

IN THE HIGH COURT OF ORISSA AT CUTTACK

M.A. NO.311 OF 1998

From the Judgment/Order dated 11.02.1998 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in Misc. Case No.355 of 1991.

Madhab Chandr Mishra

::::

Appellant

-:: VERSUS ::-

**Chief Engineer, National
Highway Projects**

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Respondent

Appeared in this case by Video Conferencing Mode / Hybrid

Mode.

For Appellant

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**Mrs. T. Patnaik, Advocate
(for Appellant)**

For Respondents

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**Mr. G.N. Rout,
Addl. Standing Counsel
(for Respondent)**

PRESENT :

THE HON'BLE MR. JUSTICE B.P.SATAPATHY

Date of Hearing- 15.07.2022:: Date of Order-13.09.2022

B.P.Satapathy, J. This matter is taken up through Hybrid Mode.

2. Heard Mr. T. Patnaik, learned counsel for the Appellant and Mr. G.N. Rout, learned ASC appearing for the Respondent.

3. This appeal has been filed under Sec. 39 of the Arbitration Act, 1940 challenging the impugned Judgment and decree passed by the learned Civil Judge (Sr. Division), Bhubaneswar on 11.02.1998 in Misc. Case No.355 of 1991.

4. It is submitted that the aforesaid Misc. Case was filed by the Respondents under Sec. 30 and 33 of the Arbitration Act for setting aside the award made by learned Tribunal on 25.03.1991. It is submitted that learned Civil Judge without proper appreciation of the claim of the Appellant and the award passed by the learned Tribunal, allowed the Misc. Case by setting aside the award passed by learned Tribunal vide the impugned Order dtd.11.02.1998.

5. It is submitted that learned Tribunal after considering the claim and counter claim made by both the Parties and after due consideration of the evidence, passed an award on 25.04.1991 by directing the Respondents to pay a sum of Rs.2,66,183/- (Rs. Two lakh sixty six thousand one hundred eighty three). It is also submitted that learned Tribunal while directing so, also kept upon the issue of pendente lite interest open for decision by the decreeing Court. It is submitted that pursuant to the said direction of the learned Tribunal O.S. No.184 of 1991 was registered and objections were invited from the Parties.

6. It is submitted that the objections filed by the Respondents under Section 30 and 33 of the Arbitration Act was registered as Misc. Case No. 355 of 1991. It is further submitted that the Appellant filed his counter to the said objection Petition and also took the stand that the objection has been filed beyond 30 days of

the award and accordingly it is barred by limitation. It is further submitted that learned Court below when dismissed the Misc. Case, the same was challenged by the Respondents before this Court in M.A. No. 214 of 1993. This Court vide Order dtd.02.03.1995 while alloweing the appeal remanded the matter to the learned Court below for disposal on merit.

7. It is submitted that on such remand of the matter learned Civil Judge taking into account the no claim certificate issued by the Appellant on 13.10.1976 set aside the award passed by the learned Tribunal. Learned Civil Judge while holding so also relied on various decisions of this Court. This Court after going through the materials available on record finds no illegality or irregularity in the said order of the learned Civil Judge and accordingly held that learned Civil Judge has rightly passed the order dtd.11.02.1998. Hence the appeal fails and is accordingly dismissed.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 13th September, 2022/Sneha