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ITEM NO.101

COURT NO.3

SECTION XIV

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(s). 5352 OF 2002

M/S. KLASSIC CONSTRUCTION (PVT.) LTD.

Appellant (s)

VERSUS

M/S. ARMY WELFARE HOUSING ORGANISATION

Respondent(s)

(With office report )

Date: 17/05/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr.P.N.Kumar, Adv.

Mr.Anurag Kumar, Adv.

Mr.Rishikesh, Adv.

Mr. Rishi Kesh,Adv.

For Respondent(s)

Mr. Arvind Kumar Tewari,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel appearing for the respective parties at length.

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The appellant before us is the contractor. The respondent is the Army Welfare

Housing Organisation represented by its Chairman/Managing Director. Both the appellant and the

respondent have entered into an agreement on 08.05.1990 by which the contract was awarded to

the appellant for executing certain construction works. We are in this appeal concerned only with

regard to Clause 131 of the contract which relates to arbitration. Clause 131 reads as under :  
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"131. If any dispute arises and persists between the Contractor and

Employer, the same shall be referred to the Sole Arbitrator to be appointed by the Chairman, Army Welfare Housing Organisation, whose award shall be final and

binding on both parties. The Arbitrator shall submit his award within four months of

his entering on the reference. This period may be extended by the Arbitrator with the consent of both the parties."

It is also not out of place to mention here that the petition filed by the appellant herein

under Section 8 and 20 of the Arbitration Act, 1940 was disposed of by the learned Single Judge

which was later on affirmed by the Division Bench of the Delhi High Court. The request made by

the appellant herein was not acceded to by both the courts below. Aggrieved by the dismissal

of

petition, the appellant has preferred the above Civil Appeal. This Court  
by Order dt.25.01.2002

ordered notice and stayed the further proceedings before the Arbitrator pursuant to the impugned

order. On 26.08.2002, leave was granted by this Court and the Order dt.25.01.2002  
was made

absolute to remain in operation during the pendency of the appeal. By Order dt.31.03.2006,  
the

Bench presided by Hon'ble the Chief Justice directed to list the above appeal for hearing in summer

vacation.

We have already extracted Clause 131 of the contract. Under the said Clause,  
any

dispute between the contractor and the employer shall be referred to the sole arbitrator. The  
said

sole arbitrator should be appointed only by the Chairman, Army Welfare  
Housing Organisation

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whose award shall be final and binding on both the parties. The said Clause also stipulates that  
at the

arbitrator shall submit his award within four months of his entering on the reference and that  
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said period be also extended with the consent of both the parties.

It is brought to our notice that during the pendency of the proceedings before  
the High

Court, the respondent has appointed Maj. General Mr.M.M.Batra as the sole arbitrator. It appears

that notice was issued to both the parties. Thereafter, he retired. The respondent again appointed

another arbitrator Maj.Genl.Madhav Arren on 22.8.1997. Since he was transferred  
he could not

complete the arbitration proceedings. Thereafter, one Mr.Mahra, Brigadier was

s appointed as

arbitrator who was also transferred. Thereupon, one Mr.M.S.Hooda who was Chief Engineer was

appointed as arbitrator on 24.12.2001. It is stated that he could not also conduct and complete the

arbitration proceedings. As noticed earlier, the dispute is still pending between the parties without

being adjudicated upon by the sole arbitrator as per Clause 131 of the contract. We feel that in the

interest of both the parties, the sole arbitrator should now be nominated by the Chairman, Army

Welfare Housing Organisation to submit his award. For this purpose, we requested the learned

counsel appearing for the respondent to submit a panel of three names to this Court with a copy to

the learned counsel for the appellant in the form of an affidavit. This Court after perusing the

affidavit will select and appoint one such person as sole arbitrator to decide all the disputes and the

claims made by the appellant herein and also the counter claims submitted by the respondent. For

this purpose, the Chairman shall recommend names of the persons who are not due for transfer

shortly. The person to be nominated shall not be transferred till the arbitration proceeding is

completed and the award is submitted. The affidavit shall be submitted by 23.05.2006.

Treat this matter as part-heard and post on 25.05.2006. Further orders will be passed

after perusing the affidavit and after hearing further submissions to be made by both the parties.

We also make it clear that the sole arbitrator to be nominated shall pass a speaking

order. With reference to this dispute, the parties have to approach for further orders only before this

Court.

The copy of this order be given to both the parties today.

( Satish K. Yadav )

Court Master

( Radha R.Bhatia )

Court Master