family to shame. We also have no hesitation in observing that the novel with its complimentary passages in favour of Basaveshwara is merely a camouflage to spin and introduce a particularly sordid and puerile story in Chapter 12.

25. As the forfeiture of the novel would have the result of shutting out its publication and distribution for all time, we had requested Mr Ramachandran to consult his client to find out if he could be persuaded to remove the portions which had been found to be offensive by the State Government. Mr Ramachandran had however come back and informed us that the author was willing to remove only three or four references from the novel, which we have found on examination, would be only cosmetic changes and would not satisfy the need of the hour. We, accordingly, dismiss the appeal.

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(BEFORE TARUN CHATTERJEE AND ALTAMAS KABIR, JJ.)

Civil Appeal No. 5197 of 2000†

PUNJAB STATE AND OTHERS . . Appellants;

Versus

DINA NATH . . Respondent.

With

Civil Appeal No. 5198 of 2000

EXECUTIVE ENGINEER, ANANDPUR SAHIB HYDEL CONSTRUCTION DIVISION . . Appellant;

Versus

DINA NATH AND OTHERS . . Respondents.

Civil Appeals No. 5197 of 2000 with No. 5198 of 2000, decided on May 14, 2007

A. **Arbitration Act, 1940 — S. 2(a) — Arbitration agreement — Form and essential elements of — Held, it need not be in any particular form — However, it must indicate that the parties had agreed that any dispute arising between them in respect of the subject-matter of the contract, should be referred to arbitration — Moreover, it must be in writing and must indicate the intention of the parties to treat the decision of the arbitrator as final — If those requirements are satisfied, the mere absence of the words "arbitration" or "arbitrator" therein cannot be a ground to hold that the agreement in question was not an arbitration agreement — A clause in the Work Order providing that any dispute arising between the principal and the contractor should be referred to Superintending Engineer for his orders and that his decision would be final and binding on the parties, held, was a binding arbitration agreement — Further held, the words "any dispute" occurring therein were wide enough to cover all disputes relating to the**

† From the Final Judgment and Order dated 5-8-1999 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 3547 of 1997

Work Order including a dispute relating to non-payment of money after completion of the work — The word "orders" implied some expression of opinion by the Superintending Engineer which would be enforceable — Words and Phrases — "any dispute", "orders" — Arbitration and Conciliation Act, 1996, Ss. 2(b) & 7 (Paras 8 to 10, 13, 14, 19 and 20)

Rukmanibai Gupta v. *Collector*, (1980) 4 SCC 556 : AIR 1981 SC 479, *relied on*

Bihar State Mineral Development Corpn. v. *Encon Builders (I) (P) Ltd.*, (2003) 7 SCC 418, *followed*

K.K. Modi v. *K.N. Modi*, (1998) 3 SCC 573, *explained* and *distinguished*

State of U.P. v. *Tipper Chand*, (1980) 2 SCC 341; *State of Orissa* v. *Damodar Das*, (1996) 2 SCC 216, *distinguished*

Dewan Chand v. *State of J&K*, AIR 1961 J&K 58, *referred to*

B. **Arbitration Act, 1940 — S. 20 — Limitation period for filing of application under — Commencement of — Application under S. 20, held should be filed within the limitation period from the accrual of the right to apply and that right accrues when difference or dispute arises between the parties to the arbitration agreement — In the present case, the principal, after completion of the work, not taking steps for making final payment despite the contractor's request — Contractor, therefore, issuing a final notice to the principal to refer the dispute to an arbitrator as per the arbitration agreement — No response from principal — Contractor therefore filing an application before the court under S. 20 within the period contemplated under Art. 137, Limitation Act as computed from the date of issuance of the said final notice — Such application, held, within limitation period — Appellate court erred in holding that the cause of action instead arose when the contractor first acquired the right of action or the right to require that arbitration should take place — Limitation Act, 1963, Art. 137 — Arbitration and Conciliation Act, 1996 — Ss. 8 and 11 — Limitation (Paras 22 to 26)**

S. Rajan v. *State of Kerala*, (1992) 3 SCC 608; *Hari Shankar Singhania* v. *Gaur Hari Singhania*, (2006) 4 SCC 658, *followed*

H-D-M/36287/C

Advocates who appeared in this case :
R.K. Rathore, Additional Advocate General for Punjab (M.K. Verma, Arun K. Sinha, Harinder Mohan Singh and Kaushal Yadav, Advocates, with him) for the Appellants;
Manoj Swarup, Advocate, for the Respondent;
Rr Ex parte.

