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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.6105 of 2014
Date of Decision: 12.2.2016

Rajinder Singh

---Petitioner

versus

Sikander Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Puja Chopra, Advocate
for the petitioner

Mr. J.S.Dhaliwal, Advocate
for the respondent

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1. Whether Reporters of local papers 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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Rekha Mittal, J.

By invoking Article 227 of Constitution of India, challenge has been laid to the order dated 22.7.2014 passed by the Additional District Judge, Ludhiana whereby the application filed by the respondent for amendment of the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the Act'), has been allowed.

The present litigation is an off shoot of a tug of war between the parties who were/are the partners in the business of a marriage palace in the name and style of 'Hotel Simran and Canal View Restaurant' and they

also raised loan from the Punjab Financial Corporation for the said purpose. An arbitration award dated 12.12.2009 in regard to aforesaid business was passed against the respondent and he has filed objections under Section 34 of the Act. The petitioner filed arbitration case No. 131 of 2011 under Section 11 of the Act for appointment of an Arbitrator on the ground that the respondent had not rendered accounts for the period after 14.10.2009 and the petitioner had been ousted from business. The petition was disposed of by this Court vide order dated 27.9.2013 (Annexure P-4) and an Arbitrator was appointed to enter upon the reference and adjudicate the disputes inter se the parties qua settlement of accounts of partnership firm. However, as per order dated 27.9.2013, it was agreed that other pending litigation would also come to an end inter se the parties except the earlier award to which objections have been filed by the respondent which would be decided on its merits.

The respondent filed an application under Order VI Rule 17 of the Code of Civil Procedure (in short "CPC") for amendment of the objection petition in order to add two new grounds by adding para Nos. 7 and 8 after para No. 6, read thus:-

> "A That the respondent Rajinder Singh entered into panchayat agreement dated 12.7.2010 whereby he agreed to appoint four persons as arbitrators and it was agreed that the decision of those persons shall be binding upon the parties. This only shows that Rajinder Singh agreed that the award given by the arbitrator earlier is invalid and is wrong. This will be treated as para No. 7 of the application.

B. The award is also bad as both the parties undertook not to approach the court till the final return of the entire loan amount taken form the P.F.C. It is a fact that the amount to the P.F.C. remains to be paid and the entire property is under mortgage. This will be treated as para No. 8 of the application."

After seeking reply of the petitioner, the application was allowed by the Court. Feeling aggrieved, the present petition has been filed by the award holder.

Counsel for the petitioner has assailed correctness and legality of the impugned order primarily on two counts. She has argued with vehemence that as the entire dispute between the parties has already been settled as per order dated 27.9.2013 passed in Arbitration case No. 131 of 2011, the respondent is not entitled to agitate the alleged agreement dated 12.7.2010 by seeking amendment of the objection petition. It is further argued that the compromise dated 12.7.2010 (Annexure P-5) is nothing but was prepared under the influence of the police when the petitioner was summoned by Superintendent of Police on the basis of an application/complaint submitted by the respondent. The petitioner filed a civil suit to challenge the alleged compromise dated 12.7.2010 but the same was later withdrawn by him in view of compromise effected between the parties as recorded in the order dated 27.9.2013. A serious prejudice would be caused to the petitioner in case the respondent is allowed to set up the said compromise to challenge the arbitral award dated 12.12.2009 passed in favour of the petitioner.

Another submission made by counsel is that the respondent

examined himself as a witness and tendered into evidence his affidavit dated 9.3.2011(Annexure P-6) by way of examination in chief and his cross examination was concluded on 12.8.2011. The affidavit filed by the respondent does not make reference to the compromise dated 12.7.2010 and the proposed amendment has been sought at the fag end of the trial with a sole intent to delay the proceedings, therefore, the trial court has committed a serious error rather illegality in allowing the application for amendment.

