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Sub.Appl.(OS) Nos.949, 950, 1056 and 1057 of 2024
in Cont.P.Nos.2125 and 2126 of 2016

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R.SUBRAMANIAN, J.
and
D.BHARATHA CHAKRAVARTHY, J.

Heard Mr.J.Ravindran, learned Additional Advocate General appearing for the State and Mr.S.Mukunth, Senior Counsel appearing for the petitioner.

2. In our considered view, these applications for clarification is an abuse of process of Court. The contract for construction of a reservoir across the Malattar river was awarded to M/s Chandragiri Construction Company, Kerala, in the year 2005, with a condition that the work should be completed within 18 months, i.e., on or before 30.06.2007. Dispute commenced from 2005. Neither the work was completed nor the dispute came to an end. In such circumstances, the contract was terminated. A Writ Petition was filed questioning the termination and Writ Appeals were also taken there from.

3. During the pendency of the Contempt Petitions, a joint memorandum was filed by the parties, agreeing to take the dispute before the Arbitrator. The



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joint memorandum dated 27.10.2021 filed before this Court reads as follows:-

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“1). With a view to resolve the disputes arising out of the Contract Agreement dt.26.10.2005, the parties herein have mutually agreed for an appointment of Sole Arbitrator by this Hon'ble Court and hence they are filing this Joint Memo before this Hon'ble Court.

2) The Parties are agreed to complete the Arbitration proceedings within the time frame mutually agreed and fixed by this Hon'ble Court.

3) By recording the Joint Memo between the parties, this Hon'ble Court may be pleased to close the above contempt proceedings.”

4. Pursuant to this joint memorandum, a retired Judge of this Court was appointed as Arbitrator and after his unfortunate demise, during the currency of the proceedings, the Hon'ble Justice N.Paul Vasanthakumar, former Chief Justice of Jammu and Kashmir High Court was appointed as an Arbitrator.

5. During the hearing before the Arbitrator, the petitioner filed an interlocutory application under Section 16 of the Arbitration Act, seeking the



Arbitrator to decide the question as to whether an Arbitrator can determine the dispute beyond the value of Rs.50,000/-, by relying upon Clause 69 of the Contract. After arguing for some time on the application, time was sought, for seeking clarification before this Court. Pursuant to the same, these petitions have been filed.

6. The Clause 69 of the Contract provides for arbitration, for disputes not exceeding the monetary value of Rs.50,000/- and empowers the Department to appoint a sole Arbitrator. That was given a go by. After litigating in the Courts, for over 16 years, wisdom dawned upon the parties to enter into a settlement, referring the matter to arbitration and a joint memorandum was filed. The contents of which are extracted supra. A reading of the joint memorandum shows that disputes arising out of the entire contract dated 26.10.2005 has been referred for arbitration. There is no question of restricting the scope of arbitration which has been done as agreed to by the parties.

7. Therefore, we see no need for clarification, we make it clear that the



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entire dispute has been referred for arbitration and the Arbitrator will be entitled to deal with it. The application filed under Section 16 of the Arbitration Act stands rejected.

8. The mandate of the Arbitrator is extended by one year from today.

9. In the result, the Sub Applications are rejected.

(R.S.M., J.)

(D.B.C., J.)

26.11.2024

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