Chronological list of cases cited ***on page(s)***

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J.— The crucial question that needs to be decided in these appeals is whether clause 4 of Work Order No. 114 dated 16-5-1985 (in short "the Work Order") which says that:

> "Any dispute arising between the department and the contractor/ society shall be referred to the Superintending Engineer, Anandpur Sahib, Hydel Circle No. 1, Chandigarh for orders and his decision will be final and acceptable/binding on both the parties"

constituted an arbitration agreement.

2. Before proceeding further, we may bring it on record that though the facts in both the appeals are identical, but for purposes of disposal of these appeals, the facts in CA No. 5197 are being considered which are as follows.

3. The parties entered into a contract for the work of dowel drain and wire crate at RD No. 9400 to 10,400 km in the State of Punjab. The appellants made running payments to the respondent during the period of execution of the works in terms of the Work Order. However, after completion of the work, the final measurements were not made, nor were the final bills prepared. The dispute remained pending with the department for which the respondent called upon the appellants to finalise the dispute and prepare the final bill as per the rates quoted by the respondent and accepted by the appellants. A final notice was issued on 16-4-1990, calling upon the appellants to refer the dispute to an arbitrator as per clause 4 of the Work Order. Since the appellants had failed to appoint an arbitrator, the respondent filed an application before the Additional Senior Subordinate Judge, Ropar, Punjab under Section 20 of the Arbitration Act, 1940 (in short "the Act") seeking appointment of an arbitrator.

4. By an order dated 20-10-1993 the learned Additional Senior Subordinate Judge, Ropar, Punjab after hearing both the parties, allowed the application filed by the respondent and referred the dispute for decision to the Superintending Engineer, Anandpur Sahib, Hydel Circle No. 1, Chandigarh. The Additional Senior Subordinate Judge, Ropar, while allowing the application, held that clause 4 of the Work Order must be construed to be an arbitration agreement within the meaning of Section 2(*a*) of the Act and that the application filed under Section 20 of the Act was filed within the period of limitation. According to the learned Additional Senior Subordinate Judge, Ropar, the cause of action arose from the date the final notice of demand was sent i.e. 16-4-1990, which was well within the period of 3 years from the date of filing the application as contemplated under Article 137 of the Limitation Act, 1963. Feeling aggrieved by the aforesaid order, the appellants preferred an appeal in the Court of the District Judge, Roopnagar, Punjab, which by an order dated 24-4-1997 was allowed, inter alia, on a finding that clause 4 of the Work Order could not be held to be an "arbitration agreement" nor was the dispute covered within the ambit of the Act. On the question of limitation in filing the application under Section 20 of the Act, the appellate court held that the application under Section 20 of the Act was barred by limitation.

Feeling aggrieved by the order of the learned Additional District Judge, Roopnagar, Punjab, reversing the order of the Additional Senior Subordinate Judge, Ropar, the respondent filed a civil revision case before the High Court of Punjab and Haryana at Chandigarh, which by the impugned order was allowed and the order of the Additional Subordinate Judge, Ropar was restored. Dissatisfied with this order of the High Court, a special leave petition was filed by the appellants, which on grant of leave was heard in the presence of the learned counsel for the parties.

