

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

FAO No.4243 of 2013 (O&M)

Date of decision: 07.09.2015

Union of India

... Appellant

Vs.

Subhash Chander Bhasin 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:- Mrs. Kulwant Kaur Kahlon, Advocate
for the appellant.

Mr. Mohinder Nain, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the impugned order dated 15.04.2013, whereby, the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act, 1996) against the Award, for want of territorial jurisdiction, have been dismissed.

Mrs. Kulwant Kaur Kahlon, learned counsel appearing on behalf of the appellant submits that the objections were filed under Section 34 of the Act, 1996 at Gurdaspur (now Pathankot) as the agreement for execution of work at CRPF Campus at Hira Nagar, Jammu and Kashmir, between the department and the contractor

was signed at Madhopur. She further submits that as per the provisions of arbitration clause 25 of the contract, relevant arbitration proceedings were to be conducted in accordance with the provisions of the Act, 1996 or any statutory modifications. The relevant clause reads thus:-

“The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996(26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.”

She further submits that the impugned order suffers from illegality and perversity, thus, not sustainable in the eyes of law.

In support of her contention, she relied upon the judgment of the Hon'ble Supreme Court in Khaleel Ahmed Dakhani vs. Hatti Gold Mines Co. Ltd. **(2000) 3 Supreme Court Cases 755**, to contend that execution proceedings taken out in Jammu and Kashmir are without jurisdiction and the Union of India cannot be compelled to defend the execution proceedings in Jammu and Kashmir since cause of action or part of same had either arisen within the territorial jurisdiction of this Court or at Delhi.

Mr. Mohinder Nain, learned counsel appearing on behalf of the respondent submits that the application under Section 9 of the Act, 1997 was filed before the District Judge, Kathua (J&K) and the

same was decided on 25.10.2008. There is no clause in the agreement which prescribe the jurisdiction to be invoked by the parties to the lis, in the particular Court and in the absence of that remedy, if any, for the appellant was to file objections before the District Judge, Kathua (J&K) and nowhere else.

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

Mrs. Kulwant Kaur Kahlon, Advocate during the course of arguments submitted that Jammu and Kashmir Conciliation and Arbitration Act, 1997 is different to the Arbitration and Conciliation Act, 1996, therefore, clause reproduced (supra) prescribed the arbitration proceedings, as per Act, 1996 and therefore, Jammu and Kashmir Conciliation Act, 1997 would not apply.

I have gone through the provisions of the Act and Section 21 of the same provides that Award shall be enforced, in case, the application to set aside the arbitral award under Section 34 has expired, as per provisions under the Code of Civil Procedure under Samvat 1977. The said section reads thus:-

“21. Enforcement

Where the time for making an application to set aside the arbitral awards under Section 34 have been expired or under such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure under Samvat 1977 in the same manner

as it were decreed by the Court.”

In view of the aforementioned fact, there is no dispute that objections under Section 34 of the Act, could be filed, before the District Judge, Kathua (J&K). In my view, there is no illegality and perversity in the impugned order, whereby, the objections have been dismissed, for want of territorial jurisdiction.

In view of what has been observed above, there is no illegality and perversity in the impugned order. The appeal is devoid of merit and the same is accordingly dismissed.

(AMIT RAWAL)
JUDGE

September 07, 2015
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