

b,
ITEM NO.33

Court No.6

SECTION XIV

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).16454/2010
(From the judgment and order dated 26/02/2010 in FAO No. 344/2008
of The HIGH COURT OF DELHI AT NEW DELHI)

SARVESH CHOPRA

Petitioner(s)

VERSUS

M/S. IRCON INTERNATIONAL LTD.
(With office report)

Respondent(s)

Date: 30/08/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. PATNAIK
HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

For Petitioner(s) Mr. Kirti Uppal, Sr. Adv.
Mr. Chirag M.Shroff, Adv.
Mr. Abhishek Singh, Adv.

For Respondent(s) Ms. Meenakshi Arora, Adv.
Mr. Vasav Ananthraman, Adv.

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

Leave granted.

Heard learned counsel for the parties.

The appeal is allowed in terms of the signed order and set aside the orders passed by the learned Single Judge and Division Bench and remand the matter to the learned Single Judge for consideration afresh on merits treating the same as an appeal under Section 37 of the Act. We make it clear that we have not expressed any opinion one way or the other on the merits of the contention of the parties as to whether the claims stood fully and finally settled.

|(KALYANI GUPTA)
|COURT MASTER

|(SHARDA KAPOOR)
|COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7309 OF 2013
[ARISING OUT OF SLP (C) NO.16454 of 2010
SARVESH CHOPRA (D) THROUGH LRS. APPELLANTS

VERSUS

M/S. IRCON INTERNATIONAL LIMITED RESPONDENT

O R D E R

1. Leave granted.

2. Heard learned counsel for the parties.

3. By an order dated 15th March, 2005 passed by the Arbitrator in Arbitration Case No.332 of 2002, the Arbitrator accepted the plea of the respondent that the Arbitrator had no jurisdiction to decide the claim of the appellant as the claim had been fully and finally settled and no claim certificate had been issued by the appellant. Aggrieved, the appellant filed an appeal before the learned Single Judge. The learned Single Judge dismissed the appeal. The appellant then filed an appeal before the Division Bench of the High Court and by the impugned order, the Division Bench of the High Court has dismissed the appeal.

4. After hearing the parties at some length, we find that both the learned Single Judge and the Division Bench of the High Court have proceeded on the basis that the appellant had challenged the award of the Arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996. Actually, the appellant had challenged the order of the Arbitrator holding that he had no jurisdiction to decide the claim of the appellant under Section 16(2) of the Act. Against the order passed by the Arbitrator under Section 16(2) of the Act, an appeal is available under Section 37 of the Arbitration and Conciliation Act, 1996. But unfortunately, the learned Single Judge and the Division Bench of the High Court have examined the case of the appellant before it as if he was moving for setting aside the Award under Section 34 of the Act.

5. Learned counsel for the respondent vehemently submitted that the learned Single Judge and the Division Bench of the High Court have considered the question as to whether there has been a valid discharge of the liability by a full and final settlement. On examining the orders passed by the learned Single Judge before whom the appeal was available under Section 37 of the Act, we find that the learned Single Judge has not gone into the merits of the contention of the appellant that there has actually been no full and final settlement. The learned Single Judge should have examined the records that were available before the Arbitrator and considered as to whether there has been a full and final settlement as claimed by the respondent.

6. We, accordingly, allow the appeal, set aside the orders passed by the learned Single Judge and Division Bench and remand the matter to the learned Single Judge for consideration afresh on merits treating the same as an appeal under Section 37 of the Act. We make it clear that we have not expressed any opinion one way or the other on the merits of the contention of the parties as to whether the claims stood fully and finally settled.

.....J
[A.K. PATNAIK]

.....J
[JAGDISH SINGH KHEHAR]

NEW DELHI
AUGUST 30, 2013.