
(2012) 10 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4065 of 2007

M/s. Punjab Kashmir Finance Pvt. Ltd.	APPELLANT
Vs	
Jagsir Singh and Others	RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(2)(iii)
Civil Procedure Code, 1908 (CPC) — Section 115, 47
Penal Code, 1860 (IPC) — Section 306

Citation : (2012) 168 PLR 802

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : I.K. Mehta, with Ms. Ranjit Mehta, for the Appellant; D.K. Kaushal, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.—In this revision petition filed u/s 115 of the CPC (in short, "CPC"), order dated 29.5.2007 passed by learned District Judge, Faridkot is under challenge. Petitioner herein filed execution petition for execution of arbitration award dated 9.9.1999 passed by Arbitrator Mr. Yash Pal Khanna against respondents Jagsir Singh, Teja Singh and Binder Singh. Only respondent No. 1 filed objections alleging that he was not served with notice by the Arbitrator and therefore, the award having been passed without affording him opportunity of hearing is liable to be set aside. Respondent No. 1 alleged that he was confined in District Jail, Faridkot in a murder case during the relevant period.

2. The petitioner decree holder resisted the objections and controverted the averments made therein. The award was pleaded to be legal and valid.

3. Respondents No. 2 and 3 did not file any objections.

4. Learned District Judge vide impugned order dated 29.5.2007 held the Arbitrator's award to be in-executable and accordingly set aside the same.

Feeling aggrieved, the instant revision petition has been filed.

5. I have heard learned counsel for the parties and perused the case file.

6. At the outset, it has to be noticed that respondents No. 2 and 3 did not file any objections against the award and therefore, the award could not be set aside in toto. In other words, the award could not be set aside qua respondents No. 2 and 3 who did not challenge the same in any manner. Impugned order of learned District Judge is, therefore, perverse and illegal to this extent and suffers from jurisdictional error and is liable to be modified in this regard.

7. As regards respondent No. 1, counsel for the petitioner contended that objections against award could not be filed by respondent No. 1 in execution proceedings and had to be filed separately u/s 34 of the Arbitration and Conciliation Act, 1996 (in short, "the Act"). Reliance in support of this contention has been placed on judgment of Hon'ble Supreme Court in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, and judgment of Gauhati High Court in Subhas Projects and Marketing Ltd. Vs. Assam Urban Water Supply and Sewerage Board,

8. On the other hand, counsel for respondent No. 1 contended that since the award is nullity having been passed without serving notice on respondent No. 1, objection to the same can be taken even in execution proceedings. Reliance has been placed on judgment of Hon'ble Supreme Court in Chandrika Misir and Another Vs. Bhaiya Lal, wherein it was laid down that if the court passing decree lacked inherent jurisdiction, objection to such decree can be raised at any stage and even in execution proceedings. Counsel for respondent No. 1 also referred to section 47 CPC and contended that all objections can be taken in the execution proceedings because the award is being executed as decree of civil court.

9. I have carefully considered the rival contentions. At the outset, it has to be determined whether respondent No. 1 was served with notice of arbitration proceedings or not. Respondent No. 1 himself appeared in the witness box and stated that he was confined in District Jail, Faridkot in a murder case and he was not served with notice of the arbitration proceedings. In this regard, respondent No. 1 produced certificate of Jail Superintendent depicting that respondent No. 1 remained confined in District Jail, Faridkot since 22.3.1999 till 1.7.2000 in a case u/s 306 IPC. There is no rebuttal of this evidence. It is, thus, proved that respondent No. 1 remained confined in District Jail, Faridkot since 22.3.1999 till 1.7.2000.

10. Perusal of arbitration proceedings reveals that the Arbitrator was appointed vide letter dated 12.7.1999. The Arbitrator received the reference on 20.7.1999 and issued notice to respondents by registered covers for 6.8.1999. Respondents No. 1 and 2 were allegedly served by registered post whereas respondent No. 3 was not served. All the three respondents were again ordered to be summoned through publication in newspaper for 31.8.1999. They were accordingly served and were proceeded against exparte on 31.8.1999 as none appeared for them.

Thereafter exparte evidence of petitioner was recorded and impugned award was passed.

