
(2004) 12 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 804 of 2004

Union of India (UOI)

APPELLANT

Vs

Baba Rangi Ram Pvt. Ltd.

RESPONDENT

Date of Decision : 14-12-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(4), 11(5), 11(6)
Constitution of India, 1950 — Article 227

Citation : (2005) 2 ARBLR 429

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Deepali Puri, for the Appellant; Raman Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner is aggrieved against the order passed by the learned trial Court on 13.01.2004 whereby the application filed by the petitioner for dismissal of the application filed by the respondent u/s 11(6) of the Arbitration and Conciliation Act, 1996 was dismissed.

2. The petitioner has moved the said application on the ground that the arbitrator has been appointed on 10.10.2003 and, therefore, the application u/s 11 of the aforesaid Act is rendered infructuous.

3. The respondent requested for appointment of arbitrator on 30.08.2002. Since the petitioner failed to appoint the arbitrator, the respondent herein filed the petition u/s 11(6) of the Arbitration and Conciliation Act, 1996 on 15.03.2003. The petitioner herein put appearance before the trial Court on 22.04.2003 and it was during the pendency of such petition, the arbitrator was appointed and thus, it was sought to be contended that the petition has become infructuous. It has been held by Hon''ble the Supreme Court in judgment reported as Datar Switchgears Ltd. Vs. Tata Finance Ltd. and Another, , that if a party fails to appoint arbitrator the right to make the appointment is not forfeited if the

appointment is not made within 30 days. Such right can be exercised at any time before the filing of the petition u/s 11(6) of the Act.

4. Once the application is filed, the arbitrator cannot be appointed. It was held to the following effect:

"So far as cases falling u/s 11(6) are concerned--such as the one before us--no time limit has been prescribed under the Act, whereas a period of 30 days has been prescribed u/s 11(6) and Section 11(5) of the Act. In our view, therefore, so far as Section 11(6) is concerned, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days, If the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the Court u/s 11, that would be sufficient. In other words, in cases arising u/s 11(6), if the opposite party has not made an appointment within 30 days of demand, the right to make appointment is not forfeited but continues, but an appointment has to be made before the former files application u/s 11 seeking appointment of an arbitrator. Only then the right of opposite party ceases."

5. There is no patent illegality or irregularity in the order warranting interference in exercise of revisional jurisdiction under Article 227 of the Constitution of India.

6. Dismissed.