

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).30243-30244/2009

(From the judgement and order dated 20/08/2004 in CMP No. 56/2004 & CP No. 1494/2004 of The HIGH COURT OF KARNATAKA AT BANGALORE)

FAROOQ BAIG

Petitioner(s)

VERSUS

ABDUL KARIM BAIG & ANR.

Respondent(s)

(With appln(s) for c/delay in filing SLP,c/delay in refiling SLP and office report)

Date: 09/04/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE R.M. LODHA

For Petitioner(s) Mr. P. Ramesh, Adv.
 Mr. Y. Arunagiri, Adv.
 Mr. Rakesh K. Sharma, Adv.

For Respondent(s) Mr. N.D.B. Raju, Adv.
 Ms. Bharathi Raju, Adv.
 Mr. N. Ganpathy, Adv.

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

Delay condoned. Leave granted.

In terms of the signed order, we allow the
appeals, set aside the orders dated 20.8.2004 and
28.1.2005 and appoint Justice S. Venkataraman, a retired
Judge of the Karnataka High Court as the sole Arbitrator.

(Ravi P. Verma) (M.S. Negi)
Court Master Court Master
[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3315-3316 OF 2010
[Arising out of SLP(C) No.30243-30244/2009]

FAROOQ BAIG

.....APPELLANT

Versus

ABDUL KARIM BAIG & ANR.

.....RESPONDENTS

O R D E R

Delay of 1603 days with reference to the challenge
to order in the main petition and delay of 1442 days in so

far as the challenge to the order in review petition is explained by stating that the main order was challenged by filing a writ petition; that in view of the decision of this Court in SBP & Co. Vs. Patel Engineering Ltd., (2005) 8 SCC 618, that an order under Section 11 of the Arbitration and Conciliation Act, 1996 ('the Act' for short) could be challenged only by initiating proceedings under Article 136, the writ petition was dismissed; and that thereafter, the petitioner has filed SLP. As the delay has been satisfactorily explained, we condone the delay. Leave granted.

2. The appellant and second respondent are the sons of first respondent. Certain disputes having arisen between them, the appellant sought reference to arbitration and proposed Smt. Susheela as an arbitrator. The respondents also agreed for arbitration by Smt. Susheela as sole arbitrator. The disputes were, accordingly, referred to the said Smt. Susheela. Alleging that the said Smt. Susheela had declined to act as an arbitrator, the appellant filed a petition under Section 11 of the Act for appointment of a new Arbitrator. When the said petition2.

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came up for consideration before the designate of the Chief Justice on 20.8.2004, the appellant's counsel could not be present; and the respondents' counsel informed the Court that though the appellant claimed that Smt. Susheela had declined, there was no material to show that she had, in fact, so declined. In view of the said submission, the learned designate dismissed the petition under Section 11 of the Act. The appellant filed an application for recalling the said order which was also dismissed on 28.1.2005. The said orders are under challenge in these appeals by special leave.

3. The fact that the parties have agreed for arbitration is not in dispute. The appellant came with an application under Section 11 of the Act with a specific case that Smt. Susheela who was the agreed arbitrator had refused to continue as an arbitrator. If the respondents wanted to contest the same, they could have produced a letter from Smt. Susheela stating that she was willing to continue as Arbitrator. The appellant could not satisfy the Court that Smt. Susheela had declined to act as Arbitrator, as his counsel could not be present at the hearing on 20.8.2004. The reason for non-appearance was explained by the appellant. In spite of it, the Court proceeded to reject the application under Section 11 of the Act which was not warranted. At least, when the application for recalling was filed, the learned designate ought to have set right the matter. But it was not done.

4. The appellant has established that Smt. Susheela was unwilling to act as Arbitrator. We are, therefore, of the view that the application under Section 11 of the Act ought to be allowed and a new Arbitrator appointed. We, accordingly, allow these appeals, set aside the orders3.

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dated 20.8.2004 and 28.1.2005 and appoint Justice S. Venkataraman, a retired Judge of the Karnataka High Court as the sole Arbitrator.

5. Learned counsel for the respondents stated that during the pendency of the writ petition which was filed by the appellant challenging the order of the designate, the appellant had filed a suit for permanent injunction and there an application under Section 8 has been filed by the respondents. If respondents agree to maintain status quo, the appellant can move the Court so that the said suit could be disposed of by consent.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
April 09, 2010.

.....J.
(R.M. LODHA)