

(2014) 12 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 8442 of 2014

B.S. Ahluwalia

APPELLANT

Vs

O.S. Ahluwalia

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34 7

Citation : (2015) 178 PLR 320

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Kanwaljit Singh, Senior Advocate and Vikram Gupta, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.

1. The dispute is between the real brothers in respect of a residential house bearing H. No. 2164, Sector 15-C, Chandigarh. The petitioner had earlier filed CR No. 7039 of 2014 against the order dated 11.9.2014 by which objection filed by him against the award passed by the Arbitrator was dismissed. At that time, the civil revision was disposed of with the following order:-

"During the course of hearing, it is, inter-alia, submitted by the learned counsel for the petitioner that the basic dispute in this case is "as to whether the order dated 23.8.2008 is an award or a settlement?"

It is argued that as per Section 7 of the Arbitration and Conciliation Act, 1996, the arbitration agreement has to be in writing. Since there was none, therefore, the decision taken by the brother while deciding the dispute between the parties to the lis cannot be termed as an arbitral award.

It is submitted that this plea was taken before the Court below and has been noticed in para No. 2 of its judgment, but no finding has been returned in this

regard. That being so, it is more a matter of review than of revision. Faced with this situation, learned counsel for the petitioner prays for withdrawal of this petition in order to first exhaust his remedy of filing a review before the Court below. Dismissed as withdrawn. Liberty granted."

The petitioner then filed a review application in terms of the aforesaid order but the said application was also dismissed by the learned Court below on 21.11.2014. Hence, the present revision petition has been filed to challenge the orders dated 11.9.2014 (Annexure P-1) and 21.11.2014 (Annexure P-11).

2. On 23.8.2008, M.S. Ahluwalia, who happened to be the elder brother of both the parties to the lis, acted as an Arbitrator to decide the dispute between the brothers in respect of as many as three properties, namely, residential property bearing H. No. 2164, Sector 15-C, Chandigarh; Uniwalk Paper Mill at Budhmajra, Distt. Mohali, Punjab and Land measuring 31 kanal 2 marla located at village Budhmajra, District Mohali, Punjab.

3. Learned counsel for the petitioner has submitted that he is concerned in this case only with regard to the residential house because in regard to Uniwalk Paper Mill, the matter is pending before this Court and as regards the agricultural land measuring 31 kanal 2 marla, the payment has already been made to the other side.

4. Learned counsel for the petitioner has submitted that he did not authorize the Arbitrator to enter into arbitration as the authorization placed on record is only by the respondent and his wife. He has further submitted that he did not participate in the arbitration proceedings and the award is not accepted by him and it is wrongly mentioned by the Arbitrator that there was a written agreement between the parties. Learned counsel for the petitioner has further argued that after the award was passed, the application was filed thrice for clarification/correction of the award passed by the Arbitrator i.e. on 17.9.2008, 26.9.2007 and 18.2.2012.

5. The basic argument raised by learned counsel for the petitioner is that the order dated 23.8.2008 is not an arbitral award but a family settlement in which the petitioner had filed an objection which could not have been dismissed on the ground of limitation as provided under Section 34 of the Arbitration and Conciliation Act, 1996 [for short "the Act"]. He has further submitted that as per Section 7 of the Act, the agreement has to be in writing.

6. Notice of motion.

7. At this stage, Mr. Akshay Bhan, Sr. Advocate, with Mr. Rohit Sud, Advocate, accepts notice on behalf of the respondent and has submitted that he is ready with the arguments.

8. Learned counsel for the respondent has argued that the order dated 23.8.2008 is an arbitral award under the Act and cannot be termed as family settlement. It is also submitted that the petitioner had asked for clarification of

the said order dated 23.8.2008, which is evident from the email dated 25.8.2008 sent by the petitioner to the Arbitrator which was duly replied by him on 26.8.2008 and is a part of the reply to the execution application filed by O.S. Ahluwalia. It is further submitted that the petitioner is incorrect in saying that there was no agreement in writing because in the beginning of the order dated 23.8.2008 (Annexure P-1), M.S. Ahluwalia, who acted as an Arbitrator has specifically mentioned that the parties have given to him in writing to arbitrate between them. In the end, it is submitted that once the award has been passed, the only remedy left with the petitioner was to file objection under Section 34 of the Act and since the objection was timed barred, filed after three years of the award, the learned court below has rightly dismissed it. I have heard both the learned counsel for the parties and after examining the record, am of the considered opinion that there is no merit in the present petition. The reason to arrive at this conclusion is that even if the petitioner submits that there was no authorization to his elder brother namely, M.S. Ahluwalia, to arbitrate between the parties, the very fact that he did not challenge the order/award dated 23.8.2008 by him on 10.3.2012 is clearly timed barred. As regards the question as to whether there was a written agreement or not between the parties, it has been specifically mentioned by M.S. Ahluwalia in his award that there was an assurance given by the parties in writing as well as oral to enter upon the arbitration. The question that whether the petitioner had accepted the arbitration award or not or it has been three times clarified, it was for him to file objection immediately before the executing Court on the ground that the award is contrary to the provisions of law. Once, no objection was filed in time, the right to file objection after the expiry of period of limitation was over. Hence, there is no error in the impugned orders. Accordingly, the present petition is hereby dismissed.