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C.A.No. 600 OF 2003

ITEM No.108

Court No. 1

SECTION IX

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. 600 of 2003

Union of India... Appellant(s)

vs.

H.K. Dhruv... Respondent(s)

(with prayer for interim relief)

with

C.A. No. 601/2003 and C.A. No. 602/2003.

Date: 28/07/2004 This/These matter(s) was/were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE G.P. MATHUR

HON'BLE MR. JUSTICE C.K. THAKKER

For Appellant (s)Mr. M N Krishnamani, Sr. Adv.  
Dr. K S Chauhan, Adv.  
Mr. Chand Kiran, Adv.  
Mr. S N Terdal, Adv.  
Ms. Anil Katiyar, Adv. (NP)

For Respondent (s)In-person.

UPON hearing counsel and respondent in-person  
the Court made the following O R D E R

The appeals are dismissed with costs.

(D.P. WALIA) (RADHA R. BHATIA)  
COURT MASTER COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Union of India... Appellant

vs.

H.K. Dhruv... Respondent

[with Civil Appeal Nos. 601 and 602 of 2003]

O R D E R

The singular question arising for decision in these appeals is whether the subsequent application under Section 8 of the Arbitration Act, 1940 seeking appointment of arbitrator and reference of dispute for adjudication, was hit by the bar contained in Order 2 Rule 2 of the Code of Civil Procedure (CPC).

The facts in all the three appeals are identical. It would, therefore, suffice to notice the facts in only one of the three cases. It appears that the respondent has entered into a contract with the Railways. He preferred some claim against the Railways which was turned down, consequent whereupon he made a demand for referring the claim for adjudication by arbitrator. That prayer was also refused and hence the respondent moved the Civil Court for appointment of arbitrator.

It also appears that during the pendency of the first application, yet another claim was preferred by the respondent which too was turned down by the Railways. The respondent sought for reference of the subsequent dispute also for adjudication by arbitrator and on that prayer having been turned down by the Railways, the respondent filed the subsequent petition under Section 8 of the Arbitration Act, 1940 before the Civil Court. It is the maintainability of the subsequent petition which was objected to by the appellant by placing reliance on Order 2 Rule 2 of the CPC. The High Court has formed an opinion against the appellant-Railways.

Having heard the learned senior counsel for the appellant as also the respondent appearing in-person, we are satisfied that no fault can be found with the view taken by the High Court. In order to attract applicability of the bar enacted by Order 2 Rule 2, CPC, it is necessary that the cause of action on which the subsequent claim is founded should have arisen to the claimant when he sought for enforcement of the first claim before any court. On the facts found and as recorded in the judgment of the High Court and with which we find no reason to differ, the second demand raised by the respondent was not available to be made a part of the claim raised in the first application. The bar enacted by Order 2 Rule 2, CPC is clearly not attracted. The appeals are devoid of any merit and are dismissed with costs.

.....CJI

.....J

(G.P. MATHUR)

.....J

(C.K. THAKKER)

New Delhi;

July 28, 2004.

