
(2014) 03 UK CK 0011
In the Uttarakhand High Court
Case No : Appeal from Order No. 19 of 2008

Union of India

APPELLANT

Vs

S. Daleep Singh and Others

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Arbitration Act, 1940 — Section 14, 15, 16, 16 — Limitation Act, 1963 - Section 5

Citation : (2015) 1 UC 517

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : B.P.S. Mer, Standing Counsel, for the Appellant

Final Decision : Dismissed

Judgement

Alok Singh, J.?As per office report dated 14.03.2014, respondent has been served personally. However, none appears on behalf of respondent despite valid service. Present appeal is filed assailing the judgment and order dated 07.06.2007 passed by District Judge, Chamoli in Arbitration Case No. 13 of 2005 whereby applications moved by the appellant, herein, under Section 14 of the Arbitration Act, 1940 and under Section 5 of the Limitation Act were dismissed.

2. Perusal of the record would reveal that award was passed by the learned Arbitrator on 20.03.1992. Award, so passed, was set aside by the learned District Judge, Chamoli vide judgment dated 29.08.1997 in Original Suit No. 33 of 1997 and the matter was remitted back to the Arbitrator for re-hearing of the matter and writing a reasoned award in accordance with the terms of the agreement. Thereafter, learned Arbitrator passed award afresh on 18.05.2002. Award, so passed, was sent to the court below, thereafter, respondent, herein, preferred a petition being Misc. Case No. 9 of 2002 for setting aside the award. However, on 04.12.2003, respondent, herein, was permitted to withdraw the petition filed for setting aside the award. Thereafter, appellant, herein moved an application for making the award Rule of Court under Section 14 of the Arbitration Act along with an application seeking condonation of delay of 3 years in moving the

application under Section 14 of the Act. Both the applications were dismissed by the learned District Judge, vide impugned judgment having observed that since application under Section 14 of the Arbitration Act was not moved within stipulated time and delay in moving the application has not been explained satisfactorily, therefore, award cannot be made Rule of Court.

3. Feeling aggrieved, appellant has preferred this appeal. I have heard learned counsel for the appellant and have carefully perused the record.

4. As mentioned hereinabove, after passing of the award afresh on 18.05.2002, same was sent to the court below and respondent, herein, initially preferred a petition for setting aside the award, however, later on, petition was dismissed as withdrawn on 04.12.2003.

5. Now, the important question arises for consideration of this Court, as to whether after dismissal of the petition for setting aside the award, application under Section 14 of the Arbitration Act for making the award Rule of Court is mandatory or award, so filed would be made Rule of Court, as a consequence of dismissal of petition for setting aside the award?

6. The identical question came for consideration before Division Bench of the Madhya Pradesh High Court in the case of Sheoramprasad Ram Narayanlal Bania Vs. Gopalprasad Parmeshwardayal Shukla and Others, wherein the Division Bench of Madhya Pradesh High Court has held as under:

"12. However, it appears to us that once the first defendant had moved the Court under Section 14 of the Arbitration Act, it was not necessary for the plaintiff to file another application for the same purpose. Nor indeed was it necessary for him to make any application praying that a decree-should be passed in terms of the award.

After an award is filed under Section 14, a party may apply to the Court under Section 15 for its modification or under Section 16 for remitting it to the arbitrators. He may also apply under Section 33 for setting aside the award on any of the grounds mentioned in Section 30. Where a Court sees no cause to remit the award or to set it aside, it is bound to pass a decree in terms thereof under Section 17.

The jurisdiction of the Court to embody the award in a decree is not, therefore, dependent upon any application by a party that it should be accepted. Its power under Sections 15 to 17 or 30 and 33, is derived from the filing of the award before it under Section 14. Therefore, after the award was filed in the lower Court on the application of the first defendant, it had the jurisdiction to accept the award and pass a decree in terms thereof, even if the plaintiff had made no application for that purpose."

7. In view of dictum of Madhya Pradesh High Court, if petition for setting aside the award is dismissed and the Court does not find any reason either to remit the award for re-consideration or setting aside the award, the decree should be

passed in terms of the award and there will be no need to move application under Section 14 for making the award Rule of Court.

8. In view of the facts narrated above, since award was placed before the court below and petition for setting aside the award was dismissed, therefore, learned trial court was duty bound to make the award Rule of Court instead of waiting for a formal application under Section 14 of the Arbitration Act. Therefore, impugned order does not sustain in the eyes of law. Present appeal is allowed. Impugned order is set aside and award passed by the Arbitrator is made Rule of Court. Let lower court record be sent back forthwith.