
(2011) 04 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2816 of 2011 (O and M)

Jasbir Singh Dhillon

APPELLANT

Vs

Punjab State Industrial Development Corporation Limited and
Another

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151
Companies Act, 1956 — Section 446
Constitution of India, 1950 — Article 227

Citation : (2011) 04 P&H CK 0095

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ram Chand Gupta, J.

C.M. No. 11307-CII

1. Application is allowed subject to all just exceptions.

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2. The present revision petition has been filed under Article 227 of the Constitution of India for quashing of order dated 15.3.2011, Annexure P12, passed by Hon'ble Mr. Justice R.S. Mongia, Chief Justice (Retd.), Sole Arbitrator, vide which application of the Petitioner filed under Order 1 Rule 10 of the CPC (for short "the Code") for impleading official liquidator of the wound up Company, namely, the Punjab Engineers Cutting Tools Limited, with whom all the records pertaining to the subject matter of arbitration proceedings are allegedly lying, as a necessary party, has been rejected.

3. I have heard learned senior Counsel for the Petitioner and have gone through the whole record carefully including the impugned order passed by learned sole

Arbitrator.

4. Facts relevant for the decision of present revision petition are that a petition was filed by Respondent No. 1-Punjab State Industrial Development Corporation Limited u/s 11(6) of the Arbitration and Conciliation Act, 1996 (for short "the Act") for appointment of third Arbitrator, as per the agreement between the parties. However, in those proceedings before the then Hon"ble Chief Justice, an objection was raised on behalf of the present Petitioner that the agreement was with the Company and the Company has not been made a party to the present proceedings and that the Company being in winding up proceedings cannot continue without leave of the Company Court and hence, present petition is not maintainable. However, the said plea was not accepted by Hon"ble the Chief Justice on the plea that the agreement was entered into between the Petitioner and Sardar Jasbir Singh Dhillon, i.e., present Petitioner as Collaborator, and not with the Company. While deciding the matter vide order dated 27.1.2010, it was observed as under by the Chief Justice:

This plea of Mr. R.L. Batta, is not sustainable in view of the fact that the Agreement was entered into between the Petitioner and Sardar Jasbir Singh Dhillon, as Collaborator and not with the Company. The relevant part of the agreement depicting that it was executed between the Petitioner and the Collaborator reads as follows:

THIS AGREEMENT MADE THIS 11th day of July, One Thous and Nine Hundred and Seventynine between PUNJAB STATE INDUSTRIAL DEVELOPMENT CORPORATION Ltd., a Company limited by shares, registered under the Companies Act, 1956, having its Registered Office at SCO 54-56, Sector 17-A, Chandigarh (hereinafter called "the CORPORATION" which expression shall unless repugnant to the context or meaning thereof include the said CORPORATION, its successors and agreed assigns) of the ONE PART and Sardar Jasbir Singh Dhillon s/o late S.B.G and a Singh residing at 65-B, Model Town, Patiala, (hereinafter called "the COLLABORATOR" which expression shall unless repugnant to the context of meaning thereof, include the said COLLABORATOR, his heirs, administrators, executors, representatives and agreed assigns) of the OTHER PART.

5. Mr. R.L. Batta, learned Sr. Counsel for the Respondent then contended that the Company has gone into liquidation. Therefore, in view of the provisions of Section 446 of the Companies Act, 1956, no proceedings could be initiated in any Court of law against such a Company, without the leave of the Company Court and without joining the Liquidator as a party. This objection is not tenable because it has already been held that the agreement was not with the Company but with Sardar Jasbir Singh Dhillon, Collaborator, who happened to be the managing partner of the company under liquidation. In this view of the matter, Section 446 of the Companies Act, 1956, will also not come in the way of appointment of third Arbitrator for the following reasons:

(a) that at the initial stage, Dr. Dhillon was appointed as an Arbitrator under the Arbitration clause even by the Collaborator, Sardar Jasbir Singh Dhillon himself when the provisions for winding up were already initiated.

(b) that as has already been held the agreement is not with the company but with the named collaborator, Respondent No. 1, herein.

