

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

FAO No.9483 of 2014 (O&M)

Date of decision : 14.10.2015

Parmod Kumar Jain and ors.

...Appellants

Versus

Kanchan Bala Jain and ors.

...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: Mr. Akshay Bhan, Sr. Advocate with
Mr. Amandeep Singh Talwar, Advocate for appellants.

Mr. Atul Goyal, Advocate for respondent Nos.1 to 4.

AMIT RAWAL, J. (Oral)

The appellants have assailed the order dated 17.09.2014, whereby objection filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred to as 'the Act') against the award dated 05.07.2010, has been dismissed.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Amandeep Singh Talwar, appearing on behalf of appellants submits, that in pursuance to the family settlement dated 31.03.2009 (Annexure A-1), the

parties had set their hands for resolving the dispute, if any, through the process of arbitration. As per the agreement, Arbitrator was also appointed. In pursuance to the aforementioned agreement, Memorandum of Understanding was arrived by Kanchan Bala Jain and Parmod Kumar Jain on 11.05.2009 on certain terms and conditions but it did not contain the resolution of dispute by way of arbitration. The named Arbitrator was appointed by the respondents and he entered into reference in the month of May and sent notice on 24.05.2010 calling upon the appellants to appear on 08.06.2010. Since, the appellants were not agreeable to his appointment and, therefore, filed objections before the Arbitrator pointing out that they had appointed different arbitrator. The Arbitrator without giving any effective opportunity in undue haste decided the reference/claim vide ex parte award dated 05.07.2010. The aforementioned award, was objected to, by filing objection and even same have been dismissed without noticing the fact that as per provision of Sub Section 2 Clause 2(i) of Section 34 of the Act, where no effective opportunity has been granted by the Arbitrator to represent the case, award is liable to be set aside.

He further submits that there was certain loan liabilities which was to be honoured by the parties to the agreement and the same had not been done. In respect of his contention, he has relied upon following case law to contend that Arbitrator was enjoined upon obligation to form opinion as to whether any appropriate notice of the arbitration proceedings had been served upon or not:-

1. Oil and Natural Gas Corporation Ltd. Vs. Western Geco International Ltd., (2014) 9 Supreme Court Cases 263.

2. Shaminder Singh and ors. Vs. Motor and General Finance Ltd.,
(2008) 147 DLT 354.
3. Rajesh P. Thakkar Vs. M/s Kotak Mahindra Bank Ltd, 2011
SCC Online Bom 1284.
4. Prem Nath L. Harsaran Dass and another Vs. Om Parkash L.
Ram Kishen Dass Aggarwal, 1956 AIR (Punjab) 187.

and thus prays that award, much less, impugned order dismissing the objection under Section 34 of the Act be set aside and new arbitrator be appointed.

Mr. Atul Goyal, learned counsel appearing on behalf of respondents submits that preceding to entering into a reference, respondents sent a legal notice dated 09.04.2010 which was dispatched by registered post on 13.04.2010. The contents of the notice would reveal that respondents had shown the intention to appoint Ramesh Jain, the named Arbitrator, as dispute had arisen between the parties, for, both the parties were not coming forward for implementation of the terms and conditions of the agreement, much less, consequential effect of the agreement. The aforementioned notice was sent at the residential address of the appellants, but they did not object to the appointment of Ramesh Jain. The objection vis-a-vis appointment of Arbitrator has been raised for the first time vide reply dated 29.05.2010. The said plea is nothing but, adoption of dilatory tactics, much less, to wriggle out from the terms and conditions of the agreement.

The objections filed by the appellants were not within the parameters of the provision of Section 34 of the Act, much less, even

objections qua alleged mis-conduct of the Arbitrator was not taken and submits that there is no illegality and perversity in the order, therefore, award is liable to be upheld and prays for dismissal of the appeal.

I have heard learned counsel for parties and appraised the paper book and as well as the case law cited above.

There is no dispute to the ratio decidendi culled out in the aforementioned judgments. It would be apt to refer extract the contents of the notice sent by the Arbitrator calling upon the appellants to appear on 08.06.2010:-

“Before Sh. Ramesh Jain, Sole Arbitrator

Kanchan Bala & other Vs. Pramod Kumar Jain & ors.

