

Dear All,

Greetings to you all,

#### CASE STUDY

COURT : Supreme Court of India  
Parties to the Case : Eastern Coalfields Ltd. Versus Sanjay Transport Agency  
& Another  
Case No. : CIVIL APPEAL No.753 OF 2007  
Judgment Dated : 22-05-2009  
Judges : THE HONOURABLE DR. JUSTICE MUKUNDAKAM  
SHARMA

&

THE HONOURABLE DR. JUSTICE B.S. CHAUHAN

#### BRIEF FACTS OF THE CASE :

Dispute arose in a Contract between a Public Sector Enterprise and a Private concern. The Private concern approached the High Court at Calcutta for appointment of Arbitrator. The Arbitration Clause read as follows:-

" Clause 14: Settlement of Disputes/Arbitration".

".....It is incumbent upon the contractor to avoid litigations and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes through committees at different levels made for this purpose by the company."

The above clause was scored off and it has been replaced by the clause below:-  
Caption

"Clause 14: Arbitration with regard to the commercial disputes between the Public Sector Enterprises inter se and Public Sector Enterprises and Government Departments."

"Arbitration with regard to the commercial disputes between the public sector enterprises inter se and between the public sector enterprises and government departments."

"In the event of any dispute of difference relating to the interpretation and application of the provisions of the commercial terms of the contract such dispute or difference shall be referred by either party to the arbitration, to one of the arbitrators in the Department of Public Enterprises, to be nominated by the Secretary to the Government of India incharge of the BUREAU OF PUBLIC ENTERPRISES. The Arbitration Act, 1940 shall not be applicable to the arbitration under this clause. The award of the arbitrator shall be binding upon the parties to the dispute, provided however, any party aggrieved by such award, may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference, the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary when so authorised by the Law Secretary, whose decision shall bind the parties finally and conclusively. The parties to the dispute will share equally the cost of arbitration, as intimated by the arbitrator."

The Calcutta High Court had appointed a Retired Judge of the Calcutta High Court as the Sole Arbitrator.

HELD:

On appeal the Hon'ble Supreme Court has held

“It is well settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of any provision and to discern the legislative intent. The section heading constitutes an important part of the Act itself, and may be read not only as explaining the provisions of the section, but it also affords a better key to the constructions of the provisions of the section which follows than might be afforded by a mere preamble. The said interpretation can well be applied to understand and construct the various clauses of an arbitration agreement also, which is in the realm of commercial contract. While interpreting so, the Court may not depend only on the text but context as well in order to fully comprehend the context and the meaning of the clause.”

It has been further held that the Caption/section heading can be marginally noted in case of ambiguity in the interpretation of any provision and to discern the legislative intent.

The Court has further given the liberty to the parties to approach the Civil Court and have further held that the benefit of Section 14 of the Limitation Act is applicable.

Events:

The short lecture delivered on 2.5.2009 in the programme is organised by Dr. Chitra S Narayanaswamy Centenary Trust and titled ‘ADR- The Unexplored Solution’ in Lecture titled “‘Gender Justice - Need of the Hour !’ (speedy justice for Women)” presented by Mr.G.Ashokapathy, Secretary CNICA, was well received and appreciated.

CNICA had on 6th of June 2009 conducted Conciliation Proceedings for ICICI Bank Customers. The program was success and had yielded good results. Almost 80 % of the parties who attended the conciliation proceedings settled their disputes.

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.