11. It is, thus, manifest from the arbitration proceedings that all the arbitration proceedings took place since July, 1999 till September, 1999. However, during the said period, respondent No. 1 was confined in District Jail, Faridkot and he was admittedly not served with notice of the arbitration proceedings in the Jail. Consequently, the alleged service of notice of arbitration proceedings on respondent No. 1 by registered post is factually incorrect and AD receipt purporting to bear signatures of respondent No. 1 could not have been signed by him at his village address because he was confined in Jail. Service of notice by publication in newspaper could also not be said to be valid service of respondent No. 1 having been confined in District Jail, Faridkot.

12. It thus emerges that respondent No. 1 was not served with notice of arbitration proceedings. No exception can, therefore, be taken to the finding of the District Judge to this effect. Consequently, in view of section 34(2)(iii) of the Act, the impugned award of the Arbitrator is liable to be set aside qua respondent No. 1 only.

13. As regards contention of counsel for the petitioner that objection to this effect could not be raised in execution petition, the same cannot be accepted in peculiar facts and circumstances of the instant case. The objections had to be preferred in the same court which was executing the award. Consequently, even if the objections were placed in the execution proceedings before the same court, respondent No. 1 cannot be nonsuited merely on this hyper technical ground. On the other hand, respondent No. 1 has duly proved his assertion that he was not served with notice of arbitration proceedings and therefore, impugned award qua him is liable to be set aside. In these circumstances, relief to respondent No. 1 cannot be refused merely because the executing court entertained objections in the execution proceedings instead of treating the objections as separate proceedings i.e. as petition u/s 34 of the Act. Judgments in the cases of Vasudev Dhanjibhai Modi (supra) and M/s. Subhas Projects & Marketing Ltd. (supra) cited by counsel for the petitioner are completely distinguishable on facts. In the case of Vasudev Dhanjibhai Modi (supra) question was raised regarding use of the land for agricultural purpose in the execution proceedings whereas already decree for ejectment had been passed and was being executed. In these circumstances, it was held that the executing court could not go behind the decree even if it is erroneous in law or on facts. In the case of M/s. Subhas Projects & Marketing Ltd. (supra) the respondent Board had taken objection to interim award of the Arbitrator on the ground of lack of jurisdiction of the arbitral Tribunal. It was held that no such objection can be taken in the execution proceedings. In the instant case, however, facts are entirely different. Respondent No. 1 was not served in the arbitration proceedings and therefore, the award of the Arbitrator is liable to be set aside. Technically, even if it be accepted that objections of respondent No. 1 against award should have been

treated as separate case and should not have been entertained in execution proceedings, even then relief to respondent No. 1, to which he is entitled to, could not be denied on this hyper technical ground. If relief is declined to respondent No. 1 on this ground, it would cause grave injustice and miscarriage of justice which this Court would not do in exercise of revisional power u/s 115 CPC. Revisional power can be exercised to undo injustice and not to do injustice.

14. It may also be mentioned that contention raised by counsel for respondent No. 1 on the basis of judgment in the case of Chandrika Misir and another (supra) is also untenable and facts of the said case are completely distinguishable. However, otherwise the award is liable to set aside qua respondent No. 1 and has been rightly set aside by the District Judge to this extent.

15. However, it is worth mentioning that even after setting aside the Arbitrator's award qua respondent No. 1, the matter has to be remitted to the Arbitrator for proceeding further in accordance with law against respondent No. 1. The petitioner could not be left without any remedy against respondent No. 1. Impugned order of learned District Judge suffers from this illegality also of not remitting the matter to the Arbitrator. For the reasons aforesaid, the instant revision petition is allowed partly. Impugned order of learned District Judge is modified and it is held that award of Arbitrator is not liable to be set aside as against respondents No. 2 and 3 who did not challenge the award and therefore, the award can be executed as such against respondents No. 2 and 3. As regards respondent No. 1, award of Arbitrator is set aside qua him only and the matter is remitted to the Arbitrator for fresh decision in accordance with law against respondent No. 1. Petitioner and respondent No. 1 are directed to appear before the Arbitrator on 15.11.2012.

Records of the District Judge and Arbitrator be sent back to the arbitrator.