

(2009) 05 SHI CK 0039
In the High Court Of Himachal Pradesh

H.P. State Civil Supplies Corpn. Ltd.	APPELLANT
Vs	
Joginder Nagar Electronic and LPG Co-op. Store Ltd.	RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 9

Citation : AIR 2009 HP 72 : (2010) 2 RCR(Civil) 856 : (2009) 2 ShimLC 402

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta

1. This appeal is directed against the order passed by the learned Additional District Judge, Mandi, in an application filed by the respondent u/s 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act).

2. We need not go into the detailed facts of the case. The facts necessary for the disposal of the case are that the respondent filed a civil suit in the Court of learned Sub-Judge, Jugindernagar. This suit was contested by the present appellant and it was also prayed that the suit was not maintainable and the parties were governed by an arbitration agreement and, therefore, the matter be referred to the arbitration. This Court vide judgment dated 8-5-2002 held that the matter has to be referred to arbitration and directed the parties to approach the Secretary (Food and Supply) to act as arbitrator in this behalf. The arbitrator has made the award which is against the respondent. The respondent challenged the award by filing a petition u/s 34 of the Article He also filed an application u/s 9 praying that the operation of the impugned award dated 19-7-2008 be stayed. This application in our considered opinion was totally misconceived. Section 36 of the Act reads as follows:

36. Enforcement - Where the time for making an application to set aside the arbitral award u/s 34 has expired, no such application having been made, it has

been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

3. A bare perusal of this provision clearly shows that after the time for making an application u/s 34 has expired or after the rejection of a petition filed; u/s 34 the award can be enforced under the CPC like any decree passed by a Civil Court. There is only one inference which can be drawn from the wording of this section, i.e. in case an application u/s 34 is filed within time the award cannot be executed till the Court disposes of the petition filed u/s 34. The learned Additional District Judge could have easily disposed of the application u/s 9 on this short ground. He could have without going into the merits held that since a petition u/s 34 has been filed, the award can not be enforced till the same is decided. It is clear that in case an application u/s 34 is filed, the award, challenge to which has been laid, cannot be acted upon till the Court of competent jurisdiction decides the objections filed against the award.

4. In this view of the matter, we are of the considered opinion that neither the appellant nor any other party could have acted upon the award till the application u/s 34 was decided. As such, the final order of the learned Additional District Judge restoring the status quo ante cannot be faulted with.

5. Having said so, we feel that the time spent on deciding the application filed u/s 9 of the Act could have been; better utilized in disposing of the Section 34. We are aware that there is no Additional District Judge at Mandi at present, therefore, we direct, that the file of the case being CMP No. 229 of 2008 shall stand transferred to the docket of the learned District Judge, Mandi. Both the parties are directed to appear before the learned District Judge, Mandi, on 25th May, 2009. No evidence is required to be led in a petition u/s 34. Even if the parties want to lead the evidence that shall be led by way of affidavits only. The learned District Judge is directed to dispose of the petition as early as possible and in any event not later than 31st July, 2009. This appeal is dismissed with the aforesaid directions. The interim order is vacated. The Registry is directed to send a copy of this order to the learned District Judge, Mandi as well as to the office of the learned Additional District Judge, Mandi for compliance.