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DULAL PODDAR

v.

EXECUTIVE ENGINEER, DONA CANAL DIVISION AND ORS.

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NOVEMBER 12, 2003

[V.N. KHARE, C.J. AND S.B. SINHA, J.]

*Arbitration Act, 1940:*

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*Ss. 8 and 30—Court appointing arbitrator without notice to other party—Arbitrator passing ex-parte award—Effect of—Arbitration—Interim award by arbitrator—Without considering claim of contractor, arbitrator passed final award—Application u/s 8 by contractor—Court without issuing a notice to other party i.e. the Department, appointing another arbitrator—*

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*Department filed revision before High Court—Arbitrator made an ex-parte award—Objection of Department u/s 30 rejected by civil court—On appeal High Court setting aside order of appointment of arbitrator as also the award given by arbitrator—Held, admittedly no notice at all was sent to the Department before appointing the arbitrator and the award given by the arbitrator was ex-parte one—Furthermore, the award made by the arbitrator*

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*having been passed without giving an opportunity of hearing to the Department was illegal and void—On facts, civil court may consider desirability of appointing a new arbitrator.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4269 of 2002.

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From the Judgment and Order dated 27.7.2001 of the Patna High Court in Appeal from Original Order No. 260 of 1997.

Ms. Kumud L. Das and S.B. Upadhyay for the Appellant.

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Saket Singh and B.B. Singh for the Respondent.

The following Order of the Court was delivered :

The appellant, who was a contractor, entered into an agreement with the respondents for carrying on construction of a canal. The agreement provided

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that in case of any dispute arising under the contract, the matter would be decided by an Arbitrator who would be the Superintending Engineer. Disputes and differences having been arisen between the parties, the Arbitration Agreement was invoked by the appellant pursuant where to the respondent herein appointed the Superintending Engineer as the Arbitrator. The said Arbitrator passed an interim award. In spite of several requests made by the appellant herein the Arbitrator did not consider his claims and pass a final award.

The appellant herein, thereafter filed an application under Section 8 of the Arbitration Act, 1940 in the Court of Subordinate judge 1, Bettiah. It appears that the said court without issuing a notice to the respondents appointed a retired Chief Engineer as an Arbitrator. When the respondents came to know about the appointment of the said Arbitrator, they filed a revision petition before the High Court challenging the appointment of the said Arbitrator as illegal. In the revision petition no order of stay however was passed and as a result of that the Arbitrator proceeded to make an *ex-parte* award. In the meantime, when the Civil Revision Petition came up for hearing before the High Court, it with view that since an award had already been made by the Arbitrator, it would be open to the respondents to challenge the appointment of the Arbitrator by means of an objection under Section 30 of the Act before the Civil Court. Accordingly, the respondent filed an objection before the Civil Court. The Civil Court reflected the said objection. The respondents, thereafter, preferred an appeal against the said order of the Civil Court before the High Court. The High Court allowed the said appeal and set aside the appointment of the Arbitrator as well as the award given by the Arbitrator. It is against the said judgment the Contractor is before us in appeal by means of special leave petition.

We have heard the learned counsel for the parties and we are of the view that the view taken by the High Court does not suffer from any legal infirmity. It is not disputed that no notice at all was sent to the respondent before appointing Arbitrator. It is also not disputed that the award given by the arbitrator was an *ex-parte* one. Furthermore. Such an award which have been made by the Arbitrator having been passed without giving an opportunity of hearing to the respondent herein, was illegal and void. We therefore, do not find any merit in the appeal. Hence, it is dismissed. There will be no order as to costs.

A We, however, having regard to the facts and circumstances of this case are of the opinion that the Civil Court may consider the desirability of appointing a new Arbitrator in terms of the provisions of the Act expeditiously as possible.

B R.P.

Appeal dismissed.