(2014) 08 P&H CK 0191

In the Punjab And Haryana At Chandigarh

Case No : CR No. 4501 of 2014 (O&M)

Chief Secretary Haryana — APPELLANT

Vs

B and R. Arora Infra Techno Private Limited — RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 11, 2(2)
Companies Act, 1956 — Section 21

Citation : (2014) 08 P&H CK 0191

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Ashwinie Kumar Bansal, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—The Engineer-in-Chief, Haryana, PWD, B & R, Chandigarh entered into contract with M/s. B & R Infra Techno Private Limited for maintenance and construction of part of the National Highway-8 route Rewari-Ateli-Narnaul running a length of 66.40 Kms. The works contract was executed on March 08, 2000. The work was physically completed on July 27, 2001. The Defect Liability Certificate was issued on April 19, 2002. The final bill was presented on October 10, 2002. The road work was completed but disputes arose between the parties which were referred to arbitration. The award has been made in favour of the contractor-respondent.

2. The challenge to the award dated April 30, 2008 in proceedings u/s 34 of the Arbitration & Conciliation Act, 1996 (for short "the Act") failed before the learned Additional District Judge, Rewari on December 13, 2011. The appeal preferred by the State of Haryana u/s 37 of the Act is pending before this Court. Notice of motion was issued on September 17, 2012 and the following interim order was passed:-

Meanwhile, execution of impugned Award (except regarding the principal amount of Rs. 25,19,355/- less the amount of excise duty i.e. Rs. 19,01,726/- and interest on the said net amount at the rate awarded by the Arbitrators since 20.10.2003 till recovery) shall remain stayed.

3. For the remaining part of the award dated April 30, 2008 against which there was no stay by this Court, the contractor filed execution proceedings in the Executing Court to obtain money under the decree.

4. Till then, the contractor fought the litigation in the name and style of M/s. B & R Infra Techno Private Limited with which company the Government had contracted with for execution of the works. It transpires that M/s. B & R Infra Techno Private Limited changed its name to M/s. B.R. Arora & Associates Private Limited on the strength of a resolution passed by the company in terms of Section 21 of the Companies Act, 1956 together with the approval of the Central Government duly accorded the Registrar of Companies, NCT of Delhi & Haryana who accepted the change and issued a Fresh Certificate of Incorporation in the changed name w.e.f. April 04, 2004.

5. An application was moved on February 01, 2014 before the Executing Court under Order 1 Rule 10 CPC for substituting the name of the decree holder from the old to the new name. The learned Additional District Judge, Rewari has allowed the application by the impugned order dated May 31, 2014. From the reading of the order, it appears that the Engineer-in-Chief, Haryana, PWD B & R Branch, Chandigarh had in the first instance accepted and entered contract with M/s. B.R. Arora & Associates Private Limited, New Delhi. Thereafter, the company changed its name to M/s. B & R Infra Techno Private Limited on May 28, 2002 and changed it back to M/s. B.R. Arora & Associates Private Limited on April 26, 2004. However, the present litigation continued under the title of the old name till when the company was required to furnish its bank account, PAN and other necessary documents to the judgment debtor for satisfaction of the decree from which it was revealed that the new name of the company was M/s. B.R. Arora & Associates Private Limited. Since the name of the decree holder was different, the Government refused to release payments due under the award which led to the filing of the application substituting the name of the company as at present. The learned Executing Court has allowed the application and called upon M/s. B.R. Arora & Associates Private Limited to furnish an indemnity bond in a sum of Rs. 10 lacs undertaking to deposit the amount received by it in terms of the order dated September 17, 2012 passed by this Court, the operative part of which is extracted above. This protection has been given in case some other person lays claim to the money. The case stands adjourned and the execution proceedings are pending.

6. The limited question raised by Mr. Bansal against the interlocutory order is that the award was passed in the name of a juristic entity other than the applicant. The name of the company was changed on April 26, 2004 and the award was passed in the old name on April 30, 2008 and no information about

