

Issue No:6

Dear All,

Greetings to you all,

CASE STUDY

COURT : IN THE HIGH COURT AT DELHI

Parties to the Case: M/s.S.K.Sharma Vs Union Of India

Case No: Arb.Appl No:211 OF 2008

Judgment dated: 11.02.2009

Judge: Hon'ble Mr.JUSTICE RAJIV SAHAI ENDLAW

The question that arose before the Delhi High Court was as follows:-

Whether disputes/claims under agreement with respect where to a receipt of full and final settlement has been given or a settlement agreement has been signed, are arbitrable or not ?

Held

Following the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. vs. Boghara Polyfab Pvt. Ltd the court had held that where the settlement is executed, discharging agreement, was on account of fraud/coercion/undue influence practiced by the other party and it is established, then obviously the discharge of the contract by such agreement/voucher is rendered void and cannot be acted upon. Consequently, any dispute raised by such party would be arbitrable. The Court had give the following reasons to hold that the dispute is arbitrable:-

- "a. The signatures of the petitioner bearing the date 31st March , 2007 and the settlement agreement bearing the date 7th April, 2007 and which shows the same to be signed in advance, as pleaded by petitioner.
- b. The payments under the final bill having been released to the petitioner on 31st March, 2007 vide cheques aforesaid and which falsify the statement in settlement agreement of all payments having been made prior thereto.
- c. The witnesses to the settlement agreement being officials of the respondent only and which again show lack of mutuality, discussion prior to signing thereof.
- d. The settlement agreement records payments having being made which admittedly were made thereafter.
- e. The factum of invocation of bank guarantees and withdrawal of the said invocation after the signing of the settlement agreement by the respondents.

f. No reason having been given as to why the bank guarantees were invoked and which invocation was subsequently withdrawn and which show coercion exercised by the respondent Railways.

g. The detail pleas of the petitioner of circumstances leading him to sign the settlement agreement in blank having not been controverted;”

Humor in Court

From book entitled Humor in the Court.

Q. What is your brother-in-law's name?

A. Borofkin.

Q. What is his first name?

A. I can't remember.

Q. He's been your brother-in-law for years, and you can't remember his first name?

A. No. I tell you I'm too excited. (Rising from the witness chair and pointing to Mr. Borofkin.) Nathan, for God's sake, tell them your first name!!

Up Coming Events:

The Inauguration of the CNICA and CNICA Mediation Center at Kanyakumari District on 7th March 2009 has been postponed. We shall duly keep you posted of the same.

We appreciate your inputs, suggestions and contributions in this regard. We welcome all to send their articles and we shall publish the same. We shall also appreciate if you could furnish us the email address of persons who would be interested in receiving our email.

Regards

**G.Ashokapathy
Secretary,
CNICA.**