Mr. Parmod Kumar Jain

160-KVM Colony, Ashok Vihar

Rishi Nagar, Ludhiana.

In Ref: Arbitration Proceedings

Whereas I have been appointed as sole arbitrator under arbitration agreement dated 31 March 2009 to settle the dispute which has arisen in course of business and partnership and family, I hereby give you notice to attend my office situated at The Fountain Head Corp, 27, Surya Vihar Rishi Nagar Ludhiana 140001. On 8.6.2010 (date) at 5 PM. or send duly authorised representative or counsel who can act on your behalf. Please note that if you or your authorised representative or counsel do not turn up on the said date at the fixed time and place, I shall start the proceeding ex parte.

My arbitrator fee shall be Rs.10,000/- and the same shall be shared equally by petitioners and respondents.

Date 24.5.2010

Sd/- Sole Arbitrator.”

Preceding to the entering into reference by the Arbitrator, legal

notice dated 09.04.2010 was also sent by the registered post to the appellants but the appellants feigned ignorance with regard to the contents of the notice, much less, did not choose to reply. For the sake of brevity, the contents of the notice is reproduced hereinbelow:-

“To

Dated: 09.04.2010

- 1. Parmod Kumar Jain son of Sh. Tilak Chand Jain*
- 2. Mohit Jain son of Sh. Parmod Jain*
- 3. Shashi Jain wife of Parmod Jain*
- 4. Timsy Jain wife of Mohit Jain*

All R/o 160, K.V.M. Colony, Ashok Vihar, Rishi Nagar, Ludhiana and also at C/o Bharat Engg. Agencies, 408, Industrial Area-A, Ludhiana 141003

STATUTORY LEGAL NOTICE FOR APPOINTMENT OF ARBITRATOR

Dear Sir/Madam,

Under the instructions and on behalf of my clients Mrs. Kanchan Bala Jain wife of late Sh. Pawan Kumar Jain, Rajiv Jain son of Late Sh. Pawan Kumar, Manisha Jain wife of Rajiv Jain & Pawan Kumar Jain & Sons H.U.F. Karta Rajiv Jain All r/o 60-B, Kitchlu Nagar, Ludhiana, I hereby serve upon you all the following legal notice.

- 1. That you all the addressees and my clients are closely related with each other and were carrying on the joint business under the name and style of M/s Sueryaa Knitwears Limited & M/s Bharat Engineering Agencies in your individual capacity and in the capacity of karta of the respective H.U.F.*
- 2. That a dispute arose and as such a Memorandum of understanding in the shape of family settlement was arrived upon on 31.03.2009 on the terms and conditions duly reduced in writing and signed by all of you and my*

clients in the presence of witness and thereafter it was duly notarized on 15.07.2009 accordingly a retirement deed was also executed on 01.04.2009 between you Parmod Kumar Jain, Mohit Kumar Jain & Kanchan Bala Jain. An MOU was also in writing on 11.05.2009 duly signed by Parmod Jain, Shashi Jain, Kanchan Jain, Rajiv Jain, Urmil Jain & Ramesh Jain.

3. That according to the terms and conditions you addressee No.1 to 4 was to make the payment to my clients and further was required to transfer the right of the properties to my clients duly incorporated in the settlement deeds and also settled orally between you addressees and my client.

4. That as you all have failed to perform your part of the agreement/contract as envisaged in the M.O.U., Retirement deed and Family Settlement deed as such despite the request of my clients, you have failed to make the payment in cash or through cheque to my clients and further you have failed to transfer the ownership rights to my clients as such

To

Sh. Ramesh Jain son of Late Roshan Lal Jain

R/o Ground Floor, Balu Ganj, Agra-1

Subject:- Appointment as arbitrator in the proceedings.

Sir,

Your are hereby appointed as arbitrator in matter of Sueryaa Knitwear ltd. and Bharat Engineering Agencies, as per clause No.11 of the agreement executed between the parties on 31.03.2009. The statutory notice has already been issued to you and opp. Party and despite receipt of notice the opp. Party has not settled the claim.

I am sending you the statement of claims along with documents. Kindly intimate the next date and venue of

arbitration and also issue notice to opp. Party and intimate your arbitral expenses, so that the same may be deposited with you against receipt.

