

(2013) 05 P&H CK 0192

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 955 of 2013 (O and M)

Haryana State Co-Operative Labour and Construction
Federation Ltd.

APPELLANT

Vs

Financial Commissioner and Principal Secretary and Others

RESPONDENT

Date of Decision : 15-05-2013

Acts Referred:

Citation : (2013) 172 PLR 74

Hon'ble Judges : G.S. Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Karan Bhardwaj, for the Appellant;

Judgement

G.S. Sandhawalia, J.—The present appeal is directed against the order dated 03.12.2012 passed in CWP No. 20055 of 2011 wherein, the Learned Single Judge has declined to interfere in the award passed by respondent No. 4 and given liberty to the petitioner to have its remedy as provided under the Arbitration Act, 1940 (in short, the "Act"). The impugned judgment has also upheld the orders of respondents No. 1 & 2 declining to interfere in the award dated 20.02.2008 (Annexure P-9) which was the subject matter of challenge in the writ petition. The Learned Single Judge came to the conclusion that the judgments relied upon by the petitioners were distinguishable and not applicable to the facts since there was specific agreement between the parties and it was agreed to be governed by the provisions of the Act. The appeal before the Registrar under the Haryana Co-operative Societies Act, 1984 (for brevity, the "Societies Act") was not maintainable.

2. Counsel for the appellant-Federation has very vehemently argued that inter se the parties, on earlier occasions, the matter had been adjudicated upon by the authorities under the Societies Act against the award and therefore, subsequently declining to interfere in the award on the ground that the provisions of the Act would apply since there was agreement executed between the parties was contrary to the earlier view taken by the said authorities.

Reference was accordingly made to the orders dated 15.04.1997 wherein the earlier award of the Arbitrator was upheld under the Societies Act.

3. A perusal of the writ petition filed by the appellant would go on to show that it was allotted the work of construction of 58, 76 and 82 LIG houses in Sector 15, Panchkula in the year 1981 vide three separate construction contract agreements dated 11.07.1981. The appellant had further allotted these works to respondent No. 3, Unique Cooperative Labour & Construction Society Ltd. and agreements were entered into on 20.07.1981. As per clause 20 of the agreement, it was provided that any dispute or difference arising between the Federation and the Society would be referred to the arbitration of the Registrar, Cooperative Societies, Haryana as the sole arbitrator and the provisions of the Indian Arbitration Act, 1940 would apply and the decision of the arbitrator would be final and binding upon the parties. Vide letter dated 08.10.2007, application of respondent No. 3 for appointment of arbitrator was allowed by the Registrar, Cooperative Societies, Haryana-respondent No. 2 and respondent No. 4, Sh. P.S. Rawat was appointed as the Arbitrator. The Arbitrator, vide his award dated 20.02.2008, awarded various sums under different headings and further provided that the payment of the award be made within 90 days from the date of passing of the award. Thereafter, interest as per Section 31(7)(b) of the Arbitration & Conciliation Act, 1996 would be payable from the date of award till the date of actual payment. The said award was challenged by filing the appeal u/s 114 of the Societies Act. Respondent No. 2 came to the conclusion that the appeal was not maintainable since the award could only be challenged before the Civil Court under the appropriate provisions of law and dismissed the same on that ground on 15.04.2010. The Financial Commissioner also dismissed the revision petition on the ground that the award had been passed by the Arbitrator under the Act.

4. From the perusal of the above sequence of events, it would be clear that this appeal is arising out of an agreement inter se the appellant and respondent No. 3 and it was not such a dispute which would fall within Section 102 of the Societies Act which was to be referred to the Registrar, Cooperative Societies, Haryana, respondent No. 2 for decision and there was a bar in such cases against the Courts to entertain any suit or proceedings in respect of such disputes. The reliance of the counsel upon Harchand Singh Vs. Khiala Kalan Agricultural Co-operative Service Society Ltd. and Others, is without any basis. In that case, there was a dispute between the cashier of the Society on the one hand and the Society on the other which was referred to arbitration u/s 56 of the Punjab Cooperative Societies Act, 1961. The manager of the Faridkot Central Cooperative Bank Ltd., Faridkot was appointed as Arbitrator and an appeal had been filed against the said award which was dismissed. Thereafter, the petitioner had resorted to filing an application u/s 33 of the Arbitration Act, 1940 or recalling of declaration that the entire arbitration proceedings conducted by the Arbitrator were illegal and arbitrary. It was in such circumstances the Division Bench held that civil Court would have no jurisdiction in the cases of statutory

arbitration under the Arbitration Act and it would oust the application filed under Arbitration Act since there was bar on jurisdiction u/s 82 of the Punjab Cooperative Societies Act, 1961. The Learned Single Judge had rightly held the said judgment to be not applicable in the present case. The submission of the counsel for the appellant that on earlier occasions, the matter had been adjudicated upon by respondent No. 2 inter se between the parties is also of no help since a perusal of the proceedings dated 5.04.1997 would go on to show that both the appellant and respondent No. 3 had filed cross-appeals before the Joint Registrar, Cooperative Societies against the ward dated 19.05.1996 passed by the arbitrator. Both the parties had never objected to the maintainability of the appeals. In the present case, an objection had been taken by the respondents to the maintainability of the appeal before the Registrar, Cooperative Societies, Haryana as the arbitration proceedings were outcome of clause 20 of the agreement whereunder, it has been provided that the Arbitration Act is to apply in such circumstances. Thus, no fault can be found with the order of respondent No. 2 in dismissing the appeal on the ground of maintainability which has been further upheld by respondent No. 1 and by the learned Single Judge. The right of the appellant has not been foreclosed and it is always open to him to seek his remedy in the appropriate Court, as noticed by the Learned Single Judge. 7. Accordingly, we find no ground to interfere in the judgment of the Learned Single Judge and the letters patent appeal is dismissed. Since the appeal itself is dismissed on merits, no further order is called for in CM No. 2539-LPA of 2013 for condonation of delay in filing of appeal.