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SLP(C)No. 17211 OF 2000

ITEM No.35

Court No. 4

SECTION IX
A/N MATTER

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.17211/2000
(From the judgement and order dated 05/09/2000 in CA 229/2000
of The HIGH COURT OF GUJARAT AT AHMEDABAD)

H.J. BAKER & BROS. INC.

Petitioner (s)

VERSUS

GUJARAT STATE FERTILIZERS CO. LTD.

Respondent (s)

(With prayer for interim relief)
(With Appln(s). for exemption from filing c/c of the impugned Judgment
and permission to submit additional document(s)

Date : 09/02/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MR. JUSTICE U.C. BANERJEE

For Petitioner (s) Mr. G.L. Sanghi, Sr. Adv.
Mr. Gautam Khaitan, Mrs. Bela Maheshwari, Advs
M/s. O.P. Khaitan & Co., Adv.

For Respondent (s) Mr. D. Dave, Sr. Adv.
Ms. Hemantika Wahi, Adv.
Mr. Ramesh Singh & Ms. Anu Sawhney, Advs.

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

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The question that arises for consideration is whether the learned Trial Judge was justified in coming to the conclusion that there does not exist any arbitration clause while disposing of an application filed under section 33 of the Arbitration Act, 1940 and the High Court was justified in not interfering with the said order. It is undoubtedly true that while an application was pending in an interlocutory matter the Court was prime facie satisfied that there exists an arbitration clause, obviously looking to clause 20 of the tender issued by the respondent, and that order also became final as this Court refused to grant Special Leave Petition against the revisional order of the High Court. But notwithstanding the same, the power of the Court while examining and considering an application under section 33 to express its opinion on the basis of all the documents between the parties, which ultimately resulted in the contract pursuant to which some supply might have been made is not taken away. We therefore required to find out whether there

exists any written contract between the parties which contains an arbitration clause and whether on the terms and conditions of the latter from both parties as well as the conduct of the parties, can it be inferred that there exists any arbitration clause for referring the dispute arising out of so-called contract for arbitration. Having examined the relevant documents placed before us, we are of the considered opinion that there does not appear to have any arbitration clause to which the parties agreed for referring the dispute arising out of the contract in question. The conclusion of the learned Trial Judge while disposing of the application under section 33 as well as the order of the High Court therefore cannot be interfered with by an application under Article 136.

Mr. G.L.Sanghi undoubtedly urged before us that since the arbitration proceeding has commenced, it would be fair for this Court not to interfere with the same at this stage. We are, however, unable to accept this submission of the learned counsel inasmuch an order of a Court on an application being filed under section 33 goes to the root of the matter, and since that conclusion cannot be interfered with, we are not persuaded to accept this submission.

The Special Leave Petition stands dismissed.

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(Y.P.Dhamija)

(Suneet Bala Sharma)@

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COURT MASTER

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