

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

F.A.O.No.2924 of 2006 (O&M)
Date of Decision: August 12, 2015

Rajneesh Kumar Garg & another

...Appellants

Versus

Inderjit Garg & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Ashok Aggarwal, Senior Advocate with
Mr.Mukul Aggarwal, Advocate,
for the appellants.
Mr.Ashwani Talwar, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the order dated 18.3.2006 passed by the Additional District Judge, Panchkula, whereby the objections filed by respondent-Inderjit Garg to the award, have been accepted.

Mr.Ashok Aggarwal, learned Senior Counsel assisted by Mr.Mukul Aggarwal Advocate appearing on behalf of the appellants has raised manifold arguments, which are summarised herein below:-

- a) The Additional District Judge, Panchkula has exceeded his jurisdiction in accepting the objections as the award does not fall within the parameters/provisions of Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act");
- b) Respondent Inderjit Garg submitted the claim by putting all the properties in the claim statement before the arbitrator and in support of that, he has referred to the statement of claims,

which is at pages 413 to 425 of the record;

c) The authorization given by all the persons would indicate that the properties in their individual names were put to reference, to be decided by the arbitrator and in order to lend support, he has referred to the Authorization-cum-Commitments of the parties, i.e., Inderjit Garg, Sunaina Bhatnagar, Manju Garg and Rajneesh Kumar, which are at pages 389 to 395 of the record;

d) The scope of the objections purported to have been filed under Section 34 of the Act is very limited and in support of his submission,. has referred to the judgment of the Hon'ble Supreme Court in **Sachin Gupta and another Versus K.S.Forge Metal Private Limited, 2013(2) R.C.R. (Civil) 317** to contend that the learned Single Judge should not convert itself into a Court of First Appeal and the Judges are required to be restrained and circumspect in use of the language while criticizing the conduct of the parties;

e) The Additional District Judge has committed an illegality and perversity in setting-aside the award without referring to the aforementioned documents and, thus, there is an error apparent on the record and, therefore, the order is illegal, capricious and erroneous;

f) Everyone to the dispute has accepted the award and there is no objection by the daughter, daughter-in-law, son except father, namely, Inderjit Garg. The reasons assigned by the Additional District Judge while accepting the objections are not only fallacious, but erroneous.

Mr.Ashwani Talwar, learned counsel appearing on behalf of the respondents has raised the following submissions in support of the impugned order:-

i) The authorization letter given by the respondent to the arbitrator was only in respect of the properties of Sudarshan Garg, deceased-wife and not with regard to the properties of all

other legal heirs, much less, siblings;

ii) The arbitrator has not given the award in consonance with the law for the time being in force and, thus, there is violation of provisions of Section 28 of 1996 Act;

iii) The award is also in consonance with the provisions of Section 31(3) of 1996 Act as it has assigned no reason in support of the findings. In support of his argument, learned counsel has relied upon the following judgments:-

a) **Oil & Natural Gas Corporation Ltd. Versus SAW Pipes Ltd., 2003(2) R.C.R. (Civil) 554** to contend that the provisions of Sections 28 and 31 of the Act have conjointly to be read into while dealing and deciding the objections under Section 34 of the 1996 Act and in case the award is found in contravention of the aforementioned provisions, then it is contrary to the basic concept of justice and patently illegal.

b) **M/s Anand Brothers P.Ltd. TR.M.D. Versus Union of India & Ors., 2014(10) JT 523** to contend that the award has to be speaking and the expression to be given should be in ordinary literal meaning having regard to the context in which same is used.

c) In **Union of India Versus M/s G.S.Atwal and Co.(Asansole), 1996(2) R.R.R. 363 (SC)** it has been held that the arbitrator cannot enlarge the scope of the dispute unilaterally.

d) In **Tamilnadu Electricity Board Versus M/s Bridge Tunnel Constructions, 1997(2) R.C.R. (Civil) 646**, it has been held that where the award is non-speaking as the arbitrator has committed error in jurisdiction, the award is liable to be set-aside.

e) **Mcdermott International Inc. Versus Burn Standard Co.Ltd. & Ors., 2006(11) SCC 181** to contend that the intervention of the Court envisages only in few circumstances, like fraud or bias by the arbitrator,

much less, violation of the principles of natural justice and Court cannot correct errors of the arbitrators.

I have heard the learned counsel for the parties and appraised the paper book.

