
(2009) 02 P&H CK 0226
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1127 of 2006

Sultanpur Agro Agencies and others

APPELLANT

Vs

HMT Ltd and another

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Citation : (2009) 5 RCR(Civil) 429

Hon'ble Judges : Rakesh Kumar Jain, J

Advocate : Mr. I.K. Mehta, Sr. Advocate with Mr. R.K. Dogra, Mr. M.S. Kohli and Mr. Ranjit Mehta, Advocates. Mr. R.K. Chhibbar, Sr. Advocate with Mr. Lalit Thakur, Advocate., Advocates for appearing Parties

Judgement

Rakesh Kumar Jain J. (Oral)

1. Challenge in this appeal is to the ex parte award dated 31.5.2004 passed by the Arbitrator and the order on the objection filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') dated 30.9.2005 passed by Additional District Judge, Panchkula.

2. Learned counsel for the appellants contends that the appellants had never received any summons purported to have been issued by the Arbitrator in pursuant to the initiation of the arbitration proceedings, therefore, there was no occasion for him to proceed against appellants ex parte. In order to substantiate his submissions, learned counsel for the appellants referred to the record of the case beginning with the first order passed by the Arbitrator on 27.1.2004, which reads as under :

"Arbitration reference received and accepted today.

2. Statement of claim/documents etc. have been filed by the claimants HMT Ltd.

3. Notice to respondents at the addresses supplied by the claimant be issued through Regd. A.D. post for 20.3.2004 immediately at 10.00 Am sharp, and the respondents be directed to appear either personally or through authorized agent

before the undersigned at Kothi No. 60, Sector 8, Panchkula, and to submit their defence statement/documents positively."

Pursuant to this order, Regd. A.D. was issued to the following :

(i) M/s Sultanpur Agro Agencies, through its partners C/o M/s Yashdeep Auto Sales, Golaghat, Opposite D.M Residence, Sultanpur 228 001 (UP).

(ii) Shri Parveen Jaiswal, partner of M/s Sultanpur Agro Agencies, C/o M/s Yashdeep Auto Sales, Golaghat, Opposite D.M Residence, Sultanpur 228 001 (UP).

(iii) Parkash Chandra Jaiswal, partner of M/s Sultanpur Agro Agencies, C/o M/s Yashdeep Auto Sales, Golaghat, Opposite D.M Residence, Sultanpur 228 001 (UP).

Two more Regd. A.D. notices were sent to the appellants at the following address :

(i) Parkash Chandra Jaiswal, partner of M/s Sultanpur Agro Agencies, C/o 131, Station Road, Partapgarh 230 001(UP).

(ii) Shri Parveen Jaiswal, partner of M/s Sultanpur Agro Agencies, C/o 131, Station Road, Partapgarh 230 001(UP).

All the envelopes contained address of the sender Mr. B.R. Vohra, Arbitral Tribunal, 60/8, Panchkula 134109. Admittedly, all the five Regd. A.D. notices sent on two different addresses were received back unserved by the Arbitrator.

3. According to the learned counsel for the appellants, on 27.1.2004, the Group General Manager, HMT Ltd., Pinjore, District Panchkula (Haryana), sent a letter to the appellants informing them that Mr. B.R. Vohra, Advocate has been appointed as Arbitrator. After receiving that letter, the appellants had replied vide his letter dated 10.2.2004 to the Group General Manager, HMT Ltd., Pinjore, Panchkula, with a copy to Mr. B.R. Vohra, Advocate in which although the letter head contained the address of M/s Sultanpur Agro Agencies, Golaghat, Sultanpur 228 001 yet the appellants had categorically given his address below his signatures as Parveen Kumar Jaiswal, partner, C/o 131, Station Road, Partapgarh 230 001 (UP).

4. Learned counsel for the appellants has next submitted that on 20.3.2004, the Arbitrator had recorded the following orders :

"Summons sent to respondents through Regd. post have been received back with the report of postal authorities that despite repeated visits, the addressees are not found available.

