

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5849 OF 2012
(arising out of S.L.P. (Civil) No. 19113/2011)

STATE OF ORISSA

Appellant(s)

VERSUS

SUNANDA KUMAR MOHURY & ANR.

Respondent(s)

O R D E R

Leave granted.

2. The disputes arose between the parties under the contract entered between them in 1968 and work orders issued thereunder. Under clause 23 of the conditions of contract, the disputes between the parties were referred to Mr. N.C. Pani, Superintending Engineer in 1975. Later on, in 1983, the arbitration proceedings were transferred to the Arbitration Tribunal, Bhubaneshwar that was constituted pursuant to the amendment in the Arbitration Act, 1940 (for short, '1940 Act'). The proceedings for arbitration continued for about 13 years before the Arbitration Tribunal, Bhubaneshwar. On April 18, 2006, Arbitration Tribunal dropped the arbitration proceedings as the time for making the award had expired. Later on, after about two years, the respondents made an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, '1996 Act') seeking appointment of the arbitral tribunal. The contention of the respondents in the application under Section 11 of the 1996 Act was that although the arbitral proceedings were prosecuted under the 1940 Act, but as no award came to be passed by the Arbitration Tribunal on the ground of expiry of time for giving the award, the necessity of appointment of arbitral tribunal has arisen. This application made by the respondents under Section 11 has been allowed by the Designate Judge on February 18, 2011, giving rise to the present Appeal.

3. We have heard learned counsel for the parties.

4. Learned counsel for the respondents did not dispute that the time prescribed for making award by the arbitral tribunal had commenced in 1975 and had, in fact, expired and there was no extension of time. Having regard to this fact, we are unable to sustain the impugned order. As a matter of law, no such application could have been maintained after the arbitration proceedings which commenced under the 1940 Act in 1975 were dropped due to lack of extension of time in 2006.

5. Even otherwise at this distance of time, we are satisfied

that fresh arbitration proceedings under the 1996 Act cannot be allowed to be commenced when the disputes arose between the parties way back in 1975.

6. In view of the above, Appeal is allowed. The order passed by the Designate Judge on February 18, 2011 is set aside. Resultantly, the application made by the respondents under Section 11 of the 1996 Act stands rejected. No costs.

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

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI;J.
AUGUST 13, 2012 (SUDHANSU JYOTI MUKHOPADHAYA)
ITEM NO.4 COURT NO.7 SECTION XIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).19113/2011

(From the judgement and order dated 18/02/2011 in ARBP No.56/2008 of The HIGH COURT OF ORISSA AT CUTTACK)

STATE OF ORISSA Petitioner(s)

VERSUS

SUNANDA KUMAR MOHURY & ANR Respondent(s)

(With office report)

Date: 13/08/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Ms. C.K. Sucharita, Adv.

For Respondent(s) Mr. Anirudh Sanganeria, Adv.
Mr. Mukul Kumar, Adv.

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

Leave granted.

Appeal is allowed in terms of the signed order.

| (Rajesh Dham)
| Court Master

| | (Renu Diwan)
| | Court Master

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(signed order is placed on the file)