

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.3406 OF 2006

M/S SEKAR CONSTRUCTIONS

Appellant (s)

VERSUS

CHIEF ENGINEER (CIVIL) AND ORS.

Respondent(s)

O R D E R

Heard learned counsel for the parties.

This appeal has been filed against the impugned judgment of the Madras High Court dated 15.6.2004.

The case relates to arbitration. The facts in detail have been set out in the judgment of the High Court and hence we are not repeating the same except wherever necessary.

Clause 2 of the contract between the parties inter alia states:

"... The work shall throughout the stipulated period of the contract be proceeded with all due diligence and the contractor shall pay as compensation an amount equal to one per cent or such smaller amount as the Superintending Engineer (whose decision in writing shall be final) may decide on the amount of the estimated cost of the whole work as shown in the tender, for everyday that the work remains uncommenced or unfinished after the proper dates."

Learned counsel for the appellant states that the above clause in the contract between the parties is an excepted clause and hence the matter referred therein is

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not arbitrable. It has to be decided by the Superintending Engineer alone. For this proposition he has relied upon the decision of this Court in Vishwanath Sood v. Union of India And Another, (1989) 1 SCC 657.

We agree with the submission of the learned counsel for the appellant. The judgment in Vishwanath Sood's case

(supra) is squarely applicable in this case also. Hence we dispose of this appeal with a direction to the Arbitrator to proceed with the arbitration except with respect to matter referred to in the clause quoted above.

The appeal stands disposed of accordingly.

.....J.
(Markandey Katju)

.....J.
(Asok Kumar Ganguly)

New Delhi;
October 28, 2009.

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ITEM NO.103

COURT NO.7

SECTION XII

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). 3406 OF 2006

M/S SEKAR CONSTRUCTIONS

Appellant (s)

VERSUS

CHIEF ENGINEER (CIVIL) AND ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and office report)

Date: 28/10/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s)

Mr. Nikhil Nayyar, Adv.
Mr. T.V.S. Raghavendra Sreyas, Adv.
Mr. Ambuj Agrawal, Adv.

For Respondent(s)

Mr. R.D. Agrawala, Sr. Adv.
Mr. Pavan Kumar, Adv.
Mr. Pawan Kumar Sharan, Adv.

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

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

(K.K. Chawla)
AR-CUM-PS

(Indu Satija)
Court Master

[Signed order is placed on the file]