

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 9439 OF 2010
[Arising out of SLP(C) Nos.9724 of 2010]

STATE OF ORISSA

.....APPELLANT

Versus

DURGA CHARAN ROUTRAY

.....RESPONDENT

O R D E R

Leave granted. Heard.

2. The appellant entrusted the construction of Earth Dam of Kuanaria Irrigation Project (balance work) to the respondent. The contract was entered at Puri. The work was executed in Puri District. Certain disputes arose and they were referred to arbitration. The Arbitrator made an Award dated 7.3.2003 for Rs.34.81 lakhs and interest.

3. The appellant filed an application under Section 34 of the Arbitration & Conciliation Act, 1996, ('Act' for short) on 25.6.2003 in the Court of District Judge, Khurda at Bhubaneswar. Learned District Judge, by order dated 21.6.2004, held that the Court at Khurda District did not have jurisdiction and directed the return of the application to the appellant for being presented to proper Court. The appellant filed an appeal against the said order dated 21.6.2004.



4. In the meanwhile, the respondent had levied execution in respect of the award. In the said execution proceedings, the executing Court made an order dated 3.4.2004 directing the appellant to deposit the award amount and permitted the respondent to withdraw the amount by furnishing security. That order was also challenged by the appellant by filing an appeal.

5. Both the appeals, that is appeal against order dated 21.6.2004 passed by the District Judge, Khurda and the appeal against the order dated 3.4.2004 passed by the Executing Court, were heard and dismissed by a common order dated 23.12.2009 by the Orissa High Court which is under challenge in this appeal by special leave.

6. Having regard to Section 36 of the Act, the respondent ought not to have made an application for execution before the expiry of the time for making an application to set aside the arbitral award under Section 34 of the Act. Therefore, we are of the view that the Executing Court ought not to have directed the award amount to be deposited by the appellant or permitted it to be withdrawn by the respondent against security. On the facts and circumstances, we are of the view that interest of



justice would be served if the said order is amended by directing the appellant to deposit the said amount in the District Court, Puri. The direction for withdrawal by the respondent is set aside.

7. The direction for return of the application under Section 34 of the Act, for presentation to the proper Court, does not suffer from any infirmity, as the appellant is not in a position to show that any part of the cause of action arose within the jurisdiction of District Judge, Khurda.

8. We, therefore dispose of the appeal as follows:

(i) We dismiss the appeal arising from the order dated 21.6.2004. and permit the appellant to take back the application from the District Court, Khurda and re-present the application under Section 34 of the Act, before the District Court, Puri within two weeks from today;

(ii) We set aside the order of the High Court affirming the order dated 3.4.2004 of the Executing Court. We, however, direct the entire amount to be deposited in the District

Court, Puri which shall be kept in fixed deposit with a

.....4.



nationalised Bank pending hearing of the application under Section 34 of the Act;

(iii) We request the District Judge, Puri to decide the application under Section 34 of the Act expeditiously.

RAVEENDRAN)

New Delhi;
October 25, 2010.

.....J.
(R.V.

.....J.
(A.K. PATNAIK)



JUDGMENT