

Court No. - 37

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 378 of 2023

Appellant :- National Highways Authority Of India

Respondent :- Smt. Sudha And 3 Others

Counsel for Appellant :- Pranjal Mehrotra

Counsel for Respondent :- Ajay Singh, Abhishek Kulshrestha

Hon'ble Ajay Bhanot, J.

This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996. The photostat copies have been produced before the Court at the time of hearing. It has been informed by the Registry that the original records are not being summoned in view of the directions of the Supreme Court in **Asian Resurfacing of Road Agency P. Ltd. And Anr. vs. Central Bureau of Investigation** passed in **(Criminal Appeal Nos. 1375-1376 of 2013)** which are extracted hereunder:

“...

7. We also direct that if in future the trial court record is summoned, the trial courts may send photocopy/scanned copy of the record and retain the original so that the proceedings are not held up. In cases where specifically original record is required by holding that photocopy will not serve the purpose, the appellate/revisional court may call for the record only for perusal and the same be returned while keeping a photocopy/scanned copy of the same.

8. A copy of this order be sent to all the High Courts.

...”

(emphasis supplied)

The intent of the order dated 25.04.2018 rendered by the Supreme Court in **Asian Resurfacing (supra)** is clearly to ensure that cases in which proceedings are pending before the trial courts do not come to a stand still after original records are transmitted to the High

Court. However, in cases where the proceedings before the trial courts have concluded, and the order of the trial court is taken in appeal to the High Court, the same directions are not intended to apply. It is settled law that appeal is a continuation of the original proceedings. To decide second appeals, first appeals, FAFO's and other like proceedings where the *lis* before the trial court has terminated and the appeal or the proceeding has been instituted before the High Court, the original records are essential for adjudication of such proceedings before the High Court. In such matters, after termination of the *lis* before the trial court, the entire proceedings are transmitted to the higher forum. The High Court cannot decide such matters in the absence of original records. Appeals under Section 37 of the Arbitration and Conciliation Act, 1996 is one such category of appeals where proceedings before the trial courts have terminated. Hence, original records are liable to be summoned from the court below.

The interpretation given by the Registry to the order of the Supreme Court dated 25.04.2018 is erroneous.

Registry is accordingly directed to summon the original records of the trial courts in all those matters where proceedings before the trial court have terminated and the final order passed by the trial court is assailed before the High Court.

List in the third week of January, 2024.

Order Date :- 28.11.2023/Vandit