
(2015) 02 AHC CK 0113
In the Allahabad High Court
Case No : Civil Revision No. 893 of 2002

Harjinder Singh Bhatia

APPELLANT

Vs

Suresh Kapoor

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 19, 2(e), 34
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9

Citation : (2015) 3 ADJ 64 : (2015) 109 ALR 770 : (2015) 2 AWC 1897 : (2015) 127 RD 729

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Ramendra Asthana, for the Appellant; Pankaj Bhatia and N.K. Srivastava, Advocates for the Respondent

Judgement

Pankaj Mithal, J.—Heard Sri Ramendra Asthana, learned counsel for the revisionist. No one appears for the respondent despite revision of list.

2. The respondent is represented by a counsel but despite time allowed for filing reply/objection to the revision there is no response from the side of the respondent.

3. An award was made by the arbitral tribunal under the provisions of the Arbitration and Conciliation Act, 1996. The revisionist applied for setting aside the said award under Section 34 of the Act before the Court. The application of the revisionist for setting aside the award was dismissed for want of prosecution. The revisionist moved an application for recall of the above order and for restoring the application for setting aside the award. The said application has been rejected by the Court below by the impugned order dated 10.9.2002 on the ground that under the Act there is no provision for restoration.

4. The submission of Sri Asthana, learned counsel for the revisionist is that the Act does not bar the application of CPC to proceedings arising from arbitral award

before the Court. Therefore, the Court below has failed to exercise the jurisdiction vested in it under law in not recalling its order and restoring the application filed under Section 34 of the Act.

5. The Act in dispute is a self contained code in itself. It does not provide that the CPC would not apply to the proceedings before the Court arising out of the arbitral award. Section 19 of the Act only provides that the arbitral tribunal shall not be bound by CPC. It only excludes the applicability of CPC to proceedings before the arbitral tribunal and not to the proceedings before the Court arising out of the arbitral award of the Act.

6. It is settled law that the procedure before the Court in deciding a lies between the parties has to be fair and reasonable and that for the above purpose the Courts are free to take and of the CPC.

7. An application under Section 34 of the Act for setting aside an arbitral award lies before a Court. The Court has been defined under Section 2(e) of the Act to mean the principal Civil Court of original jurisdiction of the district. A Civil Court is ordinarily bound to follow the Code of Civil Procedure in dealing with any proceeding before it or an application under Section 34 of the Act until and unless the applicability of the CPC has not been excluded.

8. There is no provision in the Act which excludes the application of CPC to proceedings before the Court arising under the Act.

9. In *I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd.*, AIR 2002 SC 2308 : (2002) 2 ARBLR 246 : (2002) 4 ComplJ 186 : (2002) 1 JT 466 Supp : (2002) 4 SCALE 655 : (2002) 5 SCC 510 : (2002) 38 SCL 943 : (2002) 3 SCR 1122 : (2002) 2 UJ 1111 : (2002) AIRSCW 2438 : (2002) 4 Supreme 444 , the Apex Court has observed that under the Act the application of the Code of Civil Procedure is not specifically provided for but at the same time there is no express prohibition against its application to a proceeding arising out of the Act before the Civil Court. Therefore, as a necessary corollary the exclusion of CPC in matters arising under the Act before the Civil Court cannot be presumed or inferred. Once the CPC is applicable, the Court dealing with the matter is entitle to consider the application for recall of an order or for setting aside an ex parte order on the analogy of Order IX CPC.

10. Even otherwise, the principle is that if a Court has power to do something it has power to undo it in exercise of its inherent jurisdiction for reasons to be recorded.

11. Accordingly, I am of the view that the Court below has manifestly erred in law and has failed to exercise jurisdiction vested in it in rejecting the application for recall of the order dated 28.7.2002 dismissing the application of the revisionist filed under Section 34 of the Act for want of prosecution.

12. In the aforesaid facts and circumstances, the order dated 10.9.2002 is hereby set aside and the matter is sent back to the Court below for consideration

of the above application of the revisionist for recall of the order dated 28.7.2002 on merits. The revision is allowed. No order as to costs.