5. Having heard the learned counsel for the parties and after going through the impugned order of the High Court as well as the orders of the appellate court and the trial court and the materials on record and considering the clauses in the Work Order, we are of the view that the High Court was fully justified in setting aside the order of the appellate court and restoring the order of the Additional Subordinate Judge by which the dispute was referred to arbitration for decision. Before proceeding further, we may, however, take note of some of the relevant clauses in the Work Order which read as under:

> "*13.* If the contractor does not carry out the work as per the registered specifications, the department will have the option to employ its own labour or any other agency to bring the work to the departmental specification and recover the cost therefrom."
>
> * * *
>
> "*4.* Any dispute arising between the department and the contractor/ society shall be referred to the Superintending Engineer, Anandpur Sahib, Hydel (Construction) Circle No. 1, Chandigarh for orders and his decision will be final and acceptable/binding on both parties."

6. As pointed out herein earlier, the trial court on consideration of clause 4 of the Work Order held that clause 4 of the Work Order must be held to be an arbitration agreement and accordingly an arbitrator was appointed in compliance with clause 4 of the Work Order. At this stage, we feel it appropriate to examine in detail whether clause 4 of the Work Order can be held to be an arbitration agreement within the meaning of Section 2(*a*) of the Act.

7. Section 2(*a*) of the Act defines "arbitration agreement" which means a written agreement to submit present or future differences to arbitration whether arbitrator is named therein or not. Mr Rathore, learned Additional Advocate General appearing on behalf of the appellants contended that although the Work Order was allotted to the respondent on 16-5-1985, the respondent had failed to execute the work allotted to him and the appellant had got the work executed at its own cost in terms of clause 13 of the Work Order which, as noted herein earlier, provides that in case the contractor does not execute the allotted work, the department could get the same executed by other agencies or by itself. He further contended that owing to such failure on the part of the respondent, final bills were not prepared nor were the final measurements taken for the purpose of payment to the respondent. Accordingly, Mr Tathore contended that there was no existence of any

dispute and accordingly, the question of referring such disputes in terms of clause 4 of the Work Order could not arise at all. This submission of Mr Tathore was contested by the learned counsel for the respondent. Therefore, a dispute arose as to whether the respondent had completed the work allotted to him under the Work Order. This is an issue, according to the High Court as well as the Subordinate Court, which should be referred for decision to an arbitrator.

8. A bare perusal of the definition of arbitration agreement would clearly show that an arbitration agreement is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if any dispute arises between them in respect of the subject-matter of the contract, such dispute shall be referred to arbitration. In that case, such agreement would certainly spell out an arbitration agreement. (See *Rukmanibai Gupta* v. *Collector*[1].) However, from the definition of the arbitration agreement, it is also clear that the agreement must be in writing and to interpret the agreement as an "arbitration agreement" one has to ascertain the intention of the parties and also treatment of the decision as final. If the parties had desired and intended that a dispute must be referred to arbitration for decision and they would undertake to abide by that decision, there cannot be any difficulty to hold that the intention of the parties was to have an arbitration agreement, that is to say, an arbitration agreement immediately comes into existence.

9. In *Bihar State Mineral Development Corpn.* v. *Encon Builders (I) (P) Ltd.*[2] this Court held that: (SCC p. 423, para 14)

> "*14*. There is no dispute with regard to the proposition that for the purpose of construing an arbitration agreement, the term 'arbitration' is not required to be specifically mentioned therein."

Looking to the opinion of the Hon'ble Judges in the said case and also considering clause 4 of the Work Order in depth, we are of the opinion that clause 4 of the Work Order between the parties can be interpreted to be an arbitration agreement even though the term "arbitration" is not expressly mentioned in the agreement. In this decision of this Court the test of "dispute" and "reference" was again reiterated. In para 17, it was stated that there cannot be any doubt whatsoever that an arbitration agreement must contain broad consensus between the parties that the disputes and differences should be referred to a domestic tribunal.