Before advertng to the aforementioned contentions, it would be apt to refer Sections 28(1), 31(3) and as well as Section 34 of the 1996 Act, which read thus:-

“28. Rules applicable to substance of dispute.—(1) Where the place of arbitration is situate in India,—

(a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

(b) in international commercial arbitration,—

(i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(iii) failing any designation of the law under clause (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

31. Form and contents of arbitral award.-(1) and (2)

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(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.
34 Application for setting aside arbitral award. —

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*
- (ii) the arbitral award is in conflict with the public policy of India.*

Explanation. —Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:*

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

- (4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”*

On conjoint reading of the aforementioned provisions, it is discernible that the parameters for the Principal Court to entertain the objections are limited. In order to lend support to the aforementioned observation, I rely upon the ratio decidendi culled out in **Sachin Gupta's case (supra)** to hold that this Court would not convert itself into a Court of

First Appeal and shall be restrained, much less, circumspect while taking into consideration the conduct of the arbitrator.

For adjudication of the controversy raised in the present appeal, it would also be necessary to reproduce the Authorization-cum-Commitments, much less, the claim filed by the respondent. The Authorization-cum-Commitments of all the parties to the dispute is extracted herein below:-

“1. Authorization cum Commitments

It is record with sorrow that my wife Smt.Sudarshan Garg passed away on 11-1-2000. She left behind some properties, F.Ds unsecured loans and shares in family concerns which need to be apportioned among the legal heirs, namely I (Inderjit Garg), Rajneesh Kumar and Sunaina, as husband, son and daughter respectively of the deceased. All of us hold properties in our own names also. Smt.Manju, W/O Rajneesh Kumar also holds some property.

In the nature of human behaviour and counter-claims have emerged in respect of the properties not held in their own name by the above named person.

To avoid misunderstandings as to individual claims and counter-claims and to smoothen these differences, it is advisable to avail the good offices of a close family friend who holds interests of all the members of the family dear to his heart in equal measure.

For this, I believe that Shri S.K.Sud Advocate, is best suited. He has very kindly consented to be the arbitrator for this purpose.

Accordingly I request Shri S.K.Sud to undertake this job and I repose my full faith in him. The decision taken by him shall be binding on me.

(Inderjit Garg)

Dt.21st Aug, 2003.

2. CONSENT TO THE APPOINTMENT OF ARBITRATOR

It is to record with great sorrow that consequent to the demise of my mother, Smt.Sudarshan Garg, and in the matter of apportionment of properties left behind by her, counter-claims have emerged in respect of the properties held by me. These need be smoothened by means of arbitration.

It is with satisfaction that Consensus has emerged to have Shri S.K.Sud, Advocate as the sole Arbitrator to give his award as to claims and counter-claims.

I repose my full faith in Shri S.K.Sud, Advocate. I undertake to bind myself with the decision to be taken by him.

(Sunaina Bhatnagar)

Dated Aug 20, 2003

3. *I, Manju Garg, wife of Mr.Rajneesh Garg, resident of 125, Sec-6, PKL give my willing consent to take Mr.S.K.Sood as arbitrator for deciding the family dispute of property, fixed assets and liquid assets.*

I will accept the decision given by the arbitrator, Mr.S.K.Sood advocate and request the arbitrator to decide it quickly.

23/8/03

Thanking you,

Manju Garg.

4. *I, Rajneesh Kumar s/o Sh.Inderjit Garg R/o 125, Sector 6, Panchkula, agree to appoint Sh.S.K.Sud Advocate as arbitrator for deciding on the property and assets.*

The issue of property and assets has arisen mainly after the death of my mother. The dispute is not only of the property & assets held in the name of my mother but also for the properties & assets held in the name of other family members.

Rajneesh Kumar

125/6 PKL

22.8.03”

On going through the aforementioned authorization, it is discernible that the parties to the dispute had put entire properties other than

the properties owned by late Sudarshan Garg.

Respondent-Inderjit Garg had written a letter dated 14.9.2003, whereby he had empowered the arbitrator to resolve the family dispute, much less, gave him liberty to adopt the procedure on his own discretion. The relevant part of the letter, referred to above, reads thus:-

“The above said statement is being submitted in pursuance to the directions given by the Hon'ble Arbitrator. As the Arbitrator is to resolve the family dispute and the procedure to be evolved for this purpose is entirely his own discretion, in the present submissions, I have just given a brief resume of each property and its sources.”

