IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4866 of 2003 (O&M)
Date of decision: 01.07.2015

& **Civil Revision No.4867 of 2003 (O&M)**

M/s S.K. Bansal, Ashiana Gali No.4, Opposite Pukhraj Theatre, Bathinda.

... Petitioner

versus

G.E. (Utility) Bathinda Mil. Stn. Bathinda on behalf of Union of India, and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kashish Garg, Advocate, for the petitioner.

None for the respondents.

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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. Both the revisions are at the instance of the claimant, who was a Contractor seeking for payments under the contract that provided for maintenance and repair works of transformers owned and controlled by the respondent. The petitioner's case before the Arbitrator was in a circumstance when the petitioner claimed that he had done maintenance and repairs for two other transformers which

was not part of the contract and for outstanding payments, the petitioner had filed the Civil Suit No.181, dated 12.05.1994 before the Civil Court at Bathinda. In respect of the works which were covered under the contract, the petitioner had made a claim before the Arbitrator. In the civil action brought before the court, the objection was taken by the respondent that the dispute in relation to the claim for the additional transformers would also require to be done only before the Arbitrator and the court, while accepting the objection, directed the reference of the dispute before the Arbitrator. The Arbitrator entered reference on 27.06.1996, that is, after coming into force of the Arbitration and Conciliation Ordinance and passed an award on 26.02.1997.

2. Section 86 of the Arbitration and Conciliation Act, 1996 (for short, '1996 Act') that enacts a rule of repeal of the Ordinance specifically saves all the acts done in pursuance of any provision under the Ordinance to be deemed to be taken as an act done under the 1996 Act. The award that was passed on 26.02.1997, therefore, became final and the enforceability obtained by virtue of the provisions of 1996 Act *eo instanti* under Section 36 of the 1996 Act. Needless to mention that the finality must always be understood as subject to any challenge to the award under independent provisions contained under the Act.

3. There was no challenge to the award itself by either party but the petitioner himself adopted a strange course of applying for making the award rule of the court. Such a procedure was incompetent under the new Act but the court exercised its own jurisdiction, emboldened as it were, by resort to such process by the petitioner himself. The court passed an award and made it a rule of court modifying the award passed by the Arbitrator to the limited extent of reducing the rate of interest from 15% to 6%. This order was passed by the court granting a decree on 24.04.2001.

4. This decree of the civil court had been a subject of appeal both at the instance of the petitioner as well as the respondents, the petitioner being an unsatisfied with the reduction of rate of interest and the respondent taking an objection to the award being incompetent and that the reference to the Arbitrator itself could not have been made. The appeal by the petitioner was dismissed and the appeal of the respondents was allowed. The two revisions are against the orders, one dismissing the petition and one allowing the petition in favour of the respondents.

5. I find the entire exercise undertaken by the court at the invitation of the petitioner himself and later on an appeal by the District Court are illegal and incompetent. There is no power for a court to make an award a rule of court under the scheme of 1996 Act. I have already referred to the enforceability of the award earlier

without reference to any court's intervention unless challenged on any of the grounds mentioned under Section 34 of the Act. The first order passed modifying the award and reducing the interest is illegal and set aside and the for the same reason, the court that passed the decree setting aside the award passed is equally without jurisdiction. If the initial order was incompetent, the appeals filed by the respective parties were also incompetent.

6. The objection by the respondent was that the reference to arbitration was bad. The reference itself was on the basis of objection for resort to a civil court remedy undertaken by the petitioner through the suit instituted by him in Civil Suit No.181, dated 12.05.1994. After seeking for reference to Arbitrator and participating in the proceedings before him without any objection, the respondent was estopped from raising a plea of competence. Indeed, the respondent did not even file a petition under Section 34 of the 1996 Act after the award was passed by the Arbitrator. The principle of estoppel in such like situations has been explained by the Supreme Court in ***J. Kodanda Rami Reddy and others Versus State of A.P. and others-2011(1) SCC 197*** and I apply the same against the respondent.

7. As regards the petitioner, different principle of law applies for consideration of the issue of whether the resort to civil court to make the award the rule of court would estop him from

assailing the intervention of the Civil Court otherwise than by resort to Section 34 of the 1996 Act. If the Act makes the award enforceable as a decree, there was no way that the petitioner could invest jurisdiction in a civil court. There can be estoppel against statute.

8. The award that was passed by the Arbitrator on 26.02.1997 shall stand restored and would obtain enforceability in the manner contemplated under Sections 35 and 36 of Chapter VIII of 1996 Act. The impugned orders are quashed and the civil revisions are allowed in favour of the petitioner with costs of ₹3,500/- determined in each case against the respondents.

(K.KANNAN)
JUDGE

01.07.2015
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