

237.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.7288 of 2014

Date of decision: 11.12.2015

M/s Mahajan Construction Company

... Petitioner

versus

Surjit Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Vikas Mohan Gupta, Advocate,
for the petitioner.

Mr. Ravi Sharma, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The award which was put in execution was contested by the respondent on a plea that there existed no award in the eye of law and it was not executable. The contention was that the agreement contained no reference to arbitration and consequently, there existed no arbitration agreement. The Executing Court rejected this objection and allowed for further process of execution to follow on a decision taken by a person who claimed authority as Chairman of Labour Contractor Union.

2. The agreement between parties is on file and I have gone through the file made on 23.09.2010. It is cryptic in just two clauses that the cost of construction had been fixed at ₹50,000/- and he would complete the work before 20.10.2010. A subsequent agreement made on 12.12.2010 refers to the specifications of the works and sets out the schedule of payments. This document contains no reference to any arbitration agreement.

3. I put it across the counsel appearing on behalf of the respondent as to how any award could be passed by a person claiming to be an Arbitrator. The counsel says that when a claim was made before an Arbitrator, the petitioner sought for copies of claims and did not later appear before the Arbitrator. This, according to him, must mean that there was an arbitral agreement. The counsel would read to me Section 7(4)(c) of the Arbitration and Conciliation Act, 1996 (for short, 1996 Act) to elicit that such an agreement must be inferred. The said Section 7(4)(c) of 1996 Act is reproduced as follows:-

“An exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.”

4. There is nothing brought out to show that the respondent was making reference to any arbitration agreement and the petitioner was conceding for such arbitration agreement. An arbitral

agreement, on coming into force of the 1996 Act, cannot be otherwise than in writing. This is brought out in Section 7(3). Clauses (1) to (5) of Section 7 which describe an arbitral agreement are not mutually exclusive. One must be read into the other. The foundation of an arbitral agreement shall be in writing and there can be no inference of such an agreement. I have already referred to the fact that the agreements between parties were in writing and I have also brought out that they contain no reference to the arbitral agreement. I have no doubt in my mind that a self-styled Arbitrator passing an award in no award in the eye of law.

5. The kangaroo courts and khaps abound in every corner and if we must bring legitimacy to these institutions, we will be subverting the rule of law and allowing for local busy bodies to literally gain over the courts' powers and create a situation of terror of each one declaring that he is a source of authority who can dispense justice. Non-formal institution could surely act as safety valves for setting disputes but they must surely be by consent. There could be no forced adjudicating exercise by such bodies. Public confidence could get completely eroded by allowing for these self-styled authorities to function and bring to themselves a colour of dignity and competence. Any such attempt must be thwarted and I have no hesitation in holding that the act of Chairman, Labour Contractor Union calling himself an Arbitrator and passing an award

was an utter abnegation of justice and without legal authority.

6. The counsel for the respondent also argues that the petitioner did not take any steps to set aside the award. An award that is passed by a person of competence but whose order was fallible could be a subject of challenge. If it was not an award in the eye of law, there could be no compulsion for such a person to take steps to set aside the award. It will be competent for him to raise an objection when such an illegal award was put to execution.

7. The award is untenable and the order passed by the Executing Court is equally so. It is set aside and the revision petition is allowed with costs of ₹ 3,500/- against the respondent.

(K.KANNAN)
JUDGE

11.12.2015
sanjeev