Along with the aforementioned letter, claim statement was also filed, wherein it was specifically mentioned that he had sought the indulgence of the arbitrator in respect of each properties enabling him to assess the entitlement of each of the claimants. The details of the properties are given as under:-

1	H.No.861, HUDA, Ambala Legal owner Mrs.Sudershan Garg Allotment 1974 Construction 1985-87	It was allotted in the name of my wife but acquisition was out of my own resources. On our shifting to Panchkula in 1989, it earned us rental from 1989 to 1999 aggregating to Rs.5 lac. It was sold away in 2001 and I collected the sale proceeds and the same are with me as the acquisition of plot as well as construction thereafter was my own resources.
2	H.No.125/6, Panchkula Allotted in the name of Inderjit Garg in 1976 Construction 1977-79	The purchase price of plot and construction over it was raised by me with my own resources. I took house loan from the Govt. for this purpose and this loan was also entirely paid prior to my retirement in 1987. There is no incumbrance on this house. From 1979 to 1989, the house was rented out and thereafter we shifted to this house. After 1989, there has been no major addition, alteration, and only routine repair has been got carried out. I adopted it as our home in my post retirement period and have the memories as residing in it in the last 10 years of my married life. It is a matter of line for me. I claim to seek it in its exclusiveness so that I may live in peace in the evening of my life.

3	196, Industrial Plot, Panchkula allotted to Shri Rajneesh Kumar Allotment year 1981 Construction 1988-90 2nd construction in 1992 3rd construction 1995	It has been brought into use since 1989 under the name and style `Garg Electronics', a proprietary concern of Shri Rajneesh Kumar. I have nurtured it to the best of my capacity for more than 10 years. Since inception, I have invested in this concern my own money and that of near ones including my deceased wife, as unsecured loans and also placed at its disposal fixed deposits for use as margin money. The aforesaid is in exclusion of about Rs.12 lac brought into the capital account of Rajneesh Kumar from sale/accruals from other properties. CLAIM I simply claim that the money brought in as unsecured loan and fixed deposits offered as margin money be returned to the concerned persons. The amount in the name of my deceased wife be apportioned amongst her legal heirs.
4	Farm Forestry-cum-Agricultural land Bilaspur (10 acres) Purchase 1981-83 Ownership Rajneesh 5/12 shares Sunaina 1/4 shares Virendra 1/6 share Inderjit Garg 1/6 share (Benamee till 1997).	I have harvested two crops of Safeda in 1991 & 1996 with utmost devotion, valued at more than Rs.8 lac. I claim this land to be my exclusive property, including the share recorded as ownership of Shri Rajneesh Kumar.
5	Farm Forestry-cum-Agricultural land Village Kherki Acquisition 1984-85 Ownership “Garg Enterprises & Services” 8-1/2 share Ownership Sh.Rajneesh Kumar 3-3/4 acres Benamee 2 acres Total 14-1/4 acres	Initially 1/2 share of the total holding of 14-1/4 acres was purchased Benamee jointly with a friend. Two crops of Safeda were harvested in the years 1991 & 1996 fetching about 7 lacs in the joint ownership/1/2 ownership of my friend was also purchased in the year 1997 and as such legal ownership of the entire holding as recorded in the margin came to be effective. I seek that in the nature of things the entire holding be computed as property of `Garg Enterprises & Services' per Item No.9(ii) below.
6	Agricultural land Village Bari Kohri (Residuary share) as of now 2 acres. Acquisition 1986 owner Shri Rajneesh	Initially a chunk of about 16 acres was purchased in joint ownership with a friend out of which about 12 acres were disposed of in the year 1988. My share in the sale proceeds amounting to Rs.80,000/- was brought into “Garg Electronics” as proprietor's capital. I claim the residuary share of 2 acres, as at present as my exclusive property.
7	Haripur plot Acquisition	

