IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2232 of 2015 (O/M)
Date of decision : 29.5.2015

M/s Raja Ram Corn Products Punjab Pvt. Ltd. ..... Appellant

Versus

Suncity Projects Pvt. Ltd. ...... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Puneet Bali, Senior Advocate, with,
Mr. Vibhav Jain and Mr. Arun Gupta, Advocates,
for the appellant.

Mr. Aashish Chopra, Advocate, for respondent.

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.

Appellant has filed this appeal against the order dated 27.1.2015, passed by the learned Additional District Judge, Chandigarh, whereby the application filed by the appellant (petitioner before the lower Court) under Section 9 of the Arbitration and Conciliation Act, 1996 (in short 'the Arbitration Act, 1996') for grant of interim protection in the form of requiring the respondent to furnish appropriate security for recovery of Rs. 20 crores plus interest at the rate of 12 % annual from the date of award i.e. 23.10.2013 till the date of recovery was dismissed.

The facts necessary for the purpose of disposal of the present appeal are that a dispute arose between the parties out of the collaboration agreement dated 3.12.2007, entered into between the parties to develop Plot No. A-18, Industrial Area, Focal Point, Phase-VI, Mohali, Punjab, measuring about 5.5 acres or 26522.63 sq. yds. Therefore, the Arbitral Tribunal, consisting of Hon'ble Mr. Justice Kuldip Singh (Retd.), Presiding Arbitrator, Hon'ble Mr. Justice M.S. Liberhan (Retd.) and Hon'ble Mr. Justice G.C. Mittal (Retd.), was constituted by this Court in Arbitration Case No. 35 of 2011 titled as *M/s Raja Ram Corn Products (PB) Pvt. Ltd. Versus M/s Suncity Projects Pvt. Ltd.* The Arbitral Tribunal passed the award, whereby it was held that the appellant/petitioner is entitled to forfeit the security amount of Rs. 10 crores and recover future amount of Rs. 20 crores with 12% interest from the date of award till the date of recovery from the respondent. It is further stated that respondent filed the objections under Section 34 of the Arbitration Act, 1996 against the said award, which are still pending before the District Courts, Chandigarh.

It is stated by the appellant/petitioner that to defeat the amount awarded to the appellant/petitioner, the respondent-

Company is transferring its assets. The respondent-Company has given latest advertisement dated 22.9.2013 in the 'The Tribune', wherein it is selling/transferring/leasing its assets, such as group housing building duly constructed, spread over 27 acres with approximately 1089 apartments in the name of Parikrama Group Housing, Opposite Junior St. Xavier School, Sector-20, Panchkula (Haryana) and Suncity Business Centre, built and constructed on Chandigarh-Ambala Road, Zirakpur with total area of 1,60,000 sq. feet approximately. Respondent is having registered office located at New Delhi, but the property is situated within the jurisdiction of this Court. It is stated that if the award passed in favour of the appellant/petitioner is ultimately upheld, it will not be satisfied.

In reply, respondent opposed the application on the ground that under the guise of claiming interim measures, the appellant/petitioner is seeking to execute the award, particularly when the objection petition against the award is pending. The present application is nothing, but a counter blast to the objection petition filed by respondent under Section 34 of the Arbitration Act, 1996 to set aside the arbitral award, passed by the Arbitral Tribunal. The appellant/petitioner wants permanent protection to enforce the award, which is not permissible under law. The appellant/petitioner has failed to fulfil three conditions of prima-facie case, balance of convenience and irreparable injury, to avail the remedy sought for in the present petition. It was stated that the property of Parikrama Group Housing Society in Panchkula and Suncity Business Centre at Zirakpur are not the subject matter of the award nor the same are within the jurisdiction of this Court. Respondent is a multi-crore company and well established in the business of real estate. Projects worth several thousand crores are under execution. Therefore, it cannot be said that respondent would dispose off the property to avoid its liability.

Learned Additional District Judge, Chandigarh, dismissed the application, inter-alia, on the ground that Section 9 of the Arbitration Act, 1996 is limited to the protection of property, which is subject matter of this arbitration. Therefore, the application is not maintainable qua the other properties, for which the relief has been sought. Hence, the application was dismissed as not maintainable.

I have heard learned senior counsel for the appellant/petitioner, learned counsel for the respondent and have also carefully gone through the file.

In order to see whether the relief under Section 9 of the Arbitration Act, 1996 is limited only to the property, which is subject matter of the award, it is necessary to reproduce the said section, which reads as under :-

> "9. Interim measures, etc. by Court.—A party may, before or during arbitral proceedings or at any time after

the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it."

