

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4795 OF 2000

M/S. HAR GOBIND JAGGI

Appellant (s)

VERSUS

DELHI DEVELOPMENT AUTHORITY

Respondent(s)

Date: 21/03/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s)

Mr. Santosh Paul,Adv.

Mr. M.J. Paul,Adv.

Ms. Kaveri Mohan,Adv.

For Respondent(s)

Ms. Indu Malhotra,Adv.

Mr. Arjun Suresh,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

There will be no order as to costs.

(Ganga Thakur)

(Khushi Ram))

PS to Registrar

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4795 OF 2000

(s) M/S HAR GOBIND JAGGI

...APPELLANT

Versus

(s) DELHI DEVELOPMENT AUTHORITY

...Respondent

O R D E R

A Contractor of the respondent authority is in appeal before us.

He challenges the decision of the High Court in an appeal filed under

Section 39 of the Arbitration Act, 1940 to the extent the learned judge

deleted one head under the Award while confirming the decision of the trial

court making the Award the rule of Court. The High Court took the view

that the deduction of demurrage charges by the respondent from the outstanding bills of the appellant was justified in terms of the relevant provisions in the contract between the parties and when the Arbitrator directed refund of those amounts to the appellant, the Arbitrator had acted outside the terms of the contract thereby justifying interference by the court in a motion for setting aside the Award.

Learned counsel for the appellant submitted that it was a case of the Arbitrator interpreting the terms of contract and understanding its contents and even if the interpretation is not correct, it is not for the court to set aside the Award on that ground since it was open to the Arbitrator to come to a conclusion of his own on an interpretation of the terms of the contract. Learned counsel cited the judgment of this Court in the State of U.P. Vs. Allied Constructions (2003(7)SCC 396) and further supported his submission by referring to the other relevant decisions of this Court on the question. Counsel for the respondent submitted that this was not a case of interpretation of the terms of the contract as contended by the appellant,

but it is a case of the Arbitrator going against the terms of the contract in giving the Award for refund of demurrage deducted by the respondent.

On a consideration of the relevant provisions of the contract in the light of the reasons given by the Arbitrator in support of his Award and the reasons given by the High Court for interfering with that part of the Award, we are of the view that the view taken by the learned Judge of the High Court is justified. The terms of the contract are clear. The responsibility for placement of wagons and arranging their unloading, removal of goods from the railway premises within the time limit prescribed by the regulations, was that of the contractor. The contract also provided that the contractor shall pay all demurrage and wharfage charges direct to the Railway authorities and shall produce the clearance certificate to that effect along with his monthly bills. Apparently, the contractor had not done it and it was in that situation that the respondent deducted the concerned amount from the bills of the appellant for paying it to the Railways. In view of the clear provisions in the contract and the obligation of the contractor to pay the demurrage charges, we are of the view that the

High Court was justified in coming to the conclusion that the Arbitrator while making the Award on this head, had travelled outside the terms of the contract. We are, therefore, satisfied that the decision of the High Court does not call for any interference in this appeal.

We dismiss the appeal. There will be no order as to costs.

.....J.

(P.K. BALASUBRAMANYAN)

.....J.

(B. SUDERSHAN REDDY)

New Delhi,

March 21, 2007.