

SANJAY INDUSTRIAL AND ENGINEERING COMPANY A

v.

THE STATE OF BIHAR AND ORS.

DECEMBER 6, 1995

[K. RAMASWAMY, FAIZAN UDDIN AND B.N. KIRPAL, JJ.] B

Constitution of India :

Article 136—Concurrent finding of fact—Recorded by civil court and High Court—Not interfered with. New plea raised in appeal—Not entertained. C

Dismissing the appeal filed by the appellant-company against the State Government, this Court

HELD : 1. The civil court and the High Court have held that the letter dated 5.7.1979 did not form an integral part of the agreement dated 17.7.1979. This being a finding of fact, there is no error law warranting interference. [287-H, 288-A] D

2. The plea that the arbitrator committed legal misconduct in declining to grant the amount claimed cannot be entertained as the same was not raised before the High Court. [288-B] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11912 of 1995.

From the Judgment and Order dated 7.1.93 of the Patna High Court in Appeal from Original Order No. 195 of 1990. F

A.K. Srivastava and R.K. Sharma for the Appellants.

B.B. Singh for the Respondents.

The following Order of the Court was delivered : G

Leave granted.

Heard the counsel on both sides. Since the Civil Court and the High Court have gone into the question whether the letter dated July 5, 1979 is part of the agreement dated July 17, 1979 and have held that the letter did H

A not form an integral part of the agreement, the agreement does not contain any obligation to pay at the rate of Rs. 432 per Hume pipe to the appellant. This being a finding of fact, we do not find any error of law warranting interference.

B It is next contended that the arbitrator committed legal misconduct in declining to grant the amount claimed. We do not find any substance in the contention. Moreover, the contention was not argued in the High Court. Therefore, we cannot allow the counsel to address this contention here in this appeal.

C The appeal is dismissed. No. costs.

R.P.

Appeal dismissed.