A perusal of the said section itself shows that this section can be invoked before or during the arbitration proceedings or after the arbitral award, but before it is enforced in accordance with Section 36 of the Arbitration Act, 1996. Therefore, even though the objection petition is pending under Section 34 of the Arbitration Act, 1996, the petition under Section 9 of the Arbitration Act, 1996 is maintainable to seek interim protection.

Now, the question would arise as to whether relief under Section 9 of the Arbitration Act, 1996 can be granted only regarding the property, which is subject matter of the dispute ? A perusal of Section 9 of the Arbitration Act, 1996 *(ibid)* shows that Clause (a) is applicable only to the subject matter of the arbitration agreement, whereas under Clause (b), the order can be passed for securing the amount in dispute in the arbitration. Clause (b) does not talk of the property, which is only subject matter of the arbitration agreement. Similarly, under Clause (e), such other interim measure of protection as may appear to the Court as just and convenient can be ordered. Clause (e) also does not talk about the interim measure only against property, which is the subject matter of the arbitration agreement. Therefore, I am of the view that the learned Additional District Judge, Chandigarh, erred in holding that no relief can be granted against the property, which is not subject matter of the arbitration award.

The facts are not disputed. In this case, there was a collaboration agreement between the parties dated 3.12.2007 to develop a big chunk of land. As the dispute arose between the parties, the Arbitral Tribunal was constituted by this Court in Arbitration Case No. 35 of 2011 titled as *M/s Raja Ram Corn Products (PB) Pvt. Ltd. Versus Suncity Projects Pvt. Ltd.* It is also not disputed that the said Tribunal had passed the award whereby it is held that the present appellant/petitioner is entitled to forfeit the security of Rs. 10 crores and recover future amount of Rs. 20 crores with 12% interest from the date of award till the date of recovery.

As per the affidavit filed by the appellant/petitioner before this Court, after forfeiting the amount of Rs. 10 crores, the remaining amount comes to about Rs. 23.60 crores. In the affidavit of the appellant/petitioner, it is stated that respondent has two properties, namely,

(i) Parikrama Group Housing Society where group housing society is built over 27 acres of land and

(ii) Suncity Business Centre, situated on Chandigarh-Ambala Road, Zirakpur.

It is further stated by the appellant/petitioner that Parikrama Group Housing consists of 24 towers, each having 50 flats. It has been further stated that the towers are at varying stage of completion and physical possession of not even a single flat has been given to any person. It is further stated that tower Nos. 3A, 3B, 4A, 4B, 5A and 5B are near completion. There are about 50 flats in each of the said towers and the price of a completed/furnished flat of

1850 sq. ft. is about Rs. 3,400/- per sq. ft. As the said flats are not furnished, the value of each flat is Rs. 3,000/- per sq. ft. and the current value of each flat is Rs. 55.50 lacs. Therefore, prayer was made for restraining the respondent from alienating the said towers, mentioned above.

In the counter/additional affidavit filed by the respondent, the averments have been denied. It was stated that there are only six unsold flats in the said towers, whereas all other flats stood sold since 2008. The entire project of 27 acres alongwith 24 towers stand mortgaged with HDFC Bank Limited, Capital Court, Munirka, Delhi. It was further stated that respondent has good case and is likely to succeed in objections.

A perusal of the facts noticed above shows that at present, respondent has a liability of nearly Rs. 24 crores under the arbitral award. The objections against the said award are still pending before the District Courts, Chandigarh, the decision of which will take time. Therefore, under Section 9 of the Arbitration Act, 1996, some measures are required to be taken to protect the interest of the appellant/petitioner for satisfaction of the amount awarded in the said award. I am of also of the view that if the steps are not taken to secure the awarded amount, then the appellant/petitioner will face difficulty in executing the award, if the same is upheld by the courts.

Therefore, I am of the view that the order passed by the learned Additional District Judge, Chandigarh, dated 27.1.2015 is not sustainable in the eye of law. The same is accordingly set aside. The respondent is directed to furnish the security in the sum of Rs. 24 crores before the learned Additional District Judge, Chandigarh, where the objections under Section 34 of the Arbitration Act, 1996 are pending, to satisfy the award that may be ultimately upheld against them, within a period of four weeks from today. If the security is not furnished within four weeks, tower No. 3-A, Parikrama Group Housing Society, Sector-20, Panchkula, is ordered to be attached. However, such attachment shall be subject to the earlier encumbrances and the interest created in favour of the third person before the date of passing of this order. The attachment will continue till the award, if finally affirmed in favour of appellant, is satisfied.

Consequently, the present appeal is allowed.

(KULDIP SINGH)
JUDGE

29.5.2015
sjks