

ITEM NO.4

COURT NO.12

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5306/2022

(Arising out of impugned final judgment and order dated 30-06-2020 in ARBA No. 151/2016 passed by the High Court for the State of Telangana at Hyderabad)

M/S SHREE VISHNU CONSTRUCTIONS

Petitioner(s)

VERSUS

THE ENGINEER IN CHIEF MILITARY ENGINEERING SERVICE & ORS.

Respondent(s)

(FOR ADMISSION and I.R.WITHIN FIRST FIVE ITEMS)

Date : 21-04-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.R. SHAH

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) Mr. K. Parameshwar, AOR
Ms. A. Sregurupriya, Adv.
Mr. Prasad Hegde, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The short but an important question of law which is posed for the consideration of this Court is, as to whether the Arbitration & Conciliation (Amendment Act), 2015 viz. a viz. Section 11(6) of the Arbitration & Conciliation Act, 1996 (Act 1996) shall be made applicable, in relation to the arbitral proceedings

commenced before the Court or the issuance of the notice or in a case where the notice invoking the arbitration is issued prior to the Amendment Act, 2015 the Old Act shall be applicable or the New Act.

There are divergent views on the aforesaid in '*Board of Control for Cricket in India Versus Kochi Cricket Private Limited & Others*' [2018] 6 SCC 287 (para 37, 38 and 39) on the other hand and in cases of '*Union of India Versus Parmar Construction Company*' [2019] 15 SCC 682; '*Union of India Versus Pradeep Vinod Construction Company*' [2020] 2 SCC 464 on the other. However, it appears that in the case of *Parmar Construction Company* (supra) the earlier decision in the case of *BCCI* (supra) was not noticed and even it was not brought to the notice of this Court. So far as the decision in the case of *Pradeep Vinod Construction Company* (supra) is concerned, a three Judge Bench of this Court had considered the decision in *Parmar Construction Company* (supra) only and again the contrary decision of this Court in the case of *BCCI*(supra) was not noticed and/or again not brought to the notice of the Court.

Learned counsel for the petitioner has submitted that the subsequent decisions taking a contrary view than the decision in the case of *BCCI* (supra) can be

said to be per incuriam. We are conscious of the fact that the decision in the case of *Pradeep Vinod Construction Company (supra)* is a three Judge Bench judgment, however, in the said decision, the reliance is placed upon the two Judge Bench judgment of this Court in *Parmar Construction Company (supra)*. The aforesaid aspect requires detail consideration.

Notice, returnable on 9th May, 2022.

Dasti service, in addition, is permitted.

It will be open for the counsel for the petitioner to serve the advance copy of the notice to the Central Agency.

Pursuant to our earlier order dated 01.04.2022, the Registrar General of the High Court for the State of Telangana at Hyderabad has submitted a report along with the statement of arbitration applications pending before the High Court. From the statement it appears that even the petition filed in the year 2006 is still reported to be pending. We do not know the reason why the applications under Section 11(6) of the Arbitration Act filed in the year 2006 are still pending. It also emerges from the statement that many applications under Section 11(6) of the Arbitration Act are pending since more than one year.

The statement also shows that in many cases the applications are pending "for orders" or "for judgment" or "for disposal". In the present case itself, the application under Section 11(6) of the Arbitration Act was filed in the year 2016 and it took four years for the High Court to decide the application under Section 11(6) of the Arbitration Act and after a period of four years now the application has been dismissed.

If the applications under Section 11(6) of the Arbitration Act, 1996 are kept pending for a long period and even the appointment of arbitrators are not made at the earliest, it will defeat the object and purpose of the Arbitration Act. Even as per the proposed amendment in the year 2019, of course, it has not come into force. All endeavors shall be made by the courts to decide and dispose of the applications for appointment of arbitrator within a period of six months.

Even otherwise under the Commercial Courts Act, the commercial disputes are required to be disposed of within a period of one year. Even under the Arbitration (Amendment) Act, 2015, the arbitrator is required to dispose of the arbitral proceedings within a period of one year. Therefore, if the applications under Section 11(6) of the Arbitration Act are not

decided at the earliest and within reasonable time, more particularly within one year from the date of filing, the object and purpose of the Arbitration Act shall be frustrated. In other High Courts also such might have been the situation. Therefore, before any direction is issued by this Court to the High Courts, we direct the Registry to call the statement/particulars with respect to the pending applications under Section 11(6) of the Arbitration Act from all the High Courts so as to reach this Court on or before 6th May, 2022. We direct the Registry of all the High Courts to send the statement to the Registry of this Court on or before 6th May, 2022.

List the matter on 9th May, 2022.

(SONIA BHASIN)
COURT MASTER (SH)

(NISHA TRIPATHI)
BRANCH OFFICER