

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A.No. 1-3, 4, 5 in Civil Appeal No.6413/1999

CHANDRA PRAKASH AGARWAL

Appellant (s)

VERSUS

BHAGIRATH AGARWAL & ORS

Respondent (s)

(For leave to intervene in the arbitration proceedings and directions on behalf of the appellants and directions on behalf of respondent No. 1 and for permission to file addl. affidavit and Office Report)

Date : 04/02/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE G.P. MATHUR

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant/ (s)Mr. Gopal Subramaniam, Sr. adv.
Applicant In I.A. 2Mr. Rana Mukherjee, Adv.
Mr. Siddharth Gautam, Adv.
Mr. Suchit Mohanty, Adv.

Mr. Goodwill Indeevar,Adv.

For Respondent (s)Mr. S.B. Sanyal, Sr. adv.
For Applicant in I.A. 3 Mr. G.G. Upadhyay, Adv.
Ms. Vinita G. Upadhyay, Adv.
Mr. Awadhesh Kr. Singh, Adv.
Mr. Rajeev Sharma,Adv.
Mr. R.D. Upadhyay,Adv.

Mr. D. Mahesh Babu,Adv.

For Applicants in IA 1 Mr. K.K. Venugopal, Sr. Adv.
Mr. Dipak Kumar Jena,Adv.

Mr. V.N. Raghupathy,Adv.

UPON hearing counsel the Court made the following

O R D E R

I.A. 4 & 5

The applications are allowed and the affidavits are taken on record.

I.A. No. 1, 2 and 3

I.A. No. 1 be treated as disposed of, I.A. No. 2 is dismissed as withdrawn and I.A. No. 3 stands disposed of in terms of the signed order.

(Ajay Kr. Jain)

(Radha R. Bhatia)

Court Master

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NOS. 1- 3

IN

CIVIL APPEAL NO. 6413 OF 1999

Chandra Prakash Agarwal

....
Appellant

Versus

Bhagirath Agarwal & Ors.

....
Respondents

O R D E R

I.A.No. 1

The applicant-Manipur Tea Company Pvt. Ltd. is a stranger to the proceedings pending before the Arbitrator Justice (Retd.) Monoj Kumar Mukherjee. The parties to arbitration are Bhagirath Agarwal and Chandra Prakash Agarwal, who are partners of Hindustan Tea Company. The applicant cannot be allowed relief either by way of intervention or by way of any substantive relief in these proceedings either by this Court or by directing the Arbitrator to entertain its prayer.

The applicant is at liberty to pursue such remedy as may be available to it under the law for vindicating its grievance raised in the application. The Arbitrator is only acting as a tribunal and he cannot be permitted to be joined as party to any legal proceedings initiated by the applicant. The application be treated as disposed of.

I.A. No. 2

The applicant is aggrieved by some orders passed by the learned Arbitrator at an interim stage of the proceedings and seeks directions from this Court in that regard. Suffice it to observe that once an Arbitrator has been appointed by the Court any party feeling aggrieved by any interim order or direction made by the Arbitrator is at liberty to pursue such remedy as may be available to him under the law. That being the position of law, the learned counsel for the applicant seeks to withdraw the application reserving liberty to pursue such other remedy as may be available to the applicant. We record the statement of the learned counsel and dismiss the application as withdrawn.

I.A.No.3

Bhagirath Agarwal, the applicant herein has moved this application for the following relief :- "It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to direct the appellant to pay to the respondent the sum admissible under the terms and compromise contained in the order dated 15.02.1991 passed by this Hon'ble Court and/or pass such other and further order which may be found necessary in the circumstances of the case."

The prayer made in this application is vehemently opposed on behalf of the other party Chandra Prakash Agarwal submitting that a similar prayer was made earlier whereon this Court did not make any order. Attention is invited to the order dated 1.11.1993 passed by this Court.

However, the learned counsel for the applicant-Bhagirath Agarwal submits that Chandra Prakash Agarwal has defaulted in complying with the direction contained in the order dated 15.2.1991 to the effect that - "The petitioners will pay a sum of Rs.15 lacs every year to the respondent as a minimum guaranteed profit (amount) irrespective of any profit being earned or not." Mr. Gopal Subramaniam, learned senior counsel for Chandra Prakash Agarwal submits that there has been a subsequent Memorandum of Understanding and several other subsequent events which disentitle the applicant Bhagirath from claiming the amount of Rs.15 lacs every year.

It is clear that this Court while passing the order dated 15.2.1991 had expected the arbitration proceedings to be concluded and award made by the Arbitrator within a period of one year and that is why made certain directions to remain operative for a period of one year and to continue further "unless modified by the Court" till the arbitrator gives his Award. Now, about 14 years have passed and the arbitration proceedings are still continuing. In view of the subsequent events, we leave it open to the parties to seek suitable directions from the Arbitrator and the Arbitrator may after hearing the parties and taking into consideration all the relevant facts and circumstances, including events subsequent to the date of passing of the order dated 15.2.1991, make such directions as may be just and proper, including an interim award in accordance with law, uninfluenced by the directions contained in the order dated 15.2.1991 that the direction made by this Court would continue till the Arbitrator gives his Award "unless modified by the Court". In other words, we may say that the word 'Award' as occurring in the order of this Court shall include interim award also.

In addition, we request the learned Arbitrator to conclude the arbitration proceedings as expeditiously as possible and dispose them of by making a final award.

I.A. stands disposed of.

.....J.
(R.C. LAHOTI)

.....J.
(G.P. MATHUR)

.....J.
(TARUN CHATTERJEE)

New Delhi
February 04, 2005