

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Date of decision: 30.03.2016

1. Civil Revision No.4336 of 2012 (O&M)

B.I. Publications Pvt. Ltd.

.....Petitioner

Versus

The Pratap Steels Rolling Mills Ltd. & another

.....Respondents

2. Civil Revision No.4337 of 2012 (O&M)

British Institute of Eng. Tech. (I) Pvt. Ltd.

.....Petitioner

Versus

The Pratap Steels Rolling Mills Ltd. & another

.....Respondents

3. Civil Revision No.4338 of 2012 (O&M)

Hotel Marina

.....Petitioner

Versus

The Pratap Steels Rolling Mills Ltd. & another

.....Respondents

4. Civil Revision No.4339 of 2012 (O&M)

Brite Leasing & Finance Ltd.

.....Petitioner

Versus

The Pratap Steels Rolling Mills Ltd. & another

.....Respondents

5. Civil Revision No.4340 of 2012 (O&M)

**John Tinson & Co. Pvt. Ltd.**

.....**Petitioner**

**Versus**

**The Pratap Steels Rolling Mills Ltd. & another**

.....**Respondents**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Chetan Mittal, Senior Advocate,  
with Mr. Anurag Arora, Advocate,  
for the petitioner(s).

Mr. Rajesh Sethi, Advocate,  
for respondent No.1.

**Ritu Bahri, J.**

This order shall dispose of Civil Revision Nos.4336 to 4340 of 2012 together as common questions of law and facts are involved in all the petitions. For reference, facts are taken from Civil Revision No.4336 of 2012.

Challenge in these petitions is to the order dated 19.04.2012 (Annexure P-1) passed by the Additional District Judge, Amritsar, whereby application filed on behalf of B.I. Publications Pvt. Ltd.-petitioner under Order 14 Rule 2 read with Section 151 CPC, has been dismissed.

Petitioner and respondent No.1 had entered into a lease agreement dated 16.03.1993 (Annexure P-2) at New Delhi, according to which, the petitioner/lessor purchased the machinery and equipment and leased out the same to respondent/lessee. As per aforesaid lease agreement, it was agreed between the parties that the Courts at Delhi would have the exclusive

any matter, claim or dispute arising out this agreement. The respondent had issued some post dated cheques and some of them were encashed. After 1994, the respondent started defaulting in the payment of monthly lease charges. Thereafter, the petitioner/lessor initiated recovery proceedings against the respondent/lessee and the matter was referred to the Arbitrator. Initially, the proceedings were referred to Mr. R.K. Chandha, but he expressed his inability to act due to some personal difficulty. Thereafter, the arbitration proceedings were carried out by Mr.Vinod Chandiok (second named arbitrator). After giving a number of opportunities, the respondent/lessee was proceeded ex parte and ultimately, an Award (Annexure P-2A) of Rs.1,03,99,437/- along with interest at the rate of 18% per annum was passed in favour of petitioner/lessor on 25.09.2006. Against this Award, respondent No.1 filed an objection petition under Sections 34 and 31 of the Arbitration & Conciliation Act, 1996 before the Additional District Judge, Amritsar, taking preliminary objection that copy of the Award was received by him on 08.12.2006; he was not given the proper notice of appointment of the Arbitrator and was, otherwise, unable to present his case. Another objection taken was that the respondent-objector had been declared to be a sick company by the Board of Industrial & Financial Re-Construction under the Sick Industrial Companies (Special Provisions) Act, 1985, therefore, the aforesaid Award was liable to be set aside and could not be implemented in the eyes of law.