10. We have already noted clause 4 of the Work Order as discussed hereinabove. It is true that in the aforesaid clause 4 of the Work Order, the words "arbitration" and "arbitrator" are not indicated; but in our view, omission to mention the words "arbitration" and "arbitrator" as noted herein earlier cannot be a ground to hold that the said clause was not an arbitration agreement within the meaning of Section 2(*a*) of the Act. The essential requirements as pointed out herein earlier are that the parties have intended to

1 (1980) 4 SCC 556 : AIR 1981 SC 479
2 (2003) 7 SCC 418

make a reference to an arbitration and treat the decision of the arbitrator as final. As the conditions to constitute an "arbitration agreement" have been satisfied, we hold that clause 4 of the Work Order must be construed to be an arbitration agreement and dispute raised by the parties must be referred to the arbitrator. In *K.K. Modi* v. *K.N. Modi*[3] this Court had laid down the test as to when a clause can be construed to be an arbitration agreement when it appears from the same that there was an agreement between the parties that any dispute shall be referred to the arbitrator. This would be clear when we read para 17 of the said judgment and Points 5 and 6 of the same which read as under: (SCC p. 584)

> "(*5*) that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law, and lastly
>
> (*6*) the agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal."

11. That apart, in para 23 of the decision in *K.K. Modi*[3] this Court also noticed its earlier decision in *State of U.P.* v. *Tipper Chand*[4]. In that case, the test as indicated above was also recorded in which it was stated that: (*K.K. Modi case*[3], SCC p. 585, para 23)

> "This Court said that there was no mention in this clause of any dispute, much less of a reference thereof."

12. Keeping the ingredients as indicated by this Court in *K.K. Modi*[3] in mind for holding a particular agreement as an arbitration agreement, we now proceed to examine the aforesaid ingredients in the context of the present case:

> (*a*) Clause 4 of the Work Order categorically states that the decision of the Superintending Engineer shall be binding on the parties.
>
> (*b*) The jurisdiction of the Superintending Engineer to decide the rights of the parties has also been derived from the consent of the parties to the Work Order.
>
> (*c*) The agreement contemplates that the Superintending Engineer shall determine substantive rights of parties as the clause encompasses all varieties of disputes that may arise between the parties and does not restrict the jurisdiction of the Superintending Engineer to specific issues only.
>
> (*d*) That the agreement of the parties to refer their disputes to the decision of the Superintending Engineer is intended to be enforceable in law as it is binding in nature.

13. In view of the aforesaid conditions being satisfied, which were based on the principles laid down by this Court in *K.K. Modi case*[3] there cannot be any doubt in our mind that the arbitration agreement does exist. Clause 4 of

3 (1998) 3 SCC 573
4 (1980) 2 SCC 341

the Work Order is an arbitration agreement. The learned counsel appearing on behalf of the appellants contended that the ingredients laid down in *K.K. Modi*[3] are not satisfied in the present case and therefore following the principles laid down in that case, this Court must hold that clause 4 of the Work Order cannot be construed as an arbitration agreement. We are unable to accept this contention of the learned counsel for the appellants for two reasons. First, in view of our discussions herein earlier, to the effect that all the ingredients to hold a particular agreement as an arbitration agreement have been satisfied in the present case. Secondly, the factual situations in *K.K. Modi*[3] and in the case before us are very different. That case dealt with the evaluation and distribution of assets, which required expert decision rather than arbitration. The clause in *K.K. Modi case*[3] had a very restricted operation as it dealt with only disputes regarding implementation of contract whereas, in the case before us, clause 4 is much wider in its ambit as it deals with any dispute between the contractor and the department.

14. The words "any dispute" appears in clause 4 of the Work Order. Therefore, only on the basis of the materials produced by the parties in support of their respective claims a decision can be arrived at in resolving the dispute between the parties. The use of the words "any dispute" in clause 4 of the Work Order is wide enough to include all disputes relating to the said Work Order. Therefore, when a party raises a dispute for non-payment of money after completion of the work, which is denied by the other party, such a dispute would come within the meaning of "arbitration agreement" between the parties. Clause 4 of the Work Order also clearly provides that any dispute between the department and the contractor shall be referred to the Superintending Engineer, Hydel Circle No. 1, Chandigarh for orders. The word "orders" would indicate some expression of opinion, which is to be carried out, or enforced and which is a conclusion of a body (in this case Superintending Engineer, Hydel Circle No. 1, Chandigarh). Then again the conclusion and decision of the Superintending Engineer will be final and binding on both the parties. This being the position in the present case and in view of the fact that clause 4 of the Work Order is not under challenge before us, the decision that would be arrived at by Superintending Engineer, Hydel Circle No. 1, Chandigarh must also be binding on the parties as a result whereof clause 4 must be held to be a binding arbitration agreement.