a	1/2 share-1981 Owner Sunaina 300 Sq.yards	It was purchased in Sunaina's name and is her property.
b	1/2 share-1995 Owner on GPA Inderjit Garg 300 Sq.yards	150 Sq.Yards was sold away in 1996 and 1997. I seek to claim residuary portion measuring 150 sq.yards as my exclusive property.
8	1/2 share of residuary Urban Plot at Nabha about 240 sq.yards Acquisition 1974-75	This land originally about 1-1/4 acres was purchased in the joint names of my mother and Rajneesh Kumar in the year 1974 and 1975 in three transactions. Bulk of this land was sold away in the year 1990 and sale proceeds of Rajneesh's share amounting to about Rs.3.75 lac was utilized in Garg Electronics as capital money. An amount of Rs.1.66 lac out of the aforesaid was recorded in the capital account for assessment of capital gains. I seek to claim the residuary share in about 240 sq.yards, which is held jointly with my mother. I seek this in particular so that it may be disposed of as per the wishes of my mother.
9	Garg Enterprises & Services i) Nursery ii) Kherki land 14-1/4 acres iii)Bapoli land 7-3/4 acres iv) Manimajra land 1-1/4 acres v) Trading Unit "Subhida"	My wife initiated with the Nursery Project in 1995. It was established as a partnership concern by taking Sunaina and Manju as partners. Sunaina rendered a yeoman's service from the very beginning in setting up the nursery. Some time later a trading unit under the name and style "Subhida" was initiated. Agricultural land as in the margin as of (iii) & (iv) were purchased in this partnership apart from Kherki land described in Para-5 above. Agricultural operations were also initiated in the Campus of this partnership. On the demise of my wife in the year 2000, I have joined as a partner in place of my wife. I seek that the partnership be dissolved and asserts/liabilities be apportioned between the partners.
10	Industrial Plot No.47 Panckula Owner `Agnoor Electronics Ltd.Acquisition 1996	It is a limited concern. It's value be assessed and be apportioned as per the allotted shares in the concern.
11	Industrial Unit village Sharkpur Acquisition 1997 Owner Manju	I seek to claim to this property except that the amount invested by me in the acquisition of the property be returned to me.
12	Housing Board House No.232 at Ambala Allottee Mrs.Garg	This property is still in dispute with the Housing Board. It be awarded to be shared among the heirs of the deceased Mrs. Sudershan Garg.
13	Partnership concern R.S.Traders formed in 1999	This firm was formed in 1999 to facilitate trading and marketing operations at Delhi as a support firm to Garg Electronics. The other partner is essentially an employee. With the changing behavioral relations between Shri Rajneesh Kumar and myself, I sought the closure of this firm. This be done forthwith.

Against every column of the details of the property, he had also sought a claim. The arbitrator without adverting to the source/resources in respect of the acquisition of the properties, *ibid*, passed the award according to respective shares of the parties.

The contention of Mr.Talwar that the award of the arbitrator lacks reasoning, in my view, is not tenable for the reason that the arbitrator has given the award while taking into consideration the claim filed by Inderjit Garg, though there is no dispute to the ratio decidendi culled out in the judgments cited by Mr.Talwar, but it is equally to be noticed that facts and circumstances of each case have to be taken into consideration for arriving at a decision.

Once respondent Inderjit Garg had himself submitted to the jurisdiction of the arbitrator by giving the description of all the properties owned by him, other than the properties belonging to Sudarshan Garg, there was no occasion for the arbitrator only to delve upon the properties left by Sudarshan Garg. The claim statement submitted by Inderjit Garg would override the authorization. It was a prerogative of the respondent to confine his prayer/adjudication of the dispute only to the assets of Sudarshan Garg, but he enlarged the scope of the arbitrator by putting entire properties owned by him, which fact is evident from the list of the properties, noticed above.

I am in agreement with the contention of Mr.Aggarwal that the learned Additional District Judge, while accepting the objections, has not taken into consideration the statement of claim, rather there is no passing reference to the details of the properties indicated in the claim, much less, contents of the letter dated 14.9.2003.

In my view, the impugned order passed by the Additional

District Judge, suffers from not only illegality but perversity. The Additional District Judge, while entertaining the objections, was required to take into consideration the parameters/provisions of Section 34 of the 1996 Act in strict sense, ofcourse by taking into consideration the provisions of other sections, i.e., 28(1) and 31(3) of the 1996 Act. The ratio decidendi culled out by the Hon'ble Supreme Court in **Oil & Natural Gas Corporation Ltd. (supra)** would not be applicable in the instant case for the reason that the respondent, in his own authorization, enlarged the scope of the arbitrator by submitting the claim in respect of properties not owned by him but by his children also.

There is another aspect of the matter. The dispute primarily revolves between the father and the son. It is most unfortunate that the father and son are fighting tooth and nail and particularly the father, who had filed the objections to the award.

This Court cannot remain oblivious of the fact that since the age of the father, which has been stated at bar to be 85 years, it would not be in the fitness of things to allow the parties to indulge into embroilment and rather this Court expects that wisdom would dawn upon the parties to the lis to live peacefully and happily.

It is expected that the appellant, being the only son of the respondent, would not indulge into any insinuation, much less, cause any harassment to his father at this stage of his life.

The arbitrator had confined the relief only to the properties which have been claimed in the claim statement and, therefore, it was not within the domain of the Principal Court to accept the objections while not noticing the claim.

In view of the reasons given herein above, the impugned order dated 18.3.2006 is set-aside and the award is restored.

It is expected that the parties to the lis would maintain the cordial relations among themselves and the appellant would extend the respect to his elderly father.

The appeal is accordingly allowed.

August 12, 2015
ramesh

(AMIT RAWAL)
JUDGE