

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4581 of 2011 (O&M)
Date of Decision:18.02.2015

Milkhi Ram

....Appellant

Versus

Chief Administrator, H.A.M.B. Panchkula and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Tribhawan Dahiya, Advocate for the appellant.

Mr. Namit Gautam, Advocate for respondents No.1 and 2.

NAVITA SINGH, J.

1. The appeal was filed against the order passed by the then District Judge, Sirsa on 24.9.2010 dismissing the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act (Act for short). The award which was sought to be set aside was of 1.9.2008. Challenge to the award as also the order passed by District Judge, Sirsa was made on the ground that the award was passed ex parte and no notice either of the reference to Arbitrator by the respondents or of the proceedings before the Arbitrator was received by the appellant. When the Arbitrator entered upon the reference made by the other party, he did not inform the appellant and also issued a notice in Punjab Kesri, (Hindi edition) which was not in circulation in District Bathinda. The Arbitrator, thus, mis-conducted himself. The court below did not appreciate the facts.

2. One Sohan Lal was the Special Attorney of the appellant, who, though had no authority, to represent the appellant in arbitral proceedings, was shown present during the proceedings, which was fabricated story, as no notice was received by the appellant.

3. Counsel for the appellant referred to Section 21 of the Act, according to which arbitral proceedings would commence on the date on which a request for that dispute to be referred to arbitration was received by the respondent. It was contended that since the appellant was the respondent in connection with the arbitral proceedings, notice should have been received by him.

4. Counsel for the respondents, however, pointed out from the record of the Arbitrator that various notices were sent to the Special Power of Attorney holder i.e. Sohan Lal by the Arbitrator but no one appeared for the appellant. Initially Sohan Lal had put in appearance but then became absent. The letter dated 31.5.2005 sent under memos No.4364-4365 showed that the same was issued to the appellant himself by the Arbitrator directing the parties i.e. the Executive Engineer, HSAMB, Sirsa and Milkhi Ram, contractor (appellant now) to appear before him i.e. the Arbitrator on 14.6.2005 along with their respective claims. Similarly, letter No.4690 of 15.6.2005 was issued to the appellant by name. Yet another letter dated 14.7.2005 was issued both to appellant Milkhi Ram and his special attorney Sohan Lal. Similar was the letter dated 29.7.2005.

5. Thereafter, the appellant signed the authority letter in favour of Sohan Lal son of Mehar Chand to appear before the senior authorities regarding the work in question, and also authorized him to take any decision regarding the said work. The authority, therefore, included appearance before the Arbitrator. The appellant appeared himself at one time and also through Sohan Lal but then stopped appearing. Publication was then ordered to be issued as no one had appeared despite numerous notices having been issued by the Arbitrator. Despite publication in the newspaper, no one appeared for the contractor.

6. The Arbitrator was not obligated to make publication in the newspaper but still he made all effort to secure the presence of the appellant but

he did not bother to appear. The Arbitrator was left with no choice but to proceed ex parte against the appellant. Even the Special Power of Attorney given by the appellant in favour of Sohan Lal authorized the attorney to pursue all kinds of work in connection with the contract. The word used was 'pairvi'. He was given the authority to take all kinds of decisions relating to the work and even to file affidavit or to conduct proceedings etc. 'Pairvi' would include arbitral proceedings.

7. The appeal is totally devoid of merit and is dismissed.

(NAVITA SINGH)
JUDGE

18.02.2015
Ishwar

Whether to be referred to reporter: Yes