
(1992) 07 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 995 of 1989

Bansal and Sons Contractors

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 18-07-1992

Acts Referred:

Arbitration Act, 1940 — Section 39

Citation : (1992) 102 PLR 738

Hon'ble Judges : G.R. Majithia, J;A.S. Nehra, J

Bench : Division Bench

Advocate : Anil Khetarpal, for the Appellant; P.S. Kadian, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Nehra, J.—This revision petition has been referred to Division Bench to determine the question :-

"Whether an appeal lies against an order refusing to set aside the award and passing a decree in terms of the award ?"

2. Briefly stated, the facts of this revision petition are that the petitioner filed an application u/s 14 read with Section 17 of the Arbitration Act, 1940 (for short, the Act) praying for making the award dated 18-7-1986 a rule of the Court. The Subordinate Judge, Karnal, vide order dated 12-3-1986, appointed Shri D. P. Gupta, Superintending Engineer, as Arbitrator and the Arbitrator entered upon the reference and made the award, copy of which was endorsed to both the parties, vide endorsement No. 5672 dated 19-7-1986. In the application filed by the petitioner, it was prayed that notice be given to the Arbitrator for filing the original award alongwith the proceedings and that the award be made a rule of the Court and a decree be passed in accordance with the award.

3. Notice of this application was given to the respondents. Respondent No. 3 caused the production of the original award and the arbitration proceedings, in the Court. Respondents Nos. 1 and 2 filed objections to the award. The

objectors" claim is as under :-

Tenders for the work of construction of new buildings for Mahila Ashram, Karnal, were invited by the State of Haryana through the Executive Engineer, Provincial Division No. 1, P. W. D. (B. & R.), Karnal. In response to the said N. I.T., the applicant submitted its tender. Certain dispute arose regarding that work. The respondent filed an application u/s 20 of the Arbitration Act in the Court for appointment of an Arbitrator. On the basis of the said application, vide order dated 22-2-1986, Shri D. P. Gupta respondent was appointed as Arbitrator. The parties appeared before him and presented their claim and defence written statements. The said Arbitrator, vide his award dated 18-7-1986, awarded an amount of Rs. 64,980/- in favour of the applicant. The objectors claimed that the award made by the Arbitrator does not deserve to be made the rule of the Court and it deserves to be set aside on the ground that the learned Arbitrator has misconducted himself and the proceedings that the award has been improperly procured and is otherwise invalid ; and that the Arbitrator in his award did not give the details of the amount awarded and the award is not self contained. It was also claimed that the award has been made illegally and without jurisdiction as it was against the provisions, terms and conditions of the N.I.T. and the tenders submitted by the Contractor. It was claimed that, in pursuance of the tender submitted by the applicant, the Executive Engineer, vide his letter dated 18-5-1981, allotted the work to the applicant and the contract between the parties stood concluded. Thereafter, the applicant, made a representation dated 25-5-1981. His representation was duly considered and the conditions of the work were modified and a letter dated 11-7-1981 was issued to the applicant-contractor. In this letter, the applicant was requested to start the work and to ensure its completion within the contractual period, the applicant did not start the work despite several requests. Vide letter dated 11-8 1981, the Executive Engineer requested the applicant to start the work by 14-8-1981, failing which his earnest money would be forfeited. The Contractor did not start the work again on the receipt of the said letter and the amount of Rs. 34,200/-, deposited by the applicant as earnest money, was forfeited. It is claimed that the forfeiture of the earnest money was in accordance with law and the terms and conditions of the tender and that the learned , arbitrator was not legally justified in awarding the amount of earnest money and the award is against the facts and without jurisdiction. The award was also claimed to be a nullity. It was also claimed that, in this award, the learned Arbitrator has allowed the claim which was time barred; that the amount forfeited was Rs. 34,200/- while the Arbitrator awarded a sum of Rs. 64,980/- ; and that the award is illegal and deserves to be set aside.

4. On the pleadings of the parties, the following issues were framed :-

1. Whether the award, in question, is liable to be set aside, as alleged ?
- 2 Whether the application is not properly stamped ?

3. Whether the objection-petition is barred by time ?

4. Relief

5. Issue No. 1 was decided against the respondents. Issues Nos. 2 and 3 were not pressed.

6. The objections filed by the respondents were dismissed. The award dated 18-7-1986, awarding a sum of Rs. 64,980/- in favour of the petitioner was made a rule of the Court by the Senior Sub Judge, Karnal. on 21.5.1988.

7. Aggrieved by the judgment and decree passed by the Senior Sub-Judge, Karnal, an appeal was filed by respondents Nos. 1 and, 2 before the District Judge, Karnal, which was allowed and the judgment and decree passed by the trial Court was set aside. The objection petition filed by respondents Nos. 1 and 2 u/s 30 of the Act was allowed and the case was remitted back to the Arbitrator to decide the subject-matter afresh.

8. The learned counsel for respondents Nos. 1 and 2 submitted before the District Judge, Karnal, that the claim filed by the petitioner before the Arbitrator was barred by limitation. On behalf of the petitioner, it was argued that the point of limitation cannot be taken up before the appellate Court, because it was not raised before the Arbitrator. The appellate Court held that Section 3 of the Limitation Act debars the Arbitrator from entertaining any such claim and that, since it is a legal point, it can be taken up in an objection petition, u/s 30 of the Act though it was never urged before the Arbitrator.

