resolve the dispute between the parties, the applicant filed an application under Section 20 of the Arbitration Act, 1940 (henceforth "Act of 1940") for appointment of an Arbitrator before the District Judge, Rajnandgaon, which was registered as Case No. 6-A/2013 and the same was decided on 25.01.1995 with a direction to G.M., Core to appoint the Arbitrator. In compliance of the order dated 25.01.1995, Shri B. Pandey was appointed as Sole Arbitrator on 10.07.1997 under the Act of 1940 and ultimately the Sole Arbitrator delivered the award of Rs. 7,86,791/- along with interest @ 18% per annum on 31.07.2000. Though the award was passed under the Act, 1940, but the applicant erroneously filed an application under Section 36 of the Arbitration & Conciliation Act, 1996

(henceforth “AC Act, 1996”) read with Section 21 of the CPC for execution of the Award, which was rejected by District Judge, Rajnandgaon, by order dated 23.04.2003 holding that the Arbitration Act, 1940 would apply in the present case.

(2) The applicant preferred revision petition being Civil Revision No.253/2003 thereagainst before this Court, which was withdrawn on 21.10.2009 with liberty to avail the appropriate remedy in accordance with law.

(3) Thereafter, the applicant filed an application under Section 17 read with Section 14 of Arbitration Act, 1940 for making the award as Rule of the Court before the District Judge, Rajnandgaon. This time, that application was rejected by the District Judge, Rajnandgaon by its impugned order dated 09th March, 2017 holding that application filed by the applicant is not maintainable in view of the coming into force of the Arbitration & Conciliation Act, 1996 , therefore, AC Act, 1996 would apply in the case, against which instant Civil Revision has been filed questioning the same.

(4) Learned counsel for the applicant would submit that learned District Judge, Rajnandgaon is absolutely unjustified in holding that AC Act, 1996 would apply as earlier in the order dated 23.04.2003, it has already been held by the District Judge that the Act of 1940 would apply in the present case and, therefore, the impugned order passed by order of District Judge is liable to be set aside.

(5) Per contra, counsel for the respondent would support the impugned order.

(6) I have heard learned counsel appearing for the parties and perused the impugned order with utmost circumspection.

(7) It is not in dispute that the Sole Arbitrator was appointed by the District Judge under Section 20 of the Arbitration Act, 1940, who delivered the award on 31.07.2000, and the

execution of which was sought by the applicant under the AC Act, 1996, which was rejected by the District Judge holding the Act, 1940 would apply. Thereafter, after having liberty from this Court when the applicant filed an application under Section 17 read with Section 14 of Arbitration Act, 1940 for making the award as Rule of the Court before the District Judge, Rajnandgaon, the learned District Judge by its impugned order, contrary to its earlier order dated 23.04.2003, held that AC Act, 1996 would apply.

(8) Once the learned District Judge having held that Act of 1940 would apply, at the instance of other side, the learned District Judge cannot hold that AC Act, 1996 would apply. Thus, in the opinion of this Court, the order of District Judge dated 23.04.2003 has become final holding that Arbitration Act, 1940 would apply, as such, the learned District Judge is absolutely unjustified in holding that Act of 1996 would apply and the application filed under the provisions of Arbitration Act, 1940 is not maintainable.

(9) In view of above, the impugned order set aside. It is held that application under Section 17 read with Section 14 of Arbitration Act, 1940 for making the award as Rule of the Court is maintainable. The matter is remitted to the District Judge, Rajnandgaon for hearing and disposal of the aforesaid application in accordance with law. Since the said application was filed before the District Judge on 18.03.2016, the District Judge is directed to consider and decide the said application expeditiously preferably within a period of two months from the date of receipt of certified copy of this order.

(10) The parties are directed to appear before the District Judge, Rajnandgaon on 26.11.2018.

(11) Record of the court below be sent back forthwith.

Sd/-
(Sanjay K. Agrawal)
Judge

