

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3918 OF 2012
(Arising out of SLP (C) NO. 5130 OF 2011)

UNION OF INDIA & ORS.

Appellant (s)

Vs.

M/S C & C CONSTRUCTIONS P.LTD.

Respondent (s)

O R D E R

Delay condoned.

Leave granted.

This appeal arises out of an order dated 17.02.2010 passed by the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura at Guahati, whereby Civil Revision Petition No. 94 of 2009 filed by the appellant - Union of India herein against an order dated 31.07.2008 passed by the Civil Judge (Senior Division) Dibrugarh in Petition No. 584 of 2009 in Money Suit No. 5 of 2007, has been dismissed.

The respondent company is a civil contractor, who appears to have secured a contract for resurfacing of runway at Chabua near the Chinese Border area in the North Eastern part of the country. The estimated value of the contract was Rs. 16.81 crores. The appellant's case is that despite lapse of nearly 11 months, the respondent could execute only 0.294% of the total work. This according to the appellant called for action by way of cancellation of the contract and

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award of the balance work to another contractor. The contract was accordingly cancelled on 22.12.2003 and awarded to another contractor.

Aggrieved by the termination of the contract, the respondent filed Title Suit No. 28 of 2004 before the Court of Civil Judge (Senior Division), Dibrugarh, seeking a decree for declaration to the effect that the termination of

the contract was bad and asking for a decree for permanent injunction restraining the appellant herein from interfering with the execution of the work. An application for grant of temporary injunction appears to have been filed before the Civil Judge (Senior Division), Dibrugarh, which was dismissed, by the trial court by an order dated 12.07.2004 on consideration of the rival claims and contentions of the parties. While the above suit was pending, the respondent contractor filed Money Suit No. 5 of 2007 for recovery of a sum of Rs. 6.29 crores towards damages and the value of the work done. In the said suit the appellant herein appeared to make an application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') asking for stay of suit and reference of the disputes arising out of money suit for arbitration in terms of the Conditions No. 70 of the Contract Agreement. That application has been dismissed by the trial court on the ground that only an attested copy of the arbitration agreement had been filed by the appellant even though a certified copy was required to

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be filed under Section 8 (2) of the Act. Aggrieved, the appellant preferred Civil Revision Petition No. 94 of 2009 before the High Court at Gauhati, which has been dismissed by the High Court in terms of the order impugned in the present appeal.

When the matter came up before us for hearing and was argued at some length, we asked counsel for the parties to explore the possibilities of a reference of the disputes to a sole arbitrator. We must say to the credit of Mr. PP Malhotra, learned ASG appearing for the appellant - Union of India and Mr. Dushyant Dave, learned senior counsel for the respondent company that they have accepted the said suggestion and agreed to refer the disputes between the parties to the sole arbitration of Mr. Justice D.P. Wadhwa, former Judge of this Court. Learned counsel appearing for

the parties submit that a suitable order of reference of all the disputes raised in the two suits mentioned above could be made by this Court leaving it open to the parties to file their detailed claims and counter claims before the arbitrator in accordance with law.

In the circumstances, therefore, it is not necessary for us to examine on merits the contentions open to the parties as to the validity of the orders passed by the courts below.

We accordingly direct that:

1. All disputes raised in Title Suit No. 28 of 2004 and
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Money Suit No. 5 of 2007, both of which appear to have been consolidated for trial before the Civil Judge (Senior Division) Dibrugarh, shall stand referred to the sole arbitration of Mr. Justice D.P. Wadhwa, former Judge of this Court.
2. The parties shall be free to file their claims and counter claims, before the learned sole arbitrator arising out of and in connection with the contract which is the subject matter of the two suits mentioned above. It goes without saying that all contentions and defenses shall be open to the parties in support of their respective claims and may be urged before the arbitrator at the appropriate stage.
3. The parties agree that the venue of the arbitration shall ordinarily be at Delhi, but with the consent of the parties and subject to the convenience of the arbitrator may be at any other place also, if otherwise necessary.
4. The sole arbitrator shall be free to fix his fee and procedure for arbitration.
5. The record of the suits shall stand transferred to the sole arbitrator.

The orders passed by the trial court as also the High

Court shall, in the light of the above order, stand set
aside/modified and the appeal disposed of.

The parties are left to bear their own costs.

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.....J.
(T.S. Thakur)

.....J.
(Gyan Sudha Misra)

New Delhi,
April 23, 2012

ITEM NO.40

Court No.11

SECTION XIV

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(s).5130/2011
(From the judgement and order dated 17/02/2010 in CRP No.94/2009 of
The HIGH COURT OF GUWAHATI ,ASSAM)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

M/S C & C CONSTRUCTIONS P.LTD. Respondent(s)
(With appln(s) for c/delay in filing SLP,permission to place addl.
documents on record)

WITH S.L.P.(C)...CC NO. 2562 of 2012

WITH I.A. 1(C/delay in filing SLP and office report)

Date: 23/04/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s) Mr. PP Malhotra,ASG
Ms. Kiran Bhardwaj,Adv.
Mr. Gaurav Sharma,Adv.
Mr. B.V. Balramdas,Adv.
Mrs Anil Katiyar,Adv.

For Respondent(s) Mr. Dushyant Dave,Sr.Adv.
Mr. Amit Dhingra,Adv.

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Mr. Aman Leekha,Adv.
M/S. Dua Associates, Adv.

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

SLP (C) NO. 5130/2011

Delay condoned.

Leave granted.

The appeal is disposed of in terms of the signed order.

S.L.P.(C)...CC NO. 2562 of 2012

Mr. Dushyant Dave, learned senior counsel, submits that in view of order passed in SLP (C) NO. 5130/2011, this matter has become infructuous and the same may be dismissed as such.

Accordingly, S.L.P.(C)...CC NO. 2562 of 2012 is dismissed as infructuous.

(N.K. Goel)

Court Master

(Veena Khera)

Court Master

(Signed order is placed on the file)