

(2012) 5 Supreme Court Cases 214 : 2001 SCC OnLine SC 549

In the Supreme Court of India

(BEFORE G.B. PATTANAİK, S.N. PHUKAN AND B.N. AGRAWAL, JJ.)

KVAERNER CEMENTATION INDIA LIMITED . .

Appellant;

Versus

BAJRANGLAL AGARWAL AND ANOTHER . .

Respondents.

SLPs (C) Nos. 21395-96 of 2000, decided on March 21, 2001

A. Arbitration and Conciliation Act, 1996 — Ss. 16, 7, 5 and 34 — Jurisdiction of arbitrator to rule on its own jurisdiction — Interference of civil court with exercise of power of arbitrator under S. 16 — Impermissibility — Need for determination of issue(s) as to its own jurisdiction as preliminary issue(s) by arbitrator

— High Court refusing to interfere with arbitration proceedings on ground of non-existence of arbitration agreement and leaving matter to be decided by arbitrator — Contention that jurisdiction of civil court could not be ousted unless excluded by statute — Sustainability — Held, no dispute can be referred for arbitration in absence of any arbitration clause in agreement — However, once arbitration proceedings are initiated, S. 16 confers power on arbitrator to rule on its own jurisdiction including ruling on any objection with respect to existence or validity of arbitration agreement — Hence, civil court does not have jurisdiction to go into said questions — In instant case, appellant being party to said arbitral proceedings, held, question as to jurisdiction of arbitrator and non-existence of arbitration agreement has to be raised before arbitrator and the same are required to be determined as preliminary issues — Lastly, order of arbitrator on issue of its jurisdiction can be challenged under S. 34 — Civil Procedure Code, 1908, S. 9

(Paras 3 to 5)

Kvaerner Cementation India Ltd. v. Bajranglal Agarwal, Appeal from Order No. 695 of 2000, decided on 20-11-2000 (Bom), *affirmed*

B. Arbitration and Conciliation Act, 1996 — Ss. 7, 8 and 11 — Reference to arbitration — Non-existence of arbitration clause in agreement — Effect — Held, in absence of arbitration clause in the agreement, no dispute can be referred for arbitration

(Para 3)

N-D/26663/CV

on page(s)



Page: 215

Chronological list of cases cited

1. Appeal from Order No. 695 of 2000, decided on 20-11-2000 (Bom), *Kvaerner Cementation India Ltd. v. Bajranglal Agarwal*

215a-b

ORDER

1. These special leave applications are directed against an order¹ of a learned Single Judge of the Bombay High Court refusing to interfere with an order of the civil court vacating an interim order of injunction granted by it earlier. The suit in question had been filed for a declaration that there does not exist any arbitration clause and as such the arbitral proceedings are without jurisdiction. The learned Single Judge of the Bombay High Court came to hold that in view of Section 5 of the Arbitration and Conciliation Act, 1996 read with Section 16 thereof since the Arbitral Tribunal has the power and jurisdiction to rule on its own jurisdiction, the civil court would not pass any injunction against an arbitral proceeding.

2. Mr Dave, the learned Senior Counsel appearing for the petitioner contends that the jurisdiction of the civil court need not be inferentially held to be ousted unless any statute on the face of it excludes the same and judged from that angle when a party assails the existence of an arbitration agreement, which would confer jurisdiction on an Arbitral Tribunal, the court committed error in not granting an order of injunction.

3. There cannot be any dispute that in the absence of any arbitration clause in the agreement, no dispute could be referred for arbitration to an Arbitral Tribunal. But, bearing in mind the very object with which the Arbitration and Conciliation Act, 1996 has been enacted and the provisions thereof contained in Section 16 conferring the power on the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration agreement, we have no doubt in our mind that the civil court cannot have jurisdiction to go into that question.

4. A bare reading of Section 16 makes it explicitly clear that the Arbitral Tribunal has the power to rule on its own jurisdiction even when any objection with respect to existence or validity of the

arbitration agreement is raised, and a conjoint reading of sub-sections (2), (4) and (6) of Section 16 would make it clear that such a decision would be amenable to be assailed within the ambit of Section 34 of the Act.

5. In this view of the matter, we see no infirmity in the impugned order so as to be interfered with by this Court. The petitioner, who is a party to the arbitral proceedings may raise the question of jurisdiction of the arbitrator as well as the objection on the ground of non-existence of any arbitration agreement in the so-called dispute in question, and on such an objection being raised, the arbitrator would do well in disposing of the same as a preliminary issue so that it may not be necessary to go into the entire gamut of arbitration proceedings.

6. Our interim order stands vacated and these petitions stand disposed of accordingly.

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¹ *Kvaerner Cementation India Ltd. v. Bajranglal Agarwal*, Appeal from Order No. 695 of 2000, decided on 20-11-2000 (Bom)