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ITEM NO.53

COURT NO.9

SECTION IVB

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).24617/2011
(From the judgment and order dated 27/05/2011 in AC No.71/2011 of The HIGH
COURT OF PUNJAB & HARYANA AT CHANDIGARH)

M/S KANDHARI BEVERAGES PVT. LTD.

Petitioner(s)

VERSUS

M/S SUZLON ENERGY LTD.

Respondent(s)

(With prayer for interim relief and office report)

Date: 07/01/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. PATNAIK

HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s)

Mr. Kanwal Chaudhary, Adv.
Mr. Pradeep Kumar Bakshi, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

| Heard learned counsel for the petitioner.
| Despite notice by dasti on the sole respondent, no one has appeared.
| Leave granted.
| The appeal is allowed in terms of the signed order.

| [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. 104 OF 2013
ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 24617 OF 2011

M/S. KANDHARI BEVERAGES PVT. LTD. APPELLANT

VERSUS

M/S. SUZLON ENERGY LTD. RESPONDENT

O R D E R

1. Heard learned counsel for the petitioner.
2. Despite notice by dasti on the sole respondent, no one has appeared.
3. Leave granted.

4. The facts very briefly are that the appellant had earlier filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 before the Chief Justice of the Punjab and Haryana High Court which was numbered as Arbitration Case No. 11 of 2010. The learned Judge nominated by the Chief Justice by his order dated 29th April, 2011 appointed Mr. Justice R.S. Mongia, a Former Chief Justice of the Gauhati High Court as Arbitrator to decide the dispute which related to the shortfall of minimum guarantee generation of electricity for the period from May, 2006 to April, 2008. The appellant filed yet another application under Section 11 of the Act for appointment of an Arbitrator to decide the dispute with regard to shortfall of minimum guarantee generation of electricity for the period from May, 2008 to March, 2010. By the impugned order dated 27th May, 2011, the learned Judge of the Punjab and Haryana High Court, however, dismissed the application under Section 11 of the Act after holding that the second application was barred by Order II Rule 2 of the Code of Civil Procedure.

5. After hearing learned counsel for the appellant, we are of the view that as the second application under Section 11 of the Act raised the dispute regarding shortfall of minimum generation of electricity for the period from May, 2008 to March, 2010 and the dispute was different from the earlier dispute regarding the shortfall of minimum guarantee generation of electricity for the period from May, 2006 to April, 2008, the view taken by the learned Judge of the Punjab and Haryana High Court in the impugned order that the second application was barred by Order II Rule 2 of the Code of Civil Procedure was not a correct view.

6. We, therefore, set aside the impugned order and appoint Mr. Justice R.S. Mongia, Former Chief Justice of the Gauhati High Court to decide the dispute between the appellant and the respondent with regard to shortfall of minimum guarantee generation of electricity for the period from May, 2008 to March, 2010. The learned Arbitrator will fix his fees which will be borne by the parties.

7. The appeal stands allowed in the above terms.

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

.....J
[H.L. GOKHALE]

NEW DELHI
JANUARY 07, 2013.