

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.04.27 14:59
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FAO No. 7078 of 2010 (O/M)
Date of decision : 23.4.2015

M/s Ved Contracts Pvt. Ltd.

..... Appellant

Versus

M/s Radnik Exports and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Shiv Kumar, Advocate, for the appellant.

Mr. A.J. Khan, Advocate, for respondent No. 1.

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

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KULDIP SINGH, J. (ORAL)

Impugned in the present appeal is order dated 2.3.2010, passed by the learned Additional District Judge, Gurgaon, whereby the objection petitions under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 (in short 'the Act') against the award dated 25.9.2008, passed by the Arbitrator, was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the file.

The learned Additional District Judge, Gurgaon, while

dismissing the objection petitions, did not discuss the evidence and made the following observations :-

“11. But in the instant case there is nothing on the file in order to infer as to whether any of the conditions as contained in Section 34(2) or (3) of the said Act were attracted so as to declare the arbitration award dated 25.9.2008 as null and void. There is nothing on the file as to how the impugned award was against the public policy of India. There is nothing on the file as to how the sole arbitrator-respondent No. 2 has misconducted the proceedings or has misconducted himself. There is nothing on the file in order to infer as to how the award was liable to be set aside as to attract the provisions of Section 34 of Arbitration and Conciliation Act. Therefore, in the absence of any of the ground as mentioned in Section 34 of the said Act the impugned award dated 25.9.2008 is not liable to be set aside and thus, both the objection petitions stand dismissed and the impugned award dated 25.9.2008 is hereby upheld and the impugned award dated 25.9.2008 is hereby made rule of the Court, however, the parties are directed to bear their own costs. Memo of costs be prepared. Copy of this order be place don the connected petition titled M/s. Ved Contract Vs. M/s. Radnik Export. File be consigned to record room after due compliance.”

In this case, the dispute was that in terms of the agreement, the appellant submitted certain bills, which were certified by the architect of the respondent. The amount was then reduced by the Architect. It was also in the award that certified bills were not produced by the respondent before the Arbitrator. In this way, there was evidence before the Arbitrator, which was required to be discussed to see whether the award is unfair and unreasonable as claimed by the appellant.

The learned Additional District Judge, Gurgaon, had merely recorded that the award can only be set aside, if the ground

mentioned in Section 34 of the Act are attracted.

In this case, both the parties had filed claim and counter claim. It was merely mentioned that the Court is not to sit over the arbitration award as an appellate Court. However, the Court could always consider the material produced before the Arbitrator to see whether the Arbitrator has acted in a fair manner. It being so, without passing any comments on the merits of the case, which may prejudice either party, the impugned order dated 2.3.2010, passed by the learned Additional District Judge, Gurgaon, is set aside and the case is remanded back to the learned Additional District Judge, Gurgaon, with a direction to hear both the parties regarding their claim and counter claim and discuss the evidence produced before the Arbitrator and also discuss the case law on the point and decide the matter afresh. Both the parties are directed to appear before the successor Court of Shri Subhash Goyal, Gurgaon, on 21.5.2015.

Consequently, the present appeal is allowed.

(KULDIP SINGH)
JUDGE

23.4.2015
sjks