2. It is to be noted that Mr. Parveen Kumar has sent a copy of his letter dated 10.2.2004 to the undersigned and this letter emanates from the same address, on which address regd. Notices were sent by this Tribunal. It is thus evident that the respondents are trying to avoid the service. In any case, fresh notice to

respondents through Regd. post be sent at Sultanpur address given in their letter dated 10.2.2004, for 24.4.2004."

5. Learned counsel for the appellants further submits that pursuant to this order only two notices were sent by the Arbitrator Tribunal at the following addresses.

(i) Shri Parveen Jaiswal, partner of M/s Sultanpur Agro Agencies, C/o 131, Station Road, Partapgarh 230 001 (UP).

(ii) Parkash Chandra Jaiswal, partner of M/s Sultanpur Agro Agencies, C/o 131, Station Road, Partapgarh 230 001 (UP).

It is also contended by learned counsel for the appellants that these letters were not served upon the appellants since correct address of the appellants is M/s Sultanpur Auto Agencies, through its partners, C/o 131, Station Road, Partapgarh 230 001 (UP). Therefore, all these envelopes were also returned by the Postal Authorities to the Arbitrator. Thereafter, the Arbitrator passed the following order on 24.4.2004 :

"Fresh notices sent to respondents sent through Regd. AD post have again been received back unserved and surprisingly, with the identical reports, which were received for the previous date i.e. 21.3.2004. It is surprising that although the respondents Parveen Kumar Jaiswal is writing letter on 10.2.2004 from the same address, but the Postman reports that no such firm existed at the spot. It is manifest that the report made by postal authorities is patently wrong and is a procured one, just to avoid service by respondents. Obviously, the respondents are aware of these proceedings, but they manage to get false reports on the registered covers. I am, therefore, satisfied that the respondents are avoiding service, although they are fully aware of these proceedings.

2. Since the notices had been sent at the respondents last known place of business, and habitual residence, the notices sent to respondents are deemed to have been received by the respondents, as provided under Section 3(b) of the Act. Since they are not present either personally or through authorized agent, they are proceeded against ex parte.

3. To come up on 15.5.04 for ex parte evidence of the claimant, by way of affidavits."

Thereafter, an ex parte award was passed by the Arbitrator.

6. Learned counsel for the appellants has also pointed out that the Arbitrator has sent the copy of the award dated 31.5.2004 with the Regd. A.D. letter on the following addresses :

"Shri Parveen Jaiswal, partner of M/s Sultanpur Agro Agencies, C/o 131, Station Road, Partapgarh 230 001 (UP) (copy of the acknowledgement is at page 12 of the record of the Arbitrator and the copy of receipt issued by the Postal Department is at page 13)."

After the receipt of the award, appellants had filed objection under Section 34 of the Act before the learned Civil Court, which were dismissed, hence the present appeal.

7. Learned counsel for the appellants contends that the proceedings before the Arbitrator shows that the Arbitrator has committed an apparent mistake while issuing summons to the appellants on an address, where neither the appellants are carrying their business nor ordinarily residing. Therefore, the summons issued to him, pursuant to order dated 20.3.2004, have been returned by the Postal Authorities as unserved to the Arbitrator.

8. I have heard learned counsel for the parties and have perused the record with their assistance.

9. It is very much clear from the record that initially the Arbitrator had sent notices to the appellants on both the addresses of Sultanpur and Partapgarh by registered post but later on, in spite of the fact, that the appellants have given address of Partapgarh in his letter dated 10.2.2004 which is available at page 38 of the record of the Arbitrator, notice has been sent only at the address of Sultanpur that too by scoring of word Partapgarh in the envelope sent to Parveen Kumar Jaiswal. Similarly it also not understood that if the address of the appellants was Sultanpur then why copy of the award was sent by the Arbitrator on his address at Partapgarh. Thus, I am satisfied that there is an apparent mistake on the part of the arbitrator while proceeding against the appellant ex parte vide his order dated 24.4.2004.

In view of the above discussion, the present appeal is allowed and the order of the Additional District Judge, Panchkula as well as the Arbitrator is set aside. The Arbitrator is directed to decide the arbitration afresh in accordance with law.

Parties are directed to appear before Arbitrator on 30.3.2009 at 10.00 A.M and the Arbitrator is not required to serve any notice to the parties in this regard.