

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14991 OF 2017

(Arising out of S.L.P. (C) No. 34474/2014)

M/S PILE ENGINEERING INDIA (P) LTD. THR. ITS
M.D. MANORANJAN KUMAR SINHA

Appellant(s)

VERSUS

BIHAR RAJYA PUL NIRMAN NIGAM LTD & ORS.

Respondent(s)

O R D E R

Leave granted.

Heard the learned counsel appearing for the parties.

This matter has a somewhat chequered history. In that an award that was passed on 25.07.2004 for a sum of Rs. 12,09,000/- was upheld by a learned Single Judge of the Patna High Court on 16.02.2012. However, in an appeal to this Court, this Court by an order dated 12.09.2013, remanded the matter to decide whether there was an arbitration clause in point of fact between the parties. On remand, the impugned judgment dated 16.04.2014 has held that Clause 23 of the Agreement between the parties dated 12.10.1999 did not amount to an arbitration clause.

Clause 23 reads as follows:-

"Clause 23: In case any dispute or difference shall arise between the parties or either of them upon any question relating to the meaning of the specifications, designs, drawings and instruction, herein before mentioned or to the quality of workmanship of materials used on the work, or as to

the construction of any of the conditions or any clause or thing therein contained, or as to any question, claim, rights or liabilities of the parties, or any matter, or thing whatsoever, in any way arising out of, or relating to the contract, designs, drawings, specifications, estimates, instructions, order or these conditions, or otherwise concerning the work, or the execution, or failure to execute the same whether arising the progress of the work, or after the completion or abandonment thereof or as to the breach of this contract, then either party shall forthwith give to the other notice of such dispute or difference and such dispute or difference shall be referred to the Managing Director of the Corporation and his decision thereon shall be final conclusive and binding on all the parties."

We are of the opinion that the High Court was in error. The matter is covered by a direct judgment of this Court which is referred to in Vishnu (Dead) by LRs. vs. State of Maharashtra and Others, (2014) 1 SCC 516. In a lengthy judgment referring to most of the judgments on point, this Court referred to the judgment in Mallikarjun vs. Gulbarga University, (2004) 1 SCC 372. Clause 30, on the facts of that case, was set out in this paragraph. It will be noticed that Clause 30 of the aforesaid paragraph and the present Clause 23 are almost identical, with one important difference - namely, the expression "or as to the breach of this contract" occurs in Clause 23 which did not occur in Clause 30 of Mallikarjun's case. Despite that, the judgment in Mallikarjun's case held that the aforesaid Clause 30 was an arbitration clause.

Following the aforesaid judgment, we state that Clause 23 of the Agreement was an arbitration clause between the parties.

As a result, the impugned judgment of the High Court is set aside and the Arbitral Award dated 25.07.2004 is upheld.

Accordingly, the appeal is allowed.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(SANJAY KISHAN KAUL)

New Delhi;
September 18, 2017.

ITEM NO.6

COURT NO.12

SECTION XVI

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 (C) No(s). 34474/2014

(Arising out of impugned final judgment and order dated 16-04-2014 in MAN No. 465/2006 passed by the High Court Of Judicature At Patna)

M/S PILE ENGINEERING INDIA (P) LTD THR. ITS
M.D. MANORANJAN KUMAR SINHA

Petitioner(s)

VERSUS

BIHAR RAJYA PUL NIRMAN NIGAM LTD & ORS.

Respondent(s)

Date : 18-09-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Devashish Bharuka, AOR
Mr. Gaurav Parthap Singh, Adv.
Ms. Anu Tyagi, Adv.
Ms. Himanjali Gautam, Adv.

For Respondent(s) Mr. Nagendra Rai, Sr. Adv.
Mr. Smarhar Singh, Adv.
Mr. Shantanu Sagar, AOR

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

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
COURT MASTER

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)