
(2000) 07 P&H CK 0107
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision 1798 of 2000

P.M.D. Enterprises

APPELLANT

Vs

Doaba Co-operative Milk Producers Union Ltd.

RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Citation : (2000) 4 RCR(Civil) 386

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. D.R. Mahajan, Advocate., Advocates for appearing Parties

Judgement

R.L. Anand, J.—This is a civil revision and has been directed against the order dated 8.1.2000 passed by the Addl. Distt. Judge, Jalandhar, who affirmed the order dated 27.11.1998 passed by the Court of Addl. Civil Judge (Sr. Divn.), Jalandhar.

2. Brief facts of the case are that M/s. P.M.D. Enterprises through its partner Pawan Kumar, petitioner, entered into an agreement with respondent No. 1 M/s Doaba Coop. Milk Producers Union Limited, which invited sealed tenders for the purchase of rice husk at Milk Plant, Jalandhar. The petitioner submitted his tender, which was found to be lowest and was accepted vide letter dated 21.10.1987. A dispute arose between the parties which was referred to Shri S.R. Goyal, Arbitratorrespondent No. 2, who gave the award on 21.7.1988. Respondent No. 1 filed an application for the production of the award and making it a rule of the Court. However, the petitioner filed objections under Section 30 of the Indian Arbitration Act, 1940, alleging that the Arbitrator had misconducted himself and the proceedings. It was further alleged that the appellantpetitioner was not aware of the authority who appointed the Arbitrator and the Arbitrator admitted the counter claim of the respondent wrongly. It was further alleged that the award was passed against the principles of natural justice. Notice of the objections was given to respondent No. 1, who filed the reply to the objections and from the pleadings of the parties, the trial Court framed the following issues :

1. Whether the application is within time ? OP Objector.

2. Whether the award is liable to be set aside on the grounds mentioned in the objection petition ? OP Objector.

3. Relief."

3. The parties led oral as well as documentary evidence in support of their case and, finally, the trial Court dismissed the objections of the petitioner and made the award rule of the Court. The petitioner filed the first appeal before the Court of Addl. Distt. Judge, Jalandhar, who for the reasons given in para9 of the judgment, which are quoted hereinbelow, dismissed the appeal :

"The law is well settled that the Court cannot sit in appeal over the view of the Arbitrator for reexamination and reassess the matter. The award be set aside if the Arbitrator has misconducted the proceedings. The learned counsel for the appellant has not been able to point out anything on the basis of which it could be said that the Arbitrator has misconducted the proceedings. Much emphasis has been laid by the counsel for the appellant on the finding of the Arbitrator that the contract stood cancelled on 8.12.1987 but thereafter the appellant continued supplying the material which has been accepted by the respondent, as such it is an error apparent on the face of record, and that according to the agreement, payment was to be made within seven days but the same was not made within the stipulated time and therefore the Arbitrator did not apply his mind. However, these contentions of the learned counsel for the appellant are devoid of force. Ex.P4 is the letter dated 22.12.1987 vide which the respondent informed the appellant that they have failed to supply the Rice Husk as per schedule given and as per terms and conditions given, they reserve their right to go for Rice Husk risk purchase and the difference of rate can be recovered without any notice. According to the terms of the agreement, the appellant had to supply 2000 M.T. of Rice Husk which they never supplied and according to the clause "7" of the Agreement, the respondent had the right to go for rice husk risk purchase in case of nonsupply of husk as per schedule and as such the agreement stood cancelled when the appellant failed to supply the rice husk as agreed. It, therefore, cannot be said that there is any apparent error on the face of record. If, therefore, the appellant continued to supply the material and the respondent accepted the same, it does not mean that the Award suffers from error apparent on record. As regards the payment of bills, suffice it to say, that no doubt according to clause "10" of the agreement, the payment was to be made within seven days on presentation of the bill and the same was not made within the stipulated time but the appellant accepted the late payment and supplied the rice husk after acceptance of payment and as such he cannot now complain that the payment was not made within the prescribed time. If the payment was not made within time, the appellant could cancel the contract at his end. Since, he continued supplying the rice husk and continued accepting the payment, it does not effect the Award. The perusal of Award shows that the Arbitrator has duly considered these facts. It, therefore, cannot be said that the award suffers from nonapplication of mind. In case of nonsupply of agreed rice

husk, the respondent was entitled to rice husk purchases at the risk of the appellant and there is no clause that the risk purchase was to be made after inviting tenders. The Award, therefore, cannot be said to be suffering from any infirmity. As already discussed above, the award can be set aside on the ground that the arbitrator misconducted the proceedings but nothing has been brought on record to show that the arbitrator has misconducted the proceedings. The trial Court has, therefore, rightly decided this issue in favour of the respondent. The findings of the trial Court, are therefore, correct and affirmed."

4. In this manner the present revision. I have heard the counsel for the petitioner and with his assistance gone through the record of this case and am of the considered opinion that the present revision can be disposed of at this stage without even issuing notice to the respondents.

5. Counsel for the petitioner raised two fold contentions. Firstly, he relied upon Section 19 of the Indian Partnership Act and submitted that one partner has no implied authority to refer the matter to the Arbitrator and, in this manner, the arbitration clause contained in the agreement is not binding upon the other partners of the firm. Supplementing his first contention, he submitted that it is a legal plea which can be taken at any time by the petitioner. His second contention is that the arbitrator has misconducted himself when he has tampered with the record.

6. Both the submissions of the counsel for the petitioner do not prevail upon the mind of this Court. Section 19(2) of the Act lays down that "In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to (a) submit a dispute relating to the business of the firm to arbitration,".

7. Thus, a reading of the above would show that in order to succeed on this plea, it is obligatory for the petitioner to show that there was usage or custom of trade of the firm vide which the partner of the firm could not refer the matter to arbitration. Rather, the implied authority of the partner is that he can bind the firm, if he has done that act in the discharge of the business of the firm. If the award had gone in favour of the petitioner, then, everybody would have been happy. When the matter was referred to the arbitrator, the firm, through its partner, had been participating in the proceedings. At no point of time, it was ever told to the arbitrator that he had no authority to adjudicate the controversy. At this juncture, sitting as a Court of revision, it will be difficult for this Court to accept this contention of the counsel for the petitioner.

8. With regard to the second contention that the arbitrator has tampered with the record, this submission is also not acceptable to the Court. During the course of submissions, counsel for the petitioner has shown to me the photo copy of the proceedings. Counsel for the petitioner submitted that on 19.5.1988, the arbitrator ordered the opposite party to produce two registers on 2.6.1988. The arbitrator has written the following words by tampering the zimny orders :

"Evidence of petitioner has been closed."

9. I have gone through the photo copies of the relevant documents. What the arbitrator wanted to say was that on 19.5.1988, the petitioner had closed his oral evidence while examining R.K. Sharma and Makhan Lal and, in this manner, the evidence of the petitioner has been closed. It appears that the petitioner wanted to show to the arbitrator some record of respondent No. 1 and in that context, the arbitrator ordered for the production of two registers on 2.6.1988. It does not mean that the arbitrator has tampered with the proceedings or, in this manner, has misconducted himself or the proceedings. The reasons given by the Courts below in dismissing the objections are well reasoned and I do not see any illegality or infirmity in the same.

10. No merit. Dismissed.

Revision dismissed.