
(2016) 02 P&H CK 0139
In the Punjab And Haryana At Chandigarh
Case No : FAO-6617 of 2014 (O&M)

M/s D.S. Cables

APPELLANT

Vs

Uttar Haryana Bijli Vitran Nigam Ltd. and another

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(5)

Citation : (2016) 2 PLR 360

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Sandeep Vermani, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Amit Rawal, J. (Oral) - The appellant-contractor is aggrieved of order dated 18.04.2014, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called "the 1996 Act") seeking setting aside the ex parte Award dated 22.04.2009, have been dismissed.

2. Mr. S.C. Kalra, learned counsel appearing on behalf of the appellant-Contractor, submits that all the notices sent by the Arbitrator were addressed at the factory premises which was closed in the year 2008, whereas the Arbitrator entered into the reference in December 2009. Somehow the report on the registered envelop came as "refusal" on that premise the appellant was proceeded ex parte. A letter dated 09.02.2009, in this regard, was addressed to Bureau of Indian Standards giving intimation of the closure of the factory but the letter head showed the address of the factory premises. The Objecting Court relied upon the contents of the letter that the aforementioned letter was sent in response to the letter written by the Bureau of Indian Standards at the address of the factory. Even if the appellant is proceeded ex parte, the Arbitrator was enjoined upon obligation as per the provisions of sub-Section 5 of Section 31 of 1996 Act, to send the signed copy of the Award. As per the record of the Arbitrator, vide letter dated 22.04.2009, the signed copy has been only sent to

the Chief Engineer, UHBVL, Panchkula. The copy was never endorsed to the appellant-Contractor, despite the ex parte proceedings had been issued against the appellant-contractor, thus, prays for setting aside the Award as well as the order of the Objecting Court.

3. Mr. Sandeep Vermani, learned counsel appearing on behalf of the Nigam, submits that there is no illegality and perversity in the order under challenge. The letter itself shows that the Director of Bureau of Indian Standards written a letter dated 20.01.2009 to the appellant at his factory premises, in essence, the story of closing of the factory has been coined for the first time in order to take the benefit of having not contested the arbitration proceedings. Even the copy of the Award was also sent and thus, no explanation has come forth in not filing the objections within the period prescribed under sub-Section (3) of Section 34 of the 1996 Act.

4. I have heard the learned counsel for the parties and appraised the paper book and as well as the record of the arbitration proceedings and am of the view that the letter of the Arbitrator is only addressed to the Chief Engineer, UHBVL, Panchkula enclosing the signed copy of the Award and not to the appellant-contractor, dehor of the fact that he had been proceeded ex parte, there is no compliance of the provisions of sub-Section 5 of Section 31 of the 1996 Act. The appellant on receiving the copy of the execution proceedings at his residential address, acquired the knowledge of the ex parte Award and filed the objections. The Objecting Court ought not to have dismissed the objections by taking into consideration the contents of letter dated 09.02.2009.

5. Though, the aforementioned facts give rise to the irresistible conclusion that the Objecting Court has not applied its mind it would be totally farcical exercise in remanding back the matter as it would lead multiplication of litigation. Since, the appellant has been prevented from contesting the arbitration proceedings/ alleged reference/claim stated to have been submitted on behalf of Nigam, I am of the view that the matter be decided afresh by appointment of new Arbitrator with the consent of the appellant-contractor.

6. Accordingly, I appoint Dr. B.B. Parsoon, retired Judge of this Court as an Arbitrator who shall conduct his arbitration proceedings at Arbitration and Conciliation Centre, Sector 17 Chandigarh, as per the prevailing the procedure and rules framed thereon. The letter to seek his consent be sent. On receiving consent, he shall enter into the reference by calling the parties to file their respective claims.

7. It is expected that the Arbitrator shall decide the arbitration proceedings within in a period of four months from entering into the reference.

8. With the aforementioned observations, the appeal stands disposed of.