
(1990) 10 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2048 of 1989

Union of India

APPELLANT

Vs

Yash Paul, Contractor

RESPONDENT

Date of Decision : 12-10-1990

Acts Referred:

Citation : (1992) 2 LJR 80 : (1991) PLJ 632 : (1991) 2 RRR 495

Hon'ble Judges : J.V.Gupta;CJ., J

Advocate : Lakhinder Singh, Advocate., Advocates for appearing Parties

Judgement

J.V. Gupta, C.J.

1. This order will also dispose of Civil Revisions No. 2049 to 2052 of 1989.
2. This revision petition is directed against the order of the trial Court dated June 8, 1989, whereby ex parte order of injunction was granted in favour of the contractor and against the Union of India restraining it from encashing the Bank Guarantee detailed in the application, under Order XXXIX Rules 1 and 2 read with Section 41 of the Arbitration Act.
3. A preliminary objection has been raised on behalf of the respondent contractor that since the impugned order was appealable, no revision petition is maintainable in view of subsection (2) of Section 115, Code of Civil Procedure (hereinafter called the Code). In support of the contention, reliance was placed on Harbans Singh v. Rajinder Rajan, 1988(1) PLR 467 : 1988(1) RRR 330.
4. The learned counsel for the petitioner submitted that since the Court had no jurisdiction to pass the impugned order, hence the revision petition was maintainable.
5. After hearing the learned counsel for the parties, I am of the considered opinion that no revision petition is maintainable as the impugned order was appealable. The jurisdiction of this Court is barred under Section 115(2) of the Code, which inter alia provides that the High Court shall not under this section

vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto. The impugned order was passed in the proceedings under Section 20 of the Arbitration Act on an application filed by the contractor under Order XXXIX Rules 1 and 2 read with Section 41 of the Arbitration Act. It was an ex parte one. The Union of India should have approached the trial Court for setting it aside. In any case event if the order was passed ex parte an appeal could be filed before the District Judge against the same, as held by this Court in Harbans Singh's case (supra). That being so, the revision petition is liable to be dismissed in view of subsection (2) of Section 115 of the Code hence dismissed.

6. Since further proceedings were stayed by this Court at the time of the motion hearing, the parties have been directed to appear in the trial Court on November 8, 1990. It is further directed that the said application filed by the contractor under Order XXXIX Rules 1 and 2 of the Code be finally decided within one month thereof, failing which the ex parte stay order shall stand vacated.