(1989) 12 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2746 of 1987

Haryana State Electricity Board and Others — APPELLANT

Vs

Bhanu Steels Private Limited — RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:
Arbitration Act, 1940 — Section 41
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115

Citation : (1990) 97 PLR 596

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : A.S. Nehra and Jawala Dass, for the Appellant; H.L. Sibal and S.C. Sibal, for the Respondent

Final Decision : Allowed

Judgement

G.R. Majithia, J.—This order will dispose of Civil Revisions No. 2746, 2747 and 3104 of 198? and Civil Revisions No. 2689 and 1556 of i988.

2. The respondent-Messrs hanu Steels Private Limited (hereinafter referred to as the applicants'') filed an application u/s 20 of the Indian Arbitration Act (for short ''the Ace'') against the petitioner- Haryana State Electricity Board (for short ''the respondents'') for direction to file the arbitration agreement in Court and refer the dispute to the arbitrator for decision. The dispute was regarding correction on energy bills drawn up on the basis of fast running electric meters installed in the factory of the applicants having account No. LS 2 '' It was alleged that the electric meter supplied by the respondents had been running very fast as compared to the actual energy consumption. The defect was dejected on receipt of exhorbitant highly excessive bills. A complaint was made to the respondents on October 24, 1985 for testing the meter. The respondents did not take any prompt action in fixing the test meter and even after fixing the same it did not inform the applicants'' of the test meter and continued to send bills on the basis of the consumption shown by defective meter. After detection that the meter was

running fast, the respondent did not correct the energy bill despite requests made vide letters date December 24, i985, January 24, 1986, June 25, 1986, July 17, 1986 and July 18, 1986. The respondents sent intimation vide letter July 23, 198 that the meter had been got checked from the Executive Engineer (M&P) Hissar and the basis of the result declared by him in February. 1986, proposal for over-hauling the accounts of the applicants had been sent to the higher authorities for decision. The letter indicated that excessive billing due to the defective meter was to the tune of 8,00,000/- The applicants asked the respondents to intimate the result of checking of the meter and the test percentage of fast running So that the applicants may deposit the actual amount due to the respondents, but the latter had not yet intimated the result of the test report and instead were pressing the applicants to deposit the amount of energy bills as per the reading of the defective meter. The applicants maintained that the respondents were not legally entitled to claim the excessive energy bills from the applicants although they bad been depositing the amount of excessive bills under threat of disconnection. The threat was conveyed vide letter dated February, 27, 1987 It was also alleged that the respondents had been adding surcharge @ 2% on the amount not due and the same was illegal The arbitration agreement arrived at between the parties provides for reference for dispute to the Arbitrator for decision. The applicants sought the intervention of the Court for referring the dispute to the Arbitrator since the respondents had failed to refer the dispute as enjoined by the arbitration agreement. Along with the application u/s 20 of the Act, application under Order 39, Rules 1 and 2, Civil Procedure Code, filed for temporary injunction for restraining the respondents from disconnecting the electric connection till settlement of the dispute.

3. The respondents controverted the allegations made and pleaded that the meters were replaced on November 29, 1985 and January 30, 1986 and unless there was a decision of the competent authority to the contrary the consumption of the electricity recorded by the meter treated as conclusive. After the meters had been changed, there was n dispute and the applicants had paid the old bills and there was no dispute with regard to the payment of Rs. 29,60,476.12 P. which relates to the period October 1986 to March, 1987. It was maintained that the applicants had neglected to pay the arrears of electricity bills and the supply of electric energy was liable to be stopped. The arbitration agreement was duly executed between the parties, but there was no dispute requiring reference to the Arbitrator.

4. The learned trial Judge vide his order dated July 22, 1987, issued the following directions :-

"Under the circumstances discussed above, 1 therefore, order the respondents to restore electricity supply to the petitioner forthwith The petitioners would continue paying the future electricity consumption bills in time failing which the respondents would be at liberty to disconnect the electricity supply The petitioners would further reduce the old arrears to Rs. 20 lacs within 15 days and see that the old arrears never remain more than 20 lacs, The respondents would not, however, levy surcharge on these old arrears till the decision of the dispute by the Arbitrator. If the petitioners do not pay the entire arrears, if any, within 1 days of the Award given by the Arbitrator, the respondents shall be still within their rights to disconnect the electric supply. The petitioners shall file a security bond for payment of these arrears, if any, within 15 days. The petitioners would formulate the dispute in specific words by, 24-7-198? i e. the next date fixed in the case when the same will be referred to the Arbitrator of H S.E.B. named in the agreement between the parties."

