

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction)

D. B. : HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Arb. A. No. 03 of 2022

Chhabil Das Agarwal,
S/o late Deepchand Agarwal,
5/1 Sirwani Road,
Singtam, P.O. Singtam,
East Sikkim – 737134.

.... **Appellant**

versus

1. State of Sikkim,
Through its PCE-cum-Secretary,
Energy & Power Department,
Government of Sikkim,
Gangtok, East Sikkim - 737101.
2. Energy & Power Department,
Through its Chief Engineer (North),
Government of Sikkim,
Gangtok, East Sikkim - 737101.
3. Energy & Power Department,
Through its Superintending Engineer (North),
Government of Sikkim,
Gangtok, East Sikkim - 737101.

.... **Respondents**

**Appeal under section 37(1)(c) of the Arbitration and Conciliation Act,
1996 (as amended) read with section 13 of the Commercial Courts
Act, 2015**

Appearance:

Mr. Rohan Batra, Advocate with Mr. Dhruv Sethi and Mr. Hemlal Manger, Advocates for the Appellant.

Mr. Sudesh Joshi, Additional Advocate General with Ms Tamanna Chettri, Advocate and Mr. Sujan Sunwar, Assistant Government Advocate, for the Respondents.

and

Arb. A. No. 04 of 2022

Chhabil Das Agarwal,
S/o late Deepchand Agarwal,
5/1 Sirwani Road,
Singtam, P.O. Singtam,
East Sikkim – 737134.

.... **Appellant**

versus

1. State of Sikkim,
Through its PCE-cum-Secretary,
Energy & Power Department,
Government of Sikkim,
Gangtok, East Sikkim - 737101.
2. Energy & Power Department,
Through its Chief Engineer (North),
Government of Sikkim,
Gangtok, East Sikkim - 737101.
3. Energy & Power Department,
Through its Superintending Engineer (North),
Government of Sikkim,
Gangtok, East Sikkim - 737101.

.... **Respondents**

Appeal under section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (as amended) read with section 13 of the Commercial Courts Act, 2015

Appearance:

Mr. Rohan Batra, Advocate with Mr. Dhruv Sethi and Mr. Hemlal Manger, Advocates for the Appellant.

Mr. Sudesh Joshi, Additional Advocate General with Ms Tamanna Chettri, Advocate and Mr. Sujan Sunwar, Assistant Government Advocate, for the Respondents.

Date of hearing : 30.11.2022

J U D G M E N T

14.12.2022

Bhaskar Raj Pradhan, J.

1. This judgment shall dispose of two related appeals under section 37(1)(c) of the Arbitration & Conciliation Act, 1996 (the 1996 Act). Arb. A. No. 03 of 2022

is against the impugned orders dated 8.9.2022 passed by the learned Commercial Court in Commercial Misc. Case No. 02 of 2022 and Commercial Suit No. 03 of 2022 praying for condonation of delay in filing the application under section 34 of the 1996 Act and to restore Commercial Suit No. 3 of 2022 for adjudication. Arb. A. No. 04 of 2022 is against the impugned orders dated 8.09.2022 passed by the learned Commercial Court in Commercial Misc. Case No. 01 of 2022 and Commercial Suit No. 02 of 2022 praying for condonation of delay in filing the application under section 34 of the 1996 Act and to restore Commercial Suit No. 02 of 2022 for adjudication.

2. The admitted facts necessary for the disposal of the two appeals are set out hereunder. On 8.11.2021, the learned Arbitrator passed Arbitral Awards which the appellant is partially aggrieved of. On 7.12.2021, the appellant filed applications before the learned Arbitrator under section 33(1) and (4) of the 1996 Act to seek correction of the amount awarded in the Award. The learned Arbitrator passed orders dated 14.4.2022 dismissing the correction applications filed by the appellant. On 15.08.2022, the appellant preferred the applications under section 34 of the 1996 Act and since there was delay, the

applications for condonation as well. As stated above these applications were dismissed by the learned Commercial Court.

3. Mr. Rohan Batra, learned counsel for the appellant, made various submissions before us challenging the impugned orders including the error in computing the period of delay. However, we find considerable merit in the preliminary point of maintainability of these appeals raised by the learned Additional Advocate General and thus propose to dispose them on the point without examining the merits of the cases.

4. It was argued that the present appeals were not maintainable before this Court as under the Commercial Courts Act, 2015 (the 2015 Act), it would lie before the Commercial Appellate Court.

5. The applications under section 34 of the 1996 Act were filed by the appellant on 15.08.2022 before the learned Commercial Court. The appellant was aggrieved by the rejection of his correction applications to revise the Arbitral Awards. Although not argued before us, in the appeals, the appellant pleaded that in view of notification bearing no. 17/Home/2022 dated 21.02.2022, the applications were

listed before the learned Commercial Court, although in view of notification no. 16/Home/2022 dated 21.02.2022 and 17/Home/2022 dated 21.02.2022, it ought to have been heard only by the District Judge since the sum involved was in excess of the pecuniary jurisdiction of the learned Civil Judge. It is noticed that on the date of filing of the applications, i.e., 15.08.2022, notification no. 17/Home/2022 dated 21.02.2022 was applicable which designated the Court of the Civil Judge (Senior Division) of all the districts as Commercial Court at the district level for the purpose of adjudicating commercial disputes within their respective jurisdiction. Under section 10(3) of the 2015 Act, all applications or appeals arising out of arbitration under the provisions of the 1996 Act that would ordinarily lie before any Principal Civil Court of original jurisdiction in a district (not being a High Court) shall be filed in, heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. Therefore, on 15.08.2022, the learned Civil Judge (Senior Division) had the necessary jurisdiction to adjudicate the applications as there was no pecuniary limitation prescribed to limit the jurisdiction of the Commercial Court so constituted vide

notification no. 17/Home/2022 dated 21.02.2022. By notification no.16/Home/2022 dated 21.02.2022, the Court of the District Judge of all the districts were designated as Commercial Appellate Courts. The appeals were filed on 28.10.2022 by which date by virtue of notification no. 16/Home/2022 dated 21.02.2022, the Court of the District Judge of all the districts had been designated as Commercial Appellate Courts. The impugned orders are appealable orders in terms of section 37(1)(c) of the 1996 Act. Section 37 of the 1996 Act provides that an appeal shall lie to the court authorised by law to hear appeals from original decrees of the court passing the order, *inter alia*, refusing to set aside an arbitral award under section 34. Section 13(1) of the 2015 Act provides that any person aggrieved by the judgment and order of a Commercial Court below the level of a District Judge may appeal to a Commercial Appellate Court within a period of sixty days from the date of judgment or order. The Court of the District Judge had already been constituted as Commercial Appellate Court on 21.02.2022 by notification no. 16/Home/2022. The appeals against the impugned orders passed by the learned Commercial Court, which was below the level of the District Judge, being the Court of the Civil Judge (Senior Division),

ought to have been filed before the Commercial Appellate Court and not before this Court. Consequently, the appeals are returned without examining the merits of the case to enable the appellant to approach the Commercial Appellate Court which has the necessary jurisdiction to decide them in accordance with law.

6. The appeals are disposed accordingly. The parties shall bear their respective costs.

**(Bhaskar Raj Pradhan)
Judge**

**(Biswanath Somadder)
Chief Justice**

Approved for reporting : **Yes/No**
Internet : **Yes/No**

bp