

ITEM NO.1501
(For Judgment)

Court 2 (Video Conferencing)

SECTION XVI

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

Civil Appeal No(s).2402/2019

VIDYA DROLIA & ORS.

Appellant(s)

VERSUS

DURGA TRADING CORPORATION

Respondent(s)

([HEARD BY: HON. N.V. RAMANA, HON. SANJIV KHANNA AND HON. KRISHNA MURARI, JJ.])

WITH

SLP(C) No. 5605-5606/2019 (XVI)

SLP(C) No. 11877/2020 (XVII)

Date : 14-12-2020 This appeal/petitions were called on for judgment today.

For Appellant(s)

Mr. Manoj Swarup, Sr.Adv.
Mr. Ajay Kumar, Adv.
Mr. Sunit Shah, Adv.
Mr. Pinakin M. Raval, Adv.
Mr. Neel, Adv.
Ms. Vidisha Swarup, Adv.

Mr. Debajyoti Basu, Adv.
Ms. Soumya Dutta, AOR

Mr. Pankaj Jain, Adv.
Mr. Ashok Kumar Jain, Adv.
Mr. Bijoy Kumar Jain, AOR

For Respondent(s)

Mr. Nakul Dewan, Sr.Adv.
Mr. Pradhuman Gohil, Adv.
Ms. Taruna Singh Gohil, AOR
Ms. Ranu Purohit, Adv.
Ms. Tanya Srivastava, Adv.
Ms. Jasleen Bindra, Adv.
Mr. Sambit Nanda, Adv.
Mr. Rohan Naik, Adv.
Mr. Maninder Singh, Sr.Adv.
Mr. Bijal H. Chhatrapati, Adv.
Mr. Anjali Anchayil, Adv.
Ms. Avni Sharma, Adv.

Mr. Prabhas Bajaj, Adv.
Mr. Dheeraj Nair, AOR

Mr. T. R. B. Sivakumar, AOR

Hon'ble Mr.Justice Sanjiv Khanna pronounced the judgment of the Bench comprising Hon'ble Mr.Justice N.V.Ramana, His Lordship and Hon'ble Mr.Justice Krishna Murari.

The Reference is answered in terms of the signed reportable judgment.

The Civil Appeal and the Special Leave Petitions are disposed of in the following manner:

Civil Appeal No. 2402 of 2019

In view of the fact that the Arbitral Tribunal is hearing the matter, we leave the issue of arbitrability to the Tribunal to decide and come to a conclusion on the same. Further, the parties are at liberty to execute or challenge the award in accordance with law. The direction that the award cannot be executed without applying for permission of this Court is hereby vacated.

Special Leave Petition (Civil) Nos. 5605-5606 of 2019

In this case, arbitral award has been passed on 24th August 2019. It is apprised before this Bench that the Arbitral Tribunal has rejected the objection to the Tribunal's jurisdiction. In this view, the petitioner is at liberty to pursue the remedy available under Section 34 of the Arbitration Act.

Special Leave Petition (Civil) No. 11877 of 2020

In view of the fact that the Arbitral Tribunal is hearing the matter, we leave the issue of arbitrability to the Tribunal to decide and come to a conclusion on the same. Further, the parties are at liberty to challenge the award if they are not satisfied with the same in this regard.

Hon'ble Mr.Justice N.V.Ramana pronounced the concurring but a separate judgment and held that the conclusions reached, with respect to question no. 1, are:

a. Sections 8 and 11 of the Act have the same ambit with

respect to judicial interference.

- b. Usually, subject matter arbitrability cannot be decided at the stage of Sections 8 or 11 of the Act, unless it's a clear case of deadwood.
- c. The Court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a *prima facie* (summary findings) case of non-existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.
- d. The Court should refer a matter if the validity of the arbitration agreement cannot be determined on a *prima facie* basis, as laid down above, i.e., 'when in doubt, do refer'.
- e. The scope of the Court to examine the *prima facie* validity of an arbitration agreement includes only:
 - a. Whether the arbitration agreement was in writing? or
 - b. Whether the arbitration agreement was contained in exchange of letters, telecommunication etc?
 - c. Whether the core contractual ingredients qua the arbitration agreement were fulfilled?
 - d. On rare occasions, whether the subject-matter of dispute is arbitrable?

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR

(RAJ RANI NEGI)
DEPUTY REGISTRAR

(Two signed reportable judgments are placed on the file)