

(2016) 03 P&H CK 0356
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 4822 of 2013 (O&M)

M/s Standard Wires and Cables, Khanna	APPELLANT
Vs	
Uttar Haryana Bijli Vitran Nigam and another	RESPONDENT

Date of Decision : 22-03-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(3), 34(4)

Citation : (2016) 3 PLR 267

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. P.S. Rana, Advocate, for the Appellant; Ms. Divya Sharma, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Amit Rawal, J. (Oral) - The appellant is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called "the 1996 Act") for setting aside of the Award dated 13.11.2009, whereby the Arbitrator failed to decide the counter-claim.

2. Mr. P.S. Rana, learned counsel of the appellant submits that over and above the other points, the prayer is for setting aside the impugned order on account of the counter-claim remained un-decided, much less, not even adverted to. In support of his contentions, he relies upon the judgment of Hon'ble Supreme Court in "K.V. George v. The Secretary to Govt. Water and Power Department and another" AIR 1990 SC 53.

3. Ms. Divya Sharma, learned counsel appearing on behalf of the respondent No.1. submits that there is no illegality and perversity in the Award, much less, order declining the objections. The Award is perfect and the objections were not falling within the parameters of Section 34 of the 1996 Act and prays for dismissal of the appeal.

4. I have heard learned counsel for the parties and appraised the paper book and

of the view that once, both the parties have filed the claim and the counter-claim, it was incumbent upon the Arbitrator to adjudicate both, instead of advertent to one. This is supported by the judgment of Hon''ble Supreme Court in "K.V. George's case (supra), wherein it has been held that such an act on the part of the Arbitrator amounts to misconduct. It is the duty of the Arbitrator to deal with the claim and decide the same and should act in impartial manner, but not in the manner and mode as has been done in the present case.

5. I am also prevented from remanding back the matter to the Arbitrator in view of the ratio decidendi culled out in the judgment of Division Bench of Bombay High Court in "Geojit Financial Services Ltd. v. Kritika Nagpal" decided on 25.06.2013, on the premise that the provisions of subsection 4 of Section 34 have not been complied with. Since, the Award is not sustainable, the parties would have resort to the provisions of Section 11(6) seeking the appointment of the Arbitrator, which shall entail into wastage of time and incurring of extra cost. In order to prevent the parties of such hardship, much less, to defray cost, with the consent of the parties, I deem it to appropriate to appoint Mr. K.S. Grewal, retired Hon''ble Judge of this Court as an Arbitrator who shall conduct arbitration proceedings at Arbitration and Conciliation Centre, Sector 17 Chandigarh, as per the prevailing the procedure and rules framed thereon. The Registry is directed to intimate Mr. K.S. Grewal, regarding his appointment and seek consent. On receiving consent, he shall enter into the reference by calling the parties to file their respective claims.

6. It is expected that the Hon''ble Arbitrator shall decide the arbitration proceedings within in a period of six months from the date of entering into the reference.

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