9. The learned counsel for the petitioner argued before the learned Single Judge that no appeal was maintainable before the appellate Court against the order refusing to set aside an award and making it a rule of the Court and passing a decree in terms of the award. In support of his argument, the learned counsel for the petitioner relied upon *Union of India v. M/s. Shibboo Mal and Sons* (1989) 95 P. L.R. 264.

10. The learned Single Judge has mentioned in the reference order that the view taken in *M/s. Shibboo Mal and Sons* case (supra) runs contrary to the statutory provisions of Section 39 of the Act.

11. After hearing the learned counsel for the parties, we are of the opinion that the view taken in *M/s. Shibboo Mai's* case (supra) does not run contrary to the statutory provisions of Section 39 of the Act. The facts which are mentioned in paragraphs 2 and 3, of the judgment were not brought to the notice of the learned Single Judge by the learned counsel for the petitioner. Paragraphs 2 and 3 of the judgment in *M/s. Shibboo Mal's* case (supra) read :-

"The facts briefly are that a dispute ,arose between respondent No. 1 and the appellant in respect of Contract Agreement G E J K 37/7 -77, for providing married accommodation for JCOs/HAVs/O at Udhampur in terms of the agreement, the dispute was referred for adjudication to the sole Arbitrator Lt. K.

B. Sethi. The Arbitrator gave the award and sent a copy of the same to respondent No. 1, Respondent No. 1 moved a petition before the Subordinate Judge, Chandigarh, for a direction to the Arbitrator to file the award in the Court, and after the award is filed the same may be made the rule of the Court and a decree in terms thereof may be passed.

The appellants filed reply, to the application. They did not dispute the correctness of the allegations made in the petition.

The only dispute raised was that, since the work under the contract was executed at Udhampur, the Subordinate Judge at Chandigarh has no jurisdiction to entertain the application."

The Union of India in that case did not dispute the correctness of the allegations made in the petition filed by M/s. Shibboo Mal and Sons. The only dispute raised by the Union of India in that case was that, since the work under the contract was executed at Udhampur, the Subordinate Judge at Chandigarh had no jurisdiction to entertain the application.

12. u/s 14 of the Act, the Arbitrator has to file the award in Court when directed and, when the award is filed, notice has to be sent to the parties of the filing of the award. After the provisions of Section 14 of the Act have been complied with and the Court finds no cause to remit back the award or any of the matters referred to arbitration for reconsideration, the Court shall, after the time for making an application to set aside the award has expired, pronounce the judgment according to the award and, upon the judgment so pronounced, a decree shall follow. Section 17 of the Act further postulates that no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with the award. An appeal would lie only if the decree was not in accordance with the award. Section 39 of the Act provides that all orders of the nature specified in that Section will be open to appeal irrespective of the fact whether they are final orders in the case or disposed of finally, or are merely interlocutory. Against an order u/s 17 of the Act passing a decree in terms of the award, no appeal lies u/s 39 of the Act but it lies under the last part of Section 17 on only two grounds, viz-(i) that the decree is in excess of the award and (ii) that the decree is not in accordance with the award. Clauses (a), (b) and (c) of Section 30 of the Act set out the grounds on which an award could be set aside; and Section 33 of the Act further adds that the challenge could be also with reference to the existence or validity of an arbitration agreement or an award. If no steps are taken to set aside the award under Sections 30 and 33 of the Act, an unassailable reason must follow. u/s 17 of the Act, a decree is not open to challenge except by way of an appeal under the two grounds mentioned in the said Section. Whatever may be the ground of impeachment, it has got to be agitated under Sections 30 and 33 of the Act and if there is an omission to do so, one cannot avoid the bar created by Section 17 of the Act. Since the correctness of the award was not challenged in M/s. Shihboo Mal and Sons" case (supra), therefore, no appeal was maintainable and the decision of the learned Single

Judge in that case is in accordance with law and the correctness of the same cannot be doubted.

13. In the instant case, respondents Nos. 1 and 2 filed objections to the award, which have been mentioned in the earlier part of the judgment, in the objections filed by the respondents, it was mentioned that the "award made by the Arbitrator does not deserve to be made a rule of the Court and it deserves to be set aside on the grounds that the Arbitrator has misconducted himself and the proceedings; that the award has been improperly procured and is otherwise invalid; that the Arbitrator in his award did not give the details of the amount awarded; and that the award is not self-contained. It was also claimed that the award has been made illegally and without jurisdiction as it was against the provisions, terms and conditions of the NIT and the tenders submitted by the Contractors Since the Senior Subordinate Judge refused to set aside the award and passed a decree in terms of the award, therefore, in view of Section 39 of the Act, the appeal filed by respondents Nos. 1 and 2 was maintainable before the District Judge, Karnal The reference made by the learned Single Judge is answered that an appeal is maintainable against an order refusing to set aside the award and passing a decree in terms of the award.

14. The judgment and decree passed by the learned District Judge, Karnal, was not challenged on merits. Therefore, the revision petition is dismissed with no order as to costs.