

SLP(C)No. 16373 OF 2003

ITEM No.35

Court No. 5

SECTION IVB  
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Civil) No.16373/2003

(From the judgement and order dated 13/01/2003 in CWP 309/03  
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

M/S. TELEPHONE CABLES LTD.

Petitioner (s)

VERSUS

CHIEF G.M., TELECOM CIRCLE & ANR.

Respondent (s)

(With Appln(s). for c/delay in refiling SLP )

Date : 08/01/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL  
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s) Mr.Nidhesh Gupta,Adv.  
Mr.Naveen Singh,Adv.  
Ms.S.Janani,Adv.

For Respondent (s) Ms.Hemantika Wahi,Adv.  
Ms.Archna Palekar,Adv.

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

Delay condoned.

Leave granted.

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

(Madhu Saxena)  
COURT MASTER AR-cum-PS

(N.K.Gandhi)

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.123 OF 2004  
[Arising out of SLP(C)No.16373/2003]

M/S.TELEPHONE CABLES LTD.... APPELLANT (S)

VERSUS

CHIEF GENERAL MANAGER (TELECOM),  
HARYANA TELECOM CIRCLE & ANR....RESPONDENT (S)

O R D E R

Leave granted.

The application of the appellant under Section 11 of the Arbitration and Conciliation Act, 1996 was rejected by the Civil Judge(Senior Division), Chandigarh basically on two basic grounds : (i) that the Chandigarh Court did not have territorial jurisdiction over the subject-matter of the proposed arbitration; and (ii) that the disputes were not referable to arbitration. As far as the first reason is concerned, we find from a copy of the petition filed under Section 11 of the Act that the petitioner had categorically stated that the formal acceptance of the contract in question was at Chandigarh and that the payment under the contract was paid and was further payable in Chandigarh. These factual averments have not been disputed in the affidavit in opposition filed by the respondent before the Civil Judge. In the circumstances, the decision of the Civil Judge that the "formal acceptance was not an integral part of the contract" was incorrect. There is also no finding on the part of the cause of action, namely, the place of payment, which admittedly arose in Chandigarh.

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As far as the second reason is concerned having regard to this Court's decision in M/s.Konkan Railway Corporation Ltd. & Anr. vs. M/s.Rani Construction (P) Ltd. [2002 (2) SCC 388], the Civil Judge erred in going into the substance of the dispute sought to be referred to arbitration.

These errors in the decision of the Civil Judge were unfortunately reaffirmed by the High Court in appeal. We accordingly set aside the decision of the High Court as well as of the Civil Judge and direct the Civil Judge to appoint an arbitrator as prayed for in the petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 within a period of two weeks from the date of the receipt of a copy of this order.

Record be sent back to the Civil Judge.

The appeal is disposed of accordingly. There shall be no order as to costs.

.....J. [RUMA PAL]

.....J. [S.B.SINHA]

New Delhi,  
January 8, 2004.