

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

C.W.P. No.7348 of 2015

Date of Decision : 15.05.2015

Prem Kumar Gupta

..... Petitioner

Versus

Ireo Waterfront Pvt. Ltd. and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. H.C. Arora, Advocate
for the petitioners.

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?

AJAY TEWARI, J. (Oral)

By this petition the petitioner has prayed that the Arbitrator be directed to decide his second application under Section 13 of the Arbitration and Conciliation Act, 1996 (for short '*the Act*').

The petitioner had entered into some contract with the respondent No.1. Dispute having arisen therein, the respondent No.2 was appointed as an Arbitrator as per the arbitration agreement in the contract. As soon as the petitioner was informed about the appointment of the respondent No.2 as the Arbitrator, he moved an application challenging the appointment of the Arbitrator under Section 13 of the Act by letter dated

18.10.2014. On that very date the Arbitrator rejected the challenge and called upon the petitioner to file his claim. Thereafter by letter dated 31.01.2015 the petitioner moved a fresh application under Section 13 of the Act challenging the appointment of the Arbitrator. That application having been ignored the petitioner is before this Court.

Section 13 of the Act is a complete code for challenging the appointment of a particular Arbitrator on the grounds set out in Section 12 of the Act which are in the following terms:-

“12. Grounds for challenge: (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if- (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or (b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reason, of which he becomes aware after the appointment has been made.

13. Challenge procedure:

(1) *Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.*

(2) *Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the*

arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.”

A perusal thereof reveals that the section mandates the Arbitrator to proceed to give the final order if he has rejected the challenge under sub-section(2) of Section 13 of the Act. Sub-section (5) of Section 13 of the Act permits the unsuccessful applicant to challenge this order also in any application filed under Section 34 of the Act, thus, giving him this additional plea apart from those referred to in that section. I put it to the learned counsel that under what provision would a second application lie. Learned counsel has argued that there is no bar to the entertainment of the second application and has particularly stressed on what he terms as the seriousness of the allegations against the Arbitrator as a ground of judicial

intervention at this stage.

In my opinion, once the second application is not allowed the mere fact that there is no bar to the entertainment of the second application would not come to the aid of the petitioner and on such grounds even a 3rd, 4th, 5th application may be justified. In the circumstances, I find no merit in the arguments of the learned counsel.

No other argument has been raised by the learned counsel for the petitioner.

Petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 15, 2015

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**(AJAY TEWARI)
JUDGE**