6. Therefore, this Court has the jurisdiction to appoint the third Arbitrator as per Section 11 of the Act. At this stage Mr. R.L. Batta, submitted that original Arbitrator appointed by Sardar Jasbir Singh Dhillon has failed to act that is why the Arbitration proceedings could not go on. He further submitted that in this view of the matter and subject to any challenge to this order the Respondent is prepared to appoint his Arbitrator within four weeks from today.

7. As a consequence of the above discussion, this petition is allowed with a direction to the Respondent to appoint his Arbitrator within four weeks from today. Both the Arbitrators then shall appoint the third Arbitrator within four weeks. In case the Arbitrators so appointed failed to appoint the third Arbitrator, the aggrieved party may approach this Court for appointment of third Arbitrator. Taking into account the passage of time consumed by these proceedings, this Court may in that eventuality appoint a sole Arbitrator to adjudicate upon the disputes between the parties. In the meanwhile, the parties will exchange the statement of claims and response thereof. The statement of claim be supplied to Counsel for the Respondents within four weeks and response to the statement of claim shall be supplied to the Counsel for the Petitioner within four weeks thereafter. The parties shall appear before the Arbitral Tribunal on 21.05.2010 or on an agreed date convenient to the parties but not later than 15 days from the aforesaid date fixed by this Court, after exchange of pleadings as directed aforesaid. The Arbitral Tribunal shall render the award not later than six months from the date of first appearance of the parties before it.

8. With these directions , the petition stand s disposed of.

9. Thereafter in continuation of the said order, another order was passed by Hon"ble the Chief Justice vide order dated 9.11.2010, Annexure P4, which reads as under:

This order may be read in continuation of order dated 22.2.2010 passed by this Court.

This order will dispose of Civil Misc. Application No. 26890-CII of 2010 filed by the Petitioner for modification of order dated 22.2.2010 passed by this Court which was to the following effect:

As a consequence of the above discussion, this petition is allowed with a direction to the Respondent to appoint his Arbitrator within four weeks from today. Both the Arbitrators then shall appoint the third Arbitrator within four weeks. In case the Arbitrators so appointed failed to appoint the third Arbitrator, the aggrieved party may approach this Court for appointment of third Arbitrator. Taking into

account the passage of time consumed by these proceedings, this Court may in that eventuality appoint a sole Arbitrator to adjudicate upon the disputes between the parties

By way of this application, Petitioner has sought intervention of this Court either to appoint Sole Arbitrator as per observations recorded by this Court in its order dated 22.2.2010 or to nominate the Presiding Arbitrator.

Mr. R.L. Batta, learned Senior Counsel has put in appearance on behalf of the Respondent.

At the outset both the parties are agreed that instead of Tribunal of three Arbitrators, sole Arbitrator may be appointed by this Court.

Accordingly, I appoint Justice R.S. Mongia, former Chief Justice of Assam High Court as Arbitrator to adjudicate upon the dispute between the parties. In the meanwhile, the parties will exchange the statements of claim and response thereof. The statement of claim be supplied to Counsel for the Respondent within four weeks and response to the statement of claim shall be supplied to the Counsel for the Petitioner within four weeks thereafter. The parties shall appear before the Arbitrator on 21.1.2011 or on an agreed date convenient to the parties but not later than a fortnight from the date of exchange of pleadings as directed aforesaid. The Arbitrator shall dispose of the reference not later than six months from the date of first appearance of the parties.

The Civil Misc. application is disposed of accordingly.

10. While the proceedings were being conducted by learned Sole Arbitrator, an application was filed on behalf of the Petitioner under Order 1 Rule 10 read with Section 151 of the Code for impleading the Official Liquidator, appointed by this Court in the wound up Company, namely, Punjab Engineers Cutting Tools Limited, as a necessary party, which was declined by learned sole Arbitrator by observing as under:

In view of what has been observed above since the Company is not privy to the agreement between the PSIDC and Mr. Jasbir Singh Dhillon, it is not a necessary party and cannot be impleaded as has been observed by the Hon'ble Chief Justice in the aforesaid order.