5. The parties to the lis feeling aggrieved against the order of the trial .fudge filed Civil Appeal No. 21-CMA of 35-7-87, ''Haryana State Electricity Board and Ors. v. M/s Bhanu Steels Private Limited, Delhi Road Hissar and Civil Appeal No. 22-CMA of 27-7-1987, titled ''M/s Bhanu Steels- Private Limited, Delhi Road, Hissar v. The Haryana State Electricity Board and Ors.. Both these appeals were disposed of by the first Appellate Court, vide its judgment dated August 5, 1987. The first Appellant Court maintained the order except to the extent where direction was given for liquidation of the dues beyond Rs. 20 lacs and for furnishing security bond for the said sum, were unwarranted.

6. The respondents have assailed the order of the first Appellate Court in Civil Revisions No. 2746 and 2747 of 1987. The applicants have assailed the order of the first Appellate Court in Civil Revision No. 3104 of 1987. Civil Revisions No. 2689 and 1556 of 1987 have been directed against the order of the Subordinate Judge directing the applicants to furnish bank guarantee in the sum of Rs, 4 lacs within one month from the date of the order and the matter was referred to the Arbitrator for adjudication by the Chief Engineer. Haryana State Electricity Board, Vidyut Nagar, Hissar. on 18-7-1988 The applicants and the respondents feeling aggrieved against this order have filed these revision petitions.

7. Shri A. S Nehra, learned counsel for the respondents-Board (petitioners in revision petition by the Board), submitted that the appeal against the order of the trial Judge was not maintainable and support of his submission he relied upon Punjab State Electricity Board, Patiala v. M/s Ramji Lal Basant Lal, Chandigarh (1975) 77 P. L. R. 115. In the said judgment, the learned Single Judge of this Court observed that injunction was granted u/s 41, read with clause 4 of the Second Schedule, appended to the Act and Section 39 of Chapter VI of the Act enumerates appeal able orders and an order passed u/s 41, read with clause 4 of the Second Schedule is not mentioned in Section 39 of the Act. Consequently, the appeal was not competent. This judgment is not applicable to the facts of the instant case. Section 41(a) of the Act provides that the provisions of the CPC shall apply to all the proceedings before the Court and to all appeals under this Act The application for temporary injunction was filed under Order XXXIX, Rule 1 and 2. Civil Procedure Code, appeal lay under Order XLlll of the Code of Civil Procedure. The objection raised is not maintainable. Even otherwise, this objection is not available to the respondents Board since it had

also filed an appeal against the order of the trial Judge before the first Appellate Court and no objection was raised by either panics before Appellate Court that the appeal was not competent. The respondents cannot be allowed to approbate and reprobate and it is not open to it to make a grouse in a revision that the appeal before the first Appellate Court was not maintainable. The other objection raised by Mr Nehra was that the consumer is a debtor as defined in Section 3 of the Haryana Government Electricity Undertaking (Dues Recovery) Act, 1970 and no injunction can be issued against the respondents-Board for effecting recoveries of the dues. This objection deserves to be rejected on the simple ground that these provisions will not be attracted to the facts of the instant case, Moreover, the recovery sought to be effected has been prima facie found to be illegal by the Courts below and they were justified in issuing the interim injunction It has been settled by string of authorities that the revisional court should be slow in interfering with the discretionary order passed by the Courts below It was for the trial Court to decide on material produced before it that the applicants were entitled to the interim injunction prayed for and the trial Court after examining the material evidence produced before it, granted trie interim injunction and the order was affirmed by the first Appellate Court The order does not suffer from any infirmity calling for interference in revision petition by this Court. Consequently, the Revision Petitions No. 2746 and 2747 of 1987 filed by the respondents- Board and Civil Revision No. 3104 of 1987 filed by the applicants against the impugned order of the Appellate Court affirming on appeal with modification the order of trial Judge granting temporary injunction are dismiss.

8. In civil Revisions No. 689 and 1556 of 1988, the applicants have challenged the order of the trial Court directing the applicants to furnish the Bank security in the sum of Rs. 4 lacs before referring the dispute to the Arbitrator. When the matter was listed for motion hearing, the Bench directed the petitioners (applicants herein) to furnish security instead of the Bank guarantee as ordered by the trial Court and the order has been complied with. On the facts and circumstances o the instant case, it was not justified for the trial Judge to direct the applicants to furnish Bank guarantee in the sum of Rs. 4 lacs the case pleaded by the applicants throughout is that the excess amount has been paid under threat of disconnection of electricity charges It will meet the ends of justice if the applicants furnish security ins-teed of Bank guarantee as directed by the trial Judge. The order of the trial Judge dated June 6, 1988 is modified to this extent. Civil Revisions No. 2689 and 1S56 of 1988 are allowed in these terms.