

CR No.4144 of 2016 and

CR No.4145 of 2016

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

Date of Decision-26.07.2016

1. CR No.4144 of 2016

Housing Board Haryana -Petitioner

Versus

M/S Gulshan Rai Jain-II and another -Respondents

2. CR No.4145 of 2016

Housing Board Haryana -Petitioner

Versus

M/S Gulshan Rai Jain-II and another -Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vishal Garg, Advocate for the petitioner.

Mr. Karan Bhardwaj, Advocate for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

[1]. By this common judgment, CR No.4144 of 2016 titled as Housing Board Haryana Vs. M/s Gulshan Rai Jain-II and another and CR No.4145 of 2016 titled as Housing Board Haryana Vs. M/s Gulshan Rai Jain-II and another are being disposed of.

[2]. Facts are being taken from CR No.4144 of 2016.

[3]. Petitioner has assailed judgment dated 30.05.2016 passed by Additional District Judge, Panckhula dismissing the appeal on the ground of limitation without giving benefit under Section 14 of the Limitation Act.

[4]. Petitioner-Board awarded a contract of construction of flats in favour of respondent No.1 on 14.10.2010. A dispute arose with regard to breach of agreement between the parties. Respondents invoked Clause 33 of the Contract for appointment of Arbitrator. As a result of that, respondent No.2 was appointed as Arbitrator to enter into the reference. Arbitrator entered into the reference. Petitioner-Board raised objection before the Arbitrator with regard to deposit of 7.5 % of the claim amount in terms of Clause 33 (7) of the agreement. Arbitrator dismissed the claim of the petitioner-Board vide order dated 22.11.2015 against which two Revision Petitions i.e. CR No.8882 of 2015 and CR No.8883 of 2015 were filed in this Court. This Court decided the revision petitions vide order dated 05.01.2016 by observing that the order of the Arbitrator was in the nature of an interim order passed under Section 17 of the Arbitration and Conciliation Act (for short 'the Act') and therefore, in terms of Section 37 (2) of the said Act, the order was appealable in nature. Appeal was maintainable against the order granting or refusing to grant an interim relief under Section 17 of the Act. The revision petitions were dismissed with a liberty to the petitioner to approach the Competent Court of appellate jurisdiction.

[5]. Instead of filing appeal before the Competent Court, the petitioner ventured to file FAO No.211 of 2016 and FAO No.212 of 2016. The said appeals were disposed of by granting liberty to the

petitioner to file appeal before the Principal Court within two weeks from the preparation of certified copy of the order along with an application seeking condonation of delay in filing the appeal under Section 14 of the Limitation Act.

[6]. Learned counsel for the respondent who is present in the Court takes notice of the revision petitions and submits that during the course of arguments in FAOs, a specific argument was raised on the strength of **State of West Bengal and others Vs. Associated Contractors, 2015 AIR (SC) 260.**

[7]. Without adverting to the rival pleas of the parties, at this stage, it would be relevant to see that the petitioner was granted liberty to file fresh appeal before the Competent Court within two weeks from the date on which the certified copy of the order was received and also to avail protection under Section 14 of the Limitation Act before the Appellate Court. Delay of 170 days is sought to be explained by the petitioner in filing the appeal on the ground of wrong advise given by its counsel in revisions and FAOs.

[8]. This Court is of the considered view that the substantial cause of justice should not suffer at the threshold on mere technicalities. Though there is some omission on the part of the petitioner in not approaching the Competent Court of appellate jurisdiction after decision of the civil revisions, instead, they filed two appeals before this Court. For the said omission, the petitioner can be burdened with adequate cost.

[9]. Learned counsel for the respondent vehemently argued the case on merits with reference to interpretation attached to Section 2(1) (e) of the Act. Learned counsel contended that the appeal as per provision of Section 2(1) (e) of the Act would lie before the Principal Court assuming the order passed under Section 17 of the Act, though disputes that order under challenge is not based on Section 17 of the Act and therefore, the Principal Court cannot even entertain the appeal.

[10]. Be that as it may, this Court is not in a position to advert to the stand taken by the respondent at this stage, but certainly for the omission of the petitioner-Board, the respondent can best be compensated with adequate cost.

[11]. In the light of aforesaid, I allow the revision petitions, setting aside the impugned judgment dated 30.05.2016 passed by Additional District Judge, Panchkula subject to payment of cost of Rs.25,000/- in each case.

(RAJ MOHAN SINGH)
JUDGE

26.07.2016
prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No