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SLP(C)No. 7762 OF 2004  
ITEM No.5

Court No. 7

SECTION XVI

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.7762/2004

(From the judgement and order dated 19/02/2004 in CO 391/04  
of The HIGH COURT OF CALCUTTA)

M/S. M.S. COMMERCIAL & ORS.

Petitioner (s)

VERSUS

CALICUT ENGINEERING WORKS LTD.

Respondent (s)

( With Appln(s). for permission to submit additional document(s) )  
(With prayer for interim relief)

With

SLP(C)No.7765/2004

( With appln. for permission to submit additional documents  
and with prayer for interim relief )

Date : 27/04/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA  
HON'BLE MR. JUSTICE H.K. SEMA

For Petitioner (s)Mr. U.U.Lalit, Adv.  
Mr. Rana Mukherjee, Adv.  
Mr. Siddharth Gautam, Adv.  
Mr. Goodwill Indeevar,Adv.

For Respondent (s)Mr. Ramesh P.Bhatt, Sr.Adv.  
Mr. Rauf Rahim, Adv.

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

The Special Leave Petitions are dismissed in terms of the signed order. There will be no order  
as to costs.

Anita

(Mithlesh Raghav)  
Court Master

(Signed Order is placed on the file.)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 7762 OF 2004

M/S. M.S.COMMERCIAL & ORS.

...

Appellant (s)

Versus

CALICUT ENGINEERING WORKS LTD.

...  
Respondent (s)

WITH

SPECIAL LEAVE PETITION (CIVIL) NO. 7765 OF 2004

O R D E R

These Special Leave Petitions are against an Order dated 19th February, 2004.

We have heard Mr. U.U.Lalit, learned counsel at great length.

Briefly stated, the facts are that the Respondents claimed arbitration and appointed an Arbitrator. The Petitioners claimed that there was no arbitration agreement between the parties. The question whether there was an arbitration agreement was raised before the Arbitrator by the Petitioners. As the answer to this question was dependent on whether or not Petitioners had signed the documents which purportedly contained the arbitration clause, the Petitioners applied that the documents be examined by a hand-writing expert. The Arbitrator allowed this application and called upon both the parties to give names of hand-writing experts. The Respondent supplied the names of hand-writing experts. The Petitioners did not supply any name. The Arbitrator appointed a hand-writing expert out of the list supplied by the Respondents. The hand-writing expert gave two reports.

On 2nd July, 2003 the Petitioners applied that the reports be set aside and another hand-writing expert be appointed. The Arbitrator rejected that application. Thereafter, the Arbitrator gave his decision on 29th September, 2003. The Arbitrator held that there was an arbitration agreement. On 12th November, 2003, i.e., after this decision is given, the Petitioners filed another application seeking permission to cross-examine the hand-writing expert and/or for permission to lead evidence of some other hand-writing expert. This application has been dismissed by the impugned Order.

Once the Arbitrator had taken a decision that there was an arbitration agreement, then by virtue of sub-section 5 of Section 16 of the Arbitration and Reconciliation Act, the Arbitrator was bound to continue with the Arbitration proceedings and make an arbitral award. The only right that the Petitioners now had was to challenge the Award under Section 34 of the Act after it is made. Once the Arbitrator gave his decision, it was not open to the Petitioners to ask for cross-examination of the expert or at that state lead evidence of any other expert. The stage for doing that had passed. As prior to the decision of the Arbitrator they never applied for cross-examination, they could not do so after the decision. This would not even be a ground of challenge under Section 34 of the Act. However, we clarify that the above will not mean that whilst challenging the arbitral award, if so challenged, the Petitioners cannot challenge the order rejecting their earlier application. If in law they are entitled to do so, they may.

Accordingly, the Special Leave Petitions stand dismissed. There will be no order as to costs.

.....J.

(S.N.Variava)

.....J.

(H.K.Sema)

New Delhi,  
April 27, 2004.