the change of name was brought to the knowledge of the Government. In fact, the change of name was concealed by the respondent and was suppressed even from the objections filed u/s 34 of the Act challenging the arbitration award in part under the old name. The judgment was passed by the Ld. ADJ, Rewari u/s 34 of the Act on December 13, 2011 in the old name. The appeal before the High Court was also filed in the old name. Therefore, the award and decree passed by the Tribunal and Court are non-executable, invalid and illegal being in favour of a non-entity. The respondent ceased to exist after change of name on April 26, 2004 and all consequential proceedings stand vitiated. Mr. Bansal submits that an application under Order 1 Rule 10 CPC does not lie in execution proceedings as the name was changed prior to passing of the award and the decree and the mistake was not bona fide. It is submitted that the Execution Court cannot go behind the decree and travel beyond it and this only the Civil Court which passed the decree can do which alone has power to amend the decree in appropriate proceedings. In support of his contentions, Mr. Bansal relies on the decision of the Supreme Court in Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd. and Others, to submit that delay is a significant factor in considering an application for impleading a party under Order 1 Rule 10 CPC. The Court was dealing with a suit for specific performance of an agreement to sell property by one ''A'' to ''B''. B filed the suit. The Court granted interim injunction restraining vendor from parting with possession or creating third party rights in respect of the suit property. During pendency of suit, ''A'' clandestinely entered into an agreement to sell property to third parties and executed sale deed in their favour. Third parties were total strangers to agreement between ''A'' and ''B''. The Court held that agreements for sale and sale deeds executed by ''A'' in favour of third parties did not have legal sanctity after entering into contract with ''B''. The impleadment application filed after a delay of seven years of the passing of the restraint order 1993 was not small. The Court drew an inference that the party must have come to know of the pendency of the suit and, therefore, the trial Court was correct in declining the prayer for impleadment. The facts of Vidur Impex''s case are altogether different from the present one and, therefore, the citation is distinguishable on facts. The reliance is then placed on a Single Bench decision of the Orissa High Court in Baman Chandra Acharya and Others Vs. Balaram Acharya and Others, He specifically relies on paras. 5, 6 and 12 which read as follows:-

5. The expression that "the Court may at any stage of the proceedings add the name of any person, as plaintiff or defendant who ought to have been joined, is very wide Until the decree is drawn up, parties can be added or struck out if other conditions in the Rule are satisfied. Each case is to be determined in its own facts and circumstances. The question for consideration is whether "any stage" would cover a stage after the passing of the decree.

Section 2(2). CPC defines "decree" as the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the mailers in controversy in the suit and may be either preliminary or final. A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. There is no dispute that in all suits where only one decree is passed completely disposing of the suits, there cannot be any addition of parties under Order 1 Rule 10 CPC subsequent to the decree. The controversy arises with respect to cases where both a preliminary and final decree are passed.

6. It is contended by Mr. Misra on the basis of ILR 52 Cal 483 Jotindra Motian Tagore v. Bejoy Chand Mahatap that parties can be impleaded under Order 1 Rule 11 CPC even after preliminary decree. Reliance is placed on the following observations:

A decree to be operative must, under the Indian Stamp Act, be engrossed on paper as required by that Act, and, until the Judge signs the decree so engrossed, it cannot be said that the suit has terminated. The order confirming the Commissioner''s report in this case must be taken to be an interlocutory order made in the course of the suit and preparatory to the order that might determine finally the rights of the parties.

Section 32 authorises the Court to add a party "at any time" in order to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. This must, however, be done before the "effectual and complete" adjudication and settlement of the question raised." This decision has been followed in AIR 1942 Patna 185(2) and AIR 1964 Patna Andh Pra 260.

It is necessary to examine the correctness of these decisions.

12. To sum up, even if other conditions under Order 1, Rule 10(2) are fulfilled, an application for addition of parties cannot be allowed after the preliminary decree is passed except in certain exceptional circumstances, such as, impletion of transferees subsequent to the preliminary decrees or death of parties whose rights were carved out in the preliminary decree. For instance, a preliminary decree declares that X, Y and Z have one-third share each in the disputed property Z dies leaving behind some heirs who are entitled to his share with varying interests. Such heirs can he added at the final decree stage in place of Z and on their desire their varying interests may be carved out at the final decree stage. In these exceptions, the heirs of (sic) the preliminary decree declaring rights, title and interest of the parties in a particular manner are not affected.

7. The contention is that the Court can add or strike off the name of a party but cannot change it and the words "any stage" used in Order 1 Rule 10(2) CPC would cover a stage only after passing of the decree. Order 1 Rule 10 CPC is not meant for making an addition of parties in cases where both the preliminary and final decrees are passed. In this case, the Court dealt with a title suit for partition based on purchase of a share in interest of a co-sharer through sale of share in property. The facts here are different. A company is a legal entity and a juristic person both in the old and in the new name and style of incorporation.

Certificates issued by the Registrar of Companies are public documents which require no special proof and of which judicial notice can reasonably be taken by court. The name of the company was changed after the contract had been completed. The petitioner dealt with M/s. B.R. Arora & Associates Private Limited in 2001 i.e. to start with. When the litigation started the name of the company had been changed by ROC and was changed over again in 2004 as in its present form. The title/Memo of parties to the arbitration proceedings were true and correct on the date when the litigation started and continued till the application under Order 1 Rule 10 CPC was filed in 2014 to claim money under the decree as is available under the interim order of this Court dated September 17, 2012 passed in pending FAO No. 5209 of 2012 (O & M). In any case, the learned Additional District Judge, Rewari had protected the petitioner by an indemnity bond. No further protection is required. No other issue is claimed or pressed.

8. In the result, I do not find any substance in the contentions raised on behalf of the petitioner.

9. The petition fails and is dismissed.

