IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.4744 of 2010 (O&M)
Date of decision: 23.12.2015

M/s Daffodil Software Limited ... Appellant

Vs.

Ruhi Hira and others ... 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. Sunish Bindlish, Advocate
for the appellant.

Mr. Sudhanshu Makkar, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

The appellant – Software Company is in Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (in short "1996 Act") challenging the order dated 18.11.2009, whereby, the objections under Section 34 of 1996 Act filed by the respondents against the Award dated 20.10.2007, have been accepted.

Mr. Sunish Bindlish, learned counsel appearing on behalf of the appellant submits that respondent No.1 was employed as a Software Engineer vide agreement dated 15.07.2003. In pursuance to the contract, her period of appointment was for one year and six months training period prior to the contract. However, she left the job on 06.03.2004, in essence, she worked only for a period of 07 months 23 days. Since the company suffered losses on account of having left in midway, the contract provided that Software Company can claim the damages, over and above the retention money. The Arbitrator, on the basis of the evidence brought on record, awarded damages to the tune of ₹1,72, 000/- along with interest @ 12% per annum from the date of filing of application till its realization and in this regard, a comprehensive affidavit of Managing Director was filed to show that employees of the company remained ideal and even trainer had been paid salary on pro-rata basis whenever services of the trainer were also availed. He further submits that certificate of the salary details of the employees, who remained idle, as well as, of the trainer had been proved and placed on record. He further submits that objections filed at the instance of the respondents were not within the provisions of Section 34 of 1996 Act and in this regard, he has relied upon the various judgments of the Hon'ble Supreme Court which read thus:-

1. Swan Golden Mining Ltd. vs. Hindustan Copper 2015(5) SCC 739;

2. Navodya Mass Entertainment vs. J.M.Combines 2015(5) SCC 698;

3. Rashtriya Ispat Nigam Ltd. vs. Dewan Chand Ram Saran 2012(5) SCC 306

4. P.R.Shah vs. M/s BHH Securities 2012(1) SCC 595;

5. Steel Authority of India vs. Gupta Brothers Steel Tubes Ltd. 2009 (10) SCC 63;

6. G.Ramachandra Reddy & Co. vs. UOI and another 2009(6) SCC 414 and

7. National Highway Authority and another vs. Bumihiway DDB Ltd. & others 2006(10) SCC 763.

Mr. Sudhanshu Makkar, learned counsel appearing on behalf of respondent No.1 submits that though the contract envisaged retention of money but the appellant failed to lead evidence to show how and under what circumstances, the Company had suffered losses on account of the respondent having left the job in the midway particularly when appellant retained certain amount, thus, there can be no grievance vis-a-vis the same. The objections were within the parameters of Section 34 of 1996 Act as awarding of damages was against the public policy.

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

Except the self serving statement of the Managing Director, as well as, of salary certificates of various Software Engineers, thus, no other evidence has been led, in my view, the Company had not been able to corroborate the claim of damages by leading direct and cogent evidence, i.e., loss and profit in the work in hand, in essence, the appellant was required to prove at the time of employment of respondent, number of contracts were in hand and they had to be honoured and completed within a time limit and on account of the respondent having left the job in midway, the Company had suffered huge losses, as such work was undertaken by taking the services through outsourcing or of the employees by way of over work. The aforementioned evidence has not been led, yet, the Arbitrator awarded a compensation of ₹1,72,000/-. It is settled proposition of law that a person, who asserts a particular claim, must prove the same by leading a direct and cogent evidence, in essence, the appellant has to stand on his own legs. In my view, the appellant-Company has not been able to discharge the onus, therefore, there is no question of rebutting the same.

In view of the aforementioned observations, the objections were within parameters of Section 34 of 1996 Act as the Award was against the public policy. Since the appellant, in my view, has not been able to prove the alleged claim vis-a-vis damages. I do not find any illegality and perversity in the impugned order.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 23, 2015
savita