

2022 LiveLaw (SC) 900

IN THE SUPREME COURT OF INDIA
M.R. SHAH; J., M.M. SUNDRESH; J.

Special Leave to Appeal (C) No. 18324/2022; 31-10-2022
YASHPAL CHOPRA AND CO. versus UNION OF INDIA & ORS.

Arbitration and Conciliation Act, 1996; Section 2(e), 34 - In the absence of the High Court of Orissa having original jurisdiction, the concerned District Court can be said to be `Court' - The proceedings under Section 34 against the award passed by the Arbitrator shall lie before the concerned District Court, as defined under Section 2(e).

(Arising out of impugned final judgment and order dated 04-05-2022 in ARBA No. 31/2012 passed by the High Court of Orissa at Cuttack)

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv. Mr. Tushar Arora, Adv. Ms. Reena Pandey, Adv. Ms. Manjulika Pal, Adv. Mr. Anurag Pandey, AOR

ORDER

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 04.05.2022 passed by the High Court of Orissa at Cuttack in Arbitration Appeal No. 31 of 2012 by which the High Court has allowed the said Appeal and set aside the order passed by the concerned District Court dismissing the application under section 34 of the Arbitration and Conciliation Act, 1996 (for short `the Arbitration Act') as not maintainable and has consequently remanded the matter to the concerned District Court to decide and dispose of Section 34 application on merits, the original respondent before the High Court has preferred the present Petition.

Ms. Meenakshi Arora, learned Senior Advocate appearing on behalf of the petitioner has heavily relied upon Section 42 of the Arbitration Act and Section 11 of the Arbitration Act, as amended, in support of her submission that the High Court, who has exercised the jurisdiction under Section 11 of Arbitration Act alone can be said to be `Court' and, therefore, Section 34 application shall lie before the concerned High Court only. The aforesaid has no substance. It is an admitted position that so far as Orissa High Court is concerned, the same does not possess the original jurisdiction. The `Court' is defined under Section 2 (e) of the Arbitration Act, which reads as under-
"2(e) "Court" means-

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;"

Therefore, in the absence of the High Court of Orissa having original jurisdiction, the concerned District Court can be said to be `Court' and, therefore, the proceedings under Section 34 of the Arbitration Act against the award passed by the Arbitrator shall lie before the concerned District Court, as defined under Section 2(e) of the

Arbitration Act. In that view of the matter, the High Court has not committed any error in passing the impugned judgment and order and remanding the matter to the concerned District Court/Court to decide Section 34 application in accordance with law and on its own merits. Therefore, in the facts and circumstances of the case, impugned judgment and order passed by the High Court is not required to be interfered with. The Special Leave Petition stands dismissed.

Pending application(s) shall stand disposed of.

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