Learned Counsel for the applicant then argued that other terms of the agreement make it clear that in fact real party was the company. I do not agree with learned Counsel for the applicant inasmuch as the agreement has not been entered into on behalf of the Company by Mr. Jasbir Singh Dhillon rather it was in his individual capacity as a Collaborator that the agreement was entered into between PSIDC and Mr. Jasbir Singh Dhillon.

Apart from what has been observed above it may be noticed here that vide order dated 9.11.2010 of the Hon'ble the Chief Justice appointing the undersigned as the Arbitrator, I have been asked to decide the dispute between the PSIDC and

Mr. Jasbir Singh Dhillon. The Arbitrator has no jurisdiction to implead any other party. In a judgment of Division Bench of Punjab and Haryana High Court in Phuman Singh v. State of Punjab 2001(1) PLJ 177, it has been clearly laid down that the Arbitrator has no jurisdiction to implead any other party. In para 2 of the said judgment it was observed as under:

The argument of the learned Counsel for the Petitioner is that the Society referred the dispute to the Arbitrator only against Salwinder Singh-Respondent and that the Arbitrator had no jurisdiction to implead the Petitioner and Harbans Singh as parties thereto. It is contended that since the Arbitrator could not implead the Petitioner the award made against him is without jurisdiction. We find considerable force in this contention. The question whether an Arbitrator can implead any person as a party in the proceedings before him came up for consideration before a Division Bench of this Court in Shamsher Singh and Ors. v. State of Haryana 1985 RRR 46 (P & H) : in Civil Writ Petition No. 3653 of 1981 decided on 24.11.1981 and it was held that an Arbitrator has no jurisdiction to implead the parties and that he has to decide the reference qua the parties in regard to whom the reference was made. We have perused the judgment of this Court in Shamsher Singh's case (supra) and are in respectful agreement with the same. In the case before us, neither Phuman Singh-Petitioner nor Harbans Singh- Respondent were parties to the reference which was made by the Society to the Arbitrator. It was the Arbitrator who impleaded them as parties and found the Petitioner liable for the payment of the amount. Since the Arbitrator had no jurisdiction to implead the Petitioner and Harbans Singh-Respondent, the order impleading them was obviously without jurisdiction. It necessarily follows that if the Petitioner and Harbans Singh could not be made parties in the arbitration proceedings no award could be made against them. In this view of the matter, the impugned orders cannot be sustained.

In view of the above, I am of the view that the undersigned has no power and jurisdiction to implead another party in the dispute referred by the Hon"ble Chief Justice for decision.

In passing it may further be observed that Mr. Jasbir Singh Dhillon has also filed a counter-claim and the same has been filed in his individual capacity and not on behalf of the Company. This would go to show that the dispute is between PSIDC and Mr. Jasbir Singh Dhillon and not between PSIDC and the Company. For the foregoing reasons I find no merit in this application and the same is hereby dismissed. Orders were reserved. May be conveyed to the Counsel for the parties.

11. It has been vehemently contended by learned Counsel for the Petitioner that as per agreement, Annexure P1, it was agreed that project shall be implemented through Punjab Engineers Cutting Tools Limited, a public Limited Company and that the Company will be liable for the same and hence, it is contended that though agreement was entered by the present Petitioner as Collaborator, however, the agreement was entered on behalf of the Company.

12. However, the plea cannot be accepted as the said point has already been dealt with by Hon''ble the Chief Justice while referring the matter to the sole Arbitrator and it has been rightly observed so by learned sole Arbitrator as well.

13. It has been further contended by learned Counsel for the Petitioner that view expressed by learned sole Arbitrator that he is having no jurisdiction to implead the third party as a party is not correct one. However, I am of the view that the view taken by learned sole Arbitrator is correct view by relying upon a Division Bench judgment of this Court in Phuman Singh v. State of Punjab 2001 (1) PLJ 177.

14. In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned sole Arbitrator in passing the impugned order or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

15. Moreover, law has been well settled by Hon''ble Apex Court in Surya Dev Rai v. Ram Chander Rai and Ors. 2004 (1) RCR (Civil) 147 that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross failure of justice has occasioned thereby.

16. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.