

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

Petition(s) for Special Leave to Appeal (Civil) No.1719/2000

(From the judgement and order dated 16/07/1999 in CR 5573/98
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

STATE OF HARYANA

Petitioner (s)

VERSUS

BRISH BHAN

Respondent (s)

(With prayer for interim relief)

Date : 23/04/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. KIRPAL
HON'BLE MRS. JUSTICE RUMA PAL

For Petitioner (s) Mr. Neeraj Kumar Jain, Adv.
Mr. Mahabir Singh, Adv.

For Respondent (s) Mr. Jasbir Singh Malik, Adv.
Mr. S.K. Sabbarwal, Adv.

UPON hearing counsel the Court made the following
O R D E R

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.SP2

Special leave granted.
The appeal is allowed. The result of this is that
the application under Section 28 of the Department stands
allowed and four months time from the date of the
communication of this order, is granted to the Arbitrator
to make the award.

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Kalyani. (S.L. GOYAL) @@
AA
COURT MASTER@@
A AAA

(Signed Order is placed on the file.)

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CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2001@@

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(Arising out of S.L.P.(C) No.1719 of 2000)

State of Haryana Appellant

Versus

Brish Bhan Respondent

O R D E R@@

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Special leave granted.

It appears that pursuant to an agreement between the parties and when disputes had arisen, on 13th October, 1992 an Arbitrator was appointed. The Arbitrator entered upon the reference on 21.12.1992 and thereafter the parties mutually agreed to extend the time to enable the Arbitrator to make the award. The last extension expired on 6th February, 1994 whereupon the appellant filed an application under Section 28 of the Indian Arbitration Act, 1940 praying for extension of time so as to enable the Arbitrator to make the award.

The application was opposed, but by an order dated 28th November, 1997 the Additional Civil Judge, Narwana allowed the application thereby enabling the Arbitrator to make the award within the extended period of four months from that date.

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The said decision was challenged before the Additional District Judge, Jind. The appeal of the respondent was allowed on two grounds. Firstly, it was held that there was no proper agreement between the parties. Secondly, it was held that the tender form had been offered and the same was accepted by the Department on 3rd November, 1989 and the application filed under Section 28 on 16th March, 1994 was barred by time. Against the order of the Additional District Judge, the appellant moved the High Court by filing a revision petition which was dismissed. Hence, this appeal.

We are astonished to see the second reason given by the lower appellate court in allowing the respondent's appeal. The application under Section 28 was for extension of time to enable the Arbitrator to make the award. The Arbitrator had already entered upon the reference on 21.12.1993 and the question of an application being filed under Section 28 within three years of the date of the agreement can never arise. The point in issue was whether further four months time should have been granted or not and the reasoning of the Additional District Judge, Jind is clearly fallacious.

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Moreover, he had no jurisdiction while dealing with an application under Section 28 for extension of time to decide whether there was a valid arbitration agreement or not. It was not an application under Section 33 which was before him. The order of the Additional District Judge being clearly contrary to law, the High Court erred in upholding the same on the facts and circumstances of this case. We are of the opinion that the extension sought for should have been granted and order of the trial court is correct. We, therefore, allow this appeal and set aside the decisions of the lower appellate court and the High Court. The result of this is that the application under Section 28 of the Department stands allowed and four months time from the date of the communication of this order, is granted to the Arbitrator to make the award.

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.....J
(B.N. KIRPAL)

.....J
(RUMA PAL)

New Delhi,
April 23, 2001.