

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9541/2013
(Arising out of SLP(C) No.22435/2008)

RAJESH KUMAR AGRAWAL

Petitioner(s)

VERSUS

MANISH SHARMA

Respondent(s)

ORDER

Heard learned Counsel for the parties.

Leave granted.

The appellant filed the Arbitration Case No.46 of 2007 before the District Judge, Mathura under Section 9 of the Arbitration and Conciliation Act, 1996 (for short the 'Act') seeking injunction against the respondent with regard to property of the dissolved partnership firm and for appointment of Receiver pending dissolution of the Firm. The Respondent took a stand in the aforesaid proceedings under Section 9 of the Act that the Arbitration Proceedings are over and an award has been made by the Arbitrator. The appellant, however, disputed that the Arbitration Proceedings were over and that the award has been passed by the Arbitrator. Learned District Judge without deciding the question as to whether the stand of the appellant that the Arbitration Proceedings are not over and no award has been passed, held that the appropriate remedy of the appellant is to move the appropriate Court under Section 34 of the Act for setting aside the award. The appellant filed an appeal before the High Court but by the impugned Order dated 30-4-2008, the Division Bench of the High Court has held that the remedy of the appellant is to challenge the award by application under Section 34 of the Act. Aggrieved the appellant has filed this appeal.

Learned Counsel for the Appellant vehemently submits that the appellant's case is that the Arbitration Proceedings have not been completed and no award has actually been made by the Arbitrator and that the award relied upon by the respondent is a fake award.

Learned counsel for the respondent on the other hand submits that since the award has been made by the Arbitrator, the only course open to the appellant is to move the appropriate Court under Section 34 of the Act for setting aside the award.

We are unable to accept the submissions of the Learned Counsel for the respondent. The question of moving the appropriate Court under Section 34 of the Act for setting aside the award will arise only if there is an existence of award made by the Arbitrator. According to the appellant, there is no such award made by the Arbitrator. On the other hand, the remedy under Section 9 of the Act is available to a party, before or during Arbitration Proceedings or at any time after making arbitral award but before it is enforced in accordance with Section 36 of the Act. The appellant's contention is that Arbitration Proceedings have not concluded and as such there is no award made by the Arbitrator whereas the contention of the respondent is that the Arbitration Proceedings are concluded and there is an arbitral award which has been enforced. This factual dispute has to be resolved by the Court hearing the application of the appellant under Section 9 of the Act and finding has to be recorded by the Court.

On a perusal of the orders passed by the District Judge as also the High Court, we do not find any findings recorded as to whether or not the Arbitration Proceedings were concluded and in fact an award was made by the Arbitrator. We, therefore, set aside the impugned Order of the High Court as well as the Order of the District Judge and remit the matter back to the District Judge to frame an issue on this factual dispute and to decide this issue first before finally passing the order on the application of the appellant under Section 9 of the Act. Since the matter has been pending for

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| [VISHAL ANAND]
| COURT MASTER

| | [MADHU SUDAN]
| | COURT MASTER

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(Signed Order is placed on the file)