

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4638 of 2014

Date of Decision: 29.04.2016

Amritsar Improvement Trust, Amritsar

... Petitioner(s)

Versus

Akhara Brahm Buta, Amritsar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Khushdeep Singh Mann, Advocate
for the petitioner(s).

Mr. Ravi Badyal, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 4.1.2014, passed by learned Additional Civil Judge (Senior Division), Amritsar, accepting the application filed by the respondent, thereby making award dated 31.10.1995 of the arbitrator as Rule of the Court.

Learned counsel for the petitioner submitted that the present proceedings are arising out of the Arbitration Act, 1940 (hereinafter referred to as "the Act"). The award was pronounced by

the arbitrator on 31.10.1995. Earlier, respondent filed an application under Section 20 of the Act on 6.10.1978. The respondent had filed objections on 15.11.1996 against award dated 31.10.1995, passed by the arbitrator. On 30.9.2010, learned Additional Civil Judge (Senior Division), Amritsar dismissed the objections filed by the petitioner and that way observation has been made by the Court that respondent never filed any formal application for making the award as Rule of the Court and objections of the respondent were also dismissed being premature. Thereafter, the respondent moved an application dated 30.9.2010 before the Court below for making the award dated 31.10.1995 as Rule of the Court and prayed that order passed on such application is liable to be set aside on the ground that the objections were not filed within stipulated period of 30 days and even objection petition was not filed for making award as Rule of the Court within stipulated period of 30 days.

Learned counsel for the respondent submitted that present petition is not maintainable because the order under challenge is an appealable order as per provisions of Section 39 of the Act and prayed that present petition be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that present matter is not covered as per Section 39 of the Act. For ready reference, Section 39 is being reproduced hereunder:-

"39. Appealable orders:- (1) An appeal shall lie from the following orders passed under this Act (and from no

others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order :-

An order –

- (i) superseding an arbitration;*
- (ii) on an award stated in the form of a special case;*
- (iii) modifying or correcting an award;*
- (iv) filing or refusing to file an arbitration agreement;*
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;*
- (vi) setting aside or refusing to set aside an award;*

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

The above provision reveals that present case is not covered under either of the above mentioned clauses and as such, the plea taken by learned counsel for the petitioner is not liable to be tenable.

Now coming to the point of legality and validity of the order dated 4.1.2014. Undisputedly, the award was passed on 31.10.1995 and application for making the said award as Rule of the Court was filed on

30.9.2010 i.e. after 15 years. As per Article 119 of the Limitation Act, 1963, an application for making the award as Rule of the Court is 30 days and as per Section 137 *ibid*, the maximum period is three years. For ready reference, Articles 119 and 137 of the Limitation Act, 1963 are reproduced as under:-

	Description of application	Period of limitation	Time from which period begins to run
119.	Under the Arbitration Act, 1940 (10 of 1940)		
a)	For the filing in court of an award	Thirty days	The date of service of the notice of the making of the award.
b)	For setting aside an award or getting an award remitted for reconsideration	Thirty days	The date of service of the notice of the making of the award.
120 to 136.	XXX	XXX	XXX
137.	Any other application for which no period of limitation is provided elsewhere in this division	Three years	When the right to apply accrues

The above provisions make it clear that application for making award as Rule of the Court is to be filed within a period of 30 years and at the most the period of limitation can be considered to be three years. But undisputedly, in the present case, application has been filed much beyond the period of limitation without any justifiable ground and the Court below has completely ignored this fact while passing the

order under challenge.

In view of above, present petition is hereby accepted and
impugned order dated 4.1.2014 stands set aside.

(Shekher Dhawan)
Judge

April 29, 2016
"DK"