15. In the decision of this Court in *State of U.P.* v. *Tipper Chand*[4] this Court however held that the clause in dispute in that decision between the parties did not amount to an arbitration agreement. In that decision, this Court further held that clause under consideration before them which provided that except where otherwise specified in the contract the decision of the Superintending Engineer for the time being shall be final, conclusive and binding on all the parties to the contract upon all questions relating to the meaning of the specifications, etc. and the decision of the Superintending Engineer as to the quality, workmanship, etc. shall be final, conclusive and binding between the parties does not constitute an arbitration agreement but while arriving at such a conclusion, this Court referred to a decision of the

Jammu and Kashmir High Court in *Dewan Chand* v. *State of J&K*[5]. In *Dewan Chand case*[5] the relevant clause runs as follows: (AIR p. 59, para 5)

> "For any dispute between the contractor and the Department the decision of the Chief Engineer, PWD, Jammu and Kashmir, will be final and binding upon the contractor."

This Court in that decision had put strong reliance on the expression "any dispute between the contractor and the Department" and approved the conclusions arrived at by the J&K High Court. It came to the conclusion by interpretation of that clause that there did not exist any arbitration agreement as the decision of the Superintending Engineer in connection with the work done by the contractor was meant for supervision and execution of the work and administrative control over it from time to time. However, in clause 4 of the Work Order in the present case, which specifically states that in case of any dispute between the appellants and the contracting parties, the matter shall be referred to the Superintending Engineer. Therefore, the use of the words "any dispute" would clearly mean that it would lead to conclude that the said agreement was in fact an arbitration agreement and thus these words do not restrict the scope of the contract.

16. Before parting with this aspect of the matter we may note *State of Orissa* v. *Damodar Das*[6] on which strong reliance was placed before us by the learned counsel for the appellants. This decision of this Court may not be helpful to the appellants as we find the agreement in question in that case was different from clause 4 of the Work Order. For proper appreciation, we may reproduce the agreement in *Damodar Das*[6] which reads as under: (SCC p. 222, para 9)

> "25. *Decision of Public Health Engineer to be final.*—Except where otherwise specified in this contract, the decision of the Public Health Engineer for the time being shall be final, conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications; drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work, or as to any other question, claim, right, matter or thing, whatsoever in any way arising out of, or relating to, the contract, drawings, specifications, estimates, instructions, orders or these conditions, or otherwise concerning the works or the execution or failure to execute the same, whether arising during the progress of the work or after the completion or the sooner determination thereof of the contract."

17. From a plain reading of this clause in *Damodar Das*[6] it is evident that the powers of the Public Health Engineer were essentially to supervise and inspect. His powers were limited to the questions relating to the meaning of the specifications, drawings and instructions, quality of workmanship or materials used on the work, or as to any other question, claim, right, matter, drawings, specifications, estimates, instructions, orders or these conditions,

5 AIR 1961 J&K 58
6 (1996) 2 SCC 216

or otherwise concerning the works or the execution or failure to execute the same. However, in the case before us, the Superintending Engineer was given full power to resolve any dispute arising between the parties which power in our view is wide enough to cover any nature of dispute raised by the parties. The clause in the instant case categorically mentions the word "dispute" which would be referred to him and states "his decision would be final and acceptable/binding on both the parties."

18. That being the position, we are of the view that the clause in *Damodar Das*[6] and clause 4 of the Work Order of the present case are totally different. We accordingly do not find any reason to hold otherwise.

