

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

**FAO No.1192 of 2009 (O&M)  
Date of decision: 09.09.2015**

Haryana Tourism Corporation Ltd. ... Appellant

Vs.

Joginder Singh and another ... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

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

Present:- Mr. Vijay Pal, Advocate  
for the appellant.

Mr. D.K.Singhal, Advocate  
for respondent No.2.

**AMIT RAWAL J. (Oral)**

Challenge in the present appeal is to the impugned order dated 01.09.2008, whereby, the objections filed, against the Award dated 07.02.2004, have been dismissed.

Mr. Vijay Pal, learned counsel appearing on behalf of the appellant submits that as per the terms and conditions of the contract, Arbitrator did not have the jurisdiction to enter into reference. During the pendency of the arbitration proceedings, an application, under Section 9 of the Arbitration and Conciliation Act,

1996 (hereinafter referred to as the Act, 1996), had been filed and vide order dated 07.02.2004, the Court had stayed the proceedings before the Arbitrator but by that time, Award had been pronounced. During the pendency of the Award, this Court, vide order dated 18.04.2012 adjourned the hearing of the present appeal to await the outcome of the decision in the application filed under Section 9 of the Act, 1996. It has been submitted that the proceedings under Section 9 of the Act, 1996, culminated into decision dated 09.09.2013. He further submits that since the Arbitrator did not have the jurisdiction, therefore, the Award suffers from illegality, infirmity and perversity and the same has erroneously and perversely been dismissed.

Mr. D.K.Singhal, learned counsel appearing on behalf of respondent No.2, submits that the interim order purportedly passed by the Additional District Judge, Panchkula, was conveyed to the Arbitrator on 12.02.2004, whereas, the Arbitrator had already announced the Award on 07.02.2004. This fact has been noticed by the Additional District Judge, Panchkula, while dismissing the objection vis-a-vis jurisdiction of the Arbitrator. The appellant, before filing its reply to the claim, were not prevented in moving application under Sections 13 and 16 of the Act, 1996 by taking objection with regard to jurisdiction of the Arbitrator. He further submits that there is no illegality and perversity in the impugned order.

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

The order dated 18.4.2012 passed by this Court noticed that Managing Director of the appellant, did not have the jurisdiction, to change the Arbitrator. It would be apt to reproduce the relevant portion of the order:-

*"I have heard learned counsel for the parties and perused the case filed.*

*Counsel for the appellant gracefully conceded that Managing Director of the appellant had no power to remove respondent No.1 as Arbitrator. However, it was contended by senior counsel for the appellant that impugned award having been passed in violation of temporary injunction order dated 7.2.2004 cannot be sustained. Counsel for respondent No.2 contended that interim order dated 07.02.2004 was conveyed to the Arbitrator on 12.02.2004 i.e. after passing of the Award. Due to late communication of the interim order, Arbitrator is not guilty of violating the temporary injunction order. However, the award having been passed after the interim stay order, becomes prima facie vitiated on that account. In the aforesaid circumstances, I am of the considered opinion that application under Section 9 of the Act filed by the appellant should be revived and adjudicated upon in accordance with law. If the said application is ultimately dismissed, then award may be sustained, but if the said*

*application is allowed, then appropriate order regarding the award has to be passed either in that application or in the instant appeal.*

*In view of the aforesaid, the instant appeal is kept pending. Application under Section 9 of the Act moved by the appellant-Corporation is revived before the trial Court to be adjudicated upon in accordance with law. The instant appeal is adjourned sine die and may be got revived by either party after decision of application under Section 9 of the Act.*

*The trial Court shall decide the said application as expeditiously as possible and preferably within one year of the receipt of certified copy of this order.*

*Parties are directed to appear there on 1.5.2012.”*

It is a matter of record that no such application under Sections 13 and 16 of the Act, 1996 had been moved before the Arbitrator raising objection with regard to his jurisdiction.

It is now well settled law that parties are at liberty to take objection vis-a-vis jurisdiction of the Arbitrator by filing an application before filing their reply to main claim.

In the absence of such objection, appellant cannot be permitted to raise such plea for the first time in petition under Section 34 of the Act, 1996. As noticed above, proceedings under Section 9 of the Act, 1996 have already been dismissed. Learned Additional

District Judge, Panchkula after appreciating the oral and documentary evidence noticed that interim order purported to have been passed by the Court in petition under Section 9 of the Act, 1996, was received by the Arbitrator on 12.02.2004, whereas, Award had already been passed on 07.02.2004.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. vs. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much

less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but viz-a-viz proceedings, in my view the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis*.

The award read as a whole is just, fair and reasonable and only certain claims have been granted which are duly been supported with reasons. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award. The award is perfect and justified and all the objections filed against the same were wholly misconceived.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**September 09, 2015**  
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