In response to the objection petition, the present petitioner filed an application under Order 14 Rule 2 read with Section 151 CPC contesting the territorial jurisdiction of the Court at Amritsar. This application has been dismissed vide impugned order dated 19.04.2012 (Annexure P-1).

per Clause 39 of the bilateral lease agreement, it was agreed between the parties that any arbitration or legal proceedings shall be instituted in Delhi Courts only, which shall have the exclusive jurisdiction to try any arbitration legal proceedings or any suit in respect of any matter, claim or dispute arising out of this Agreement regarding equipment leased out. As per Clause 39-A of the agreement (Annexure P-2), it was further agreed that all disputes shall be settled by arbitration in accordance with the provisions of the Indian Arbitration Act, 1940, which shall be referred to the sole arbitration of Mr. R.K. Chadha, Advocate and in his absence, Mr. Vinod Chandiok and the award given by the Arbitrator would be final and binding on both the parties. As per Section 2 (e) of the Arbitration and Conciliation Act, 1996 read with Section 39 of lease agreement (Annexure P-2), the Award passed by the Arbitrator can only be challenged in a competent Court at Delhi. Learned counsel for the petitioner has referred to the judgments passed by this Court in Harinder Kumar Vs. M/s Coromandal Fertilizers Ltd., 1998 (3) RCR (Civil) 691 and Modern Food Industries (India) Ltd. Vs. Mukerian Papers Limited and another, 2003 (3) PLR 150.

On the other hand, learned counsel for respondent No.1 has argued that provisions of Order 14 Rule 2 CPC are not attracted to the Arbitration and Conciliation Act. Once, objection under Section 34 of the Act are filed, they are required to be proved according to law and same cannot be proved except by summoning witnesses and proving relevant documents. He has further argued that the Civil Court has all the jurisdiction to entertain the objection and issue of territorial jurisdiction can only be decided after evidence is led by the parties. It cannot be decided as a preliminary issue. In support of his arguments, learned counsel for the

Court in **Sameer Suresh Gupta through Pa Holder Vs. Rahul Kumar Agarwal**, 2013 (9) SCC 374. In that case, the High Court while exercising powers under the revisional jurisdiction had set aside the order of the Tribunal on the preliminary issue of territorial jurisdiction.

This Court in **Nebh Raj etc. Vs. Sunder Dass etc.**, 1979 Current Law Journal (Civil) (P&H) 335, has held that the issue involving the question of law and fact cannot be treated as a preliminary issue.

In view of the parameters set out by the Hon'ble Supreme Court in **Sameer Suresh Gupta's** case (supra), this Court is of the view that the trial Court has rightly dismissed the application filed by the petitioner by making reference to the judgments given in **Hardev Singh Sodhi Vs. Usha Trehan**, 1999 (Suppl.) Civil Court Cases 294.

Mr. Mittal, learned senior counsel for the petitioner has further referred to the order dated 22.09.2009 passed by this Court in **B.I. Publications Pvt. Ltd. Vs. Pratap Steel Rolling Mills (1935) Ltd. and another**, CR No.3301 of 2009. This petition was filed against the order passed by the trial Court, whereby some witnesses were ordered to be summoned pursuant to an application filed by the objector. Thereafter, the petitioner filed an application under Order 47 Rule 1 CPC to recall the order dated 31.10.2007 permitting the summoning of witnesses along with documents. This Court while exercising the revisional jurisdiction had set aside the said order and given a direction to the District Judge, Amritsar to reconsider the relevance and purpose of summoning of the witnesses and the documents which were sought to be summoned. It is held that the said Court would be entitled to ask the objector to furnish the detailed particulars

and the purpose for which the witnesses or the documents were sought to be produced/summoned. Learned counsel for the petitioner finally argued that the main aim of the respondent/objector was to delay the execution of the Arbitration Award.

After hearing learned counsel for the parties, this Court is of the view that even the order dated 22.09.2009 passed by this Court in CR No.3301 of 2009 will have no bearing on the impugned order, whereby application under Order 14 Rule 2 CPC for treating the issue of territorial jurisdiction as preliminary issue, has been dismissed. The scope of interference in the impugned order is limited, as no illegality, much less perversity has been found therein warranting interference by this Court.

Resultantly, all the petitions i.e. CR Nos.4336 to 4340 of 2012 are dismissed.

30.03.2016  
ajp

(RITU BAHRI)  
JUDGE