19. At the risk of repetition we may also say before parting with this judgment that clause 4 of the Work Order speaks for a dispute between the parties. It also speaks of a dispute and all such disputes between the parties to the Work Order shall be decided by the Superintending Engineer, Anandpur Sahib, Hydel Circle No. 1. Obviously, such decision can be reached by the Superintending Engineer, Anandpur Sahib, Hydel Circle No. 1 only when it is referred to him by either party for decision. The reference is also implied. As the Superintending Engineer will decide the matter on reference, there cannot be any doubt that he has to act judicially and decide the dispute after hearing both the parties and permitting them to state their claim by adducing materials in support. In clause 4 of the Work Order it is also provided as noted herein earlier that the decision of the Superintending Engineer shall be final and such agreement was binding between the parties and decision shall also bind both the parties. Therefore, the result would be that the decision of the Superintending Engineer would be finally binding on the parties. Accordingly, in our view, as discussed hereinabove that although the expression "award" or "arbitration" does not appear in clause 4 of the Work Order even then such expression as it stands in clause 4 of the Work Order embodies an arbitration clause which can be enforced.

20. For the reasons aforesaid, we are of the view that clause 4 of the Work Order can safely be interpreted to be an arbitration agreement even though the term "arbitration" is not expressly mentioned in the agreement. In view of our discussions made herein earlier, we therefore conclude that clause 4 of the Work Order constitutes an arbitration agreement and if any dispute arises, such dispute shall be referred to the Superintending Engineer for decision which shall be binding on the parties.

21. Before parting with this judgment, we may consider a short submission advanced at the Bar on the question of limitation in filing the application under Section 20 of the Act. At the risk of repetition, we may keep it on record that the Additional Senior Subordinate Judge, Ropar, held that the application was filed in time whereas the appellate court held that the application was barred by limitation. However, the High Court in revision restored the order of the Additional Senior Subordinate Judge, Ropar, by holding that application was filed within the period of limitation.

22. For the purpose of deciding the question of limitation, it may be stated that the application under Section 20 of the Act was filed within 3

years from the date the demand notice was made by the respondent as contemplated under Article 137 of the Limitation Act.

23. In order to determine when the cause of action arose, it is essential for us to refer to a case decided by this Court. In *S. Rajan* v. *State of Kerala*[7] it was held by this Court that the right to apply for arbitration proceeding under Section 20 of the Arbitration Act, 1940 runs from the date when the dispute arises. It observed: (SCC p. 613, para 11)

> "*11.* Reading Article 137 and sub-section (1) of Section 20 together, it must be said that the right to apply accrues when the difference arises or differences arise, as the case may be, between the parties. It is thus a question of fact to be determined in each case having regard to the facts of that case."

24. Accepting the principles laid down in *S. Rajan*[7] this Court in *Hari Shankar Singhania* v. *Gaur Hari Singhania*[8] again reiterated the principle that an application under Section 20 of the Act for filing the arbitration agreement in court and for reference of the dispute to arbitration in accordance therewith is required to be filed within a period of three years when the right to apply accrues and that the said right accrues when difference or dispute arises between the parties to the arbitration agreement. Keeping the principles in mind, let us now examine as to when difference or dispute arises between the parties to the arbitration agreement, when the right to apply accrues. As noted herein earlier, demand notice was served on the appellants by the respondent on 16-4-1990 and the application under Section 20 of the Act was filed on 13-11-1990 which is admittedly within the period of limitation as contemplated under Article 137 of the Limitation Act.

25. The Additional District Judge, Roopnagar, Punjab, held on the question of limitation in filing the application under Section 20 of the Act that the cause of action did not arise when notice of demand was served but arose when the respondent first acquired either the right of action or the right to require that arbitration takes place upon the dispute concerned.

26. Keeping the decisions of this Court in *S. Rajan*[7] and *Hari Shankar Singhania*[8] in mind, in our opinion, the view of the Additional District Judge was totally erroneous. In the aforesaid two decisions, it was held that the right to apply accrued for the difference arising between the parties only when service of demand notice was effective, which should be the date for holding that the difference had already arisen between the parties. Such being the settled law, we are of the view that the application under Section 20 of the Act was clearly filed within the period of limitation.

27. For the reasons aforesaid we do not find any merit in these appeals. Accordingly, the appeals are disposed of with no orders as to costs.

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7 (1992) 3 SCC 608
8 (2006) 4 SCC 658