You are appointed arbitrator as per the clause 11 of the agreement and also you are request to send notice to the respondents to appear before you.

From

- 1. Kanchan Bala*
- 2. Rajiv Jain*
- 3. Manisha Jain*
- 4. Pawan Kumar.”*

The Arbitrator on 08.06.2010, on receipt of objections passed following orders:-

“Kanchan Bala & others Vs. Parmod Jain & others
Present:- Counsel for the claimant along with Rajiv Jain,
Claimant Respondent Ex parte

Notice of the claim petition was sent to the respondents for today. Arbitrator fee was fixed for Rs.10,000/- (Ten thousand) to be shared equally by parties. Sh. Rajiv Jain has paid Rs.5000/- in cash being their share of arbitration fee. Both, the parties have duly being served and respondent have filed objection through post duly signed by them from all of them. Respondent No.1, 3 and 5 have taken objection qua the appointment of arbitrator and have further stated that Mr. Tarun Oswal has been appointed arbitrator by them. Similar objection have been taken by respondent Nos.4 and 2 and have further stated that Sh. Atul Jain has been appointed arbitrator documents and no documents has been annex qua the appointment of Sh. Tarun Oswal and Sh. Atul Jain arbitration and as such the said objection is not maintainable. The legal objections can will be considered during evidence and during arguments. Respondents, though having been served upon have failed to appear till 6:10 pm and as such

they have been preceded with ex parte. The claimants are directed to produce their evidence in the shape of evidence along with relevant documents before 5.00 pm for further proceedings.

*Sole Arbitrator
Dated: 08.06.2010*

Present Claimants with counsel P.S. Ghumman

None from respondents as respondents are ex parte.

Present claimant with counsel claimants has filed the respective affidavits alongwith documents. Arguments heard today for orders the proceedings adjourned to 14.06.2010. The cost of the proceedings of the respondents i.e. is Rs.5000/- has been received from petitioner and the petitioners can recovered the same from the respondents.

*Sole Arbitrator
Dated: 09.06.2010*

Present claimants with counsel P.S. Ghumman

None from respondents as respondents are ex parte.

As I was busy the proceedings are adjourned to 05.07.2010 for order.

*Sole Arbitrator
Dated: 14.06.2010*

Present claimants with counsel P.S. Ghumman

None from respondents is respondents are ex parte

Vide my separate order the statements of claims of the petitioner is accepted partly and the proceedings are disposed off accordingly. The copy of the award be sent to all the parties to the statement of claims.

*Sole Arbitrator
Dated: 05.07.2010."*

The object behind the promulgation of the Act was to resolve the dispute between the parties if any as expeditiously as possible. The Arbitrator while adjudicating the claim of the respondents rejected the objections vis-a-vis his appointment by noticing as under:-

“1. That I accepted my appointment as sole arbitrator, being under the family settlement and M.O.U., which was reduced in writing and duly signed by the parties.”

The appellants did not sent any prior notice to the respondents vis-a-vis the appointment of their own Arbitrator named Tarun Oswal or Atul Jain nor any such letter, was accompanied. The aforementioned facts would reveals that appellants were aware of the arbitration proceedings, much less, existence of the arbitration clause and as well as of the Arbitrator. They did not care to contest the claim of respondents by filing their respective claim/counter-claim. The award of the arbitrator is consonance with terms and conditions of the agreement, much less, Memorandum of Understanding.

On reading of contents of Memorandum of Understanding, it reveals that it is in continuation of the agreement/family settlement dated 31.03.2009. The respondents have already performed their part in consonance with the terms and conditions of the agreement by executing the sale deed in favour of the appellants. The copy of the sale deed is part of the record of Courts below but volte-faced, when the stage to act or perform their part/role of the agreement arose. It is in these circumstances, the named Arbitrator was appointed.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments, wherein, it has been laid down that until and unless the award suffers from illegality or for want of reasons as

statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act.

The award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

I do not find any illegality and perversity in the order based on the oral and documentary evidence.

Accordingly, appeal is dismissed.

14.10.2015

pawan

**(AMIT RAWAL)
JUDGE**