Counsel for the respondent, has not disputed that dispute between the parties with regard to appointment of an Arbitrator in arbitration case No. 131 of 2011 titled "Rajinder Singh Chauhan vs. Sikander Singh" was set at rest by an order dated 27.9.2013 passed by this Court. The respondent in the case filed his detailed reply to contest claim of the petitioner for referring the matter to an Arbitrator and one of the grounds in the reply was that dispute between the parties has been settled by way of panchayat compromise dated 12.7.2010 and a copy of the compromise was also appended with the reply. It is further argued that this Court while disposing of arbitration case No. 131 of 2011 did not adjudicate contesting claims of the parties and disposed of the petition in view of the agreement between the parties but right of the respondent to pursue his objections against the award in question were allowed to proceed further for its adjudication on its merits. It is further argued that once the respondent has been permitted to pursue his remedy /objections against the earlier arbitral award in accordance with law, the order dated 27.9.2013 cannot create an estoppel against his pleading the panchayat compromise dated 12.7.2010. In addition, it is submitted that if the respondent is allowed to set up the said

document by way of amendment in his objection petition, the petitioner would rather get an opportunity to contest the said document on any of the grounds available to him, in accordance with law. Therefore, no prejudice would be caused to the petitioner merely because he has withdrawn his civil suit wherein challenge was laid to the document dated 12.7.2010. The last submission made by counsel is that at the stage of allowing amendment of pleadings, the court is not competent to go into merits of the pleadings, to be decided by the court after permitting the parties to adduce evidence in respect of their respective claims.

I have heard counsel for the parties and perused the records.

Be that as it may, it is an admitted position of the case that in arbitration case No. 131 of 2011 filed by the petitioner, the petitioner in reply has set up the panchayat compromise dated 12.7.2010 and a copy thereof was appended with the reply. The petition was disposed of by this Court on the basis of agreement and the Court issued the following directions vide order dated 27.9.2013:-

> "a)The remaining outstanding loan payable to the Punjab Financial Corporation under the OTS Policy of 2009 will be cleared by both the parties contributing equally to the said amount and it will be ensured that the loan is cleared on or before 31.03.2014.
>
> b) In the interregnum period, both the parties will nominate one nominee for the purpose of running of the business of the booking of the Marriage Palace and accounts will be

jointly maintained by the two nominees. Such nominee will be appointed within one week from today by inter-se communications through counsels.

c) In order to finally resolve the dispute, Shri Sukhdev Kumar Garg, a retired Addl. District & Sessions Judge, # 487-A, Model Town Extension, Ludhiana (Mobile No. 098144- 50864)is appointed as sole Arbitrator to enter upon the reference and adjudicate the disputes inter-se the parties qua settlement of accounts of partnership firm which would stand dissolved on clearance of the outstanding of the Punjab Financial Corporation. The venue of arbitration will be at Ludhiana. The fee of the Arbitrator will be as per the High Court Arbitration Rules.

d) With the agreed terms, all other pending litigations would also come to an end inter-se the parties except the earlier award to which objections have been filed by the respondent which would be decided on its own merits.

This petition is accordingly disposed of."

A perusal of directions issued by the Court would make it evident that this court appointed a retired Additional District and Sessions Judge as a sole Arbitrator to adjudicate the disputes inter se the parties qua settlement of accounts of partnership firm which would stand dissolved on clearance of outstanding loan of the Punjab Financial Corporation.

Fortunately, as has been been made understand to the Court, parties have already cleared the outstanding of the Punjab Financial Corporation and arbitration proceedings in pursuance of order dated 27.9.2013 have culminated in an arbitral award in favour of the petitioner.

The question that calls for determination is "*whether the respondent is estopped from pleading panchayat compromise dated 12.7.2010, in view of order dated 27.9.2013 passed by this Court?"*

The answer, in my considered opinion, is in the negative. Admittedly, this Court has not decided the contesting claims of the parties and consequently plea of the respondent that a compromise was effected between the parties on 12.7.2010 has not been decided on the basis of merit. Further more, once the respondent has been allowed to pursue his objection petition preferred against the earlier award, the respondent will be within his right to challenge the said arbitral award on any of the grounds available to him, in accordance with law. The mere fact that the petitioner has withdrawn his civil suit wherein he challenged the said panchayat compromise cannot be taken as a valid ground to deny the respondent to plead and prove the said document. As has been rightly argued by counsel for the respondent that in case the respondent is permitted to plead the said document, the petitioner would be entitled to file his reply to the amended petition and adduce evidence to contest the said document on any of the grounds available to him. In this view of the matter, I find myself unable to accept the submissions of the petitioner that the respondent is barred from pleading panchayat compromise (annxure P-5) in view of the agreement, recorded in the order dated 27.9.2013.

So far as the plea that the affidavit filed by the respondent by way of examination in chief does not make reference to the panchayat compromise, the same is misconceived and liable to be rejected. There was no occasion for the respondent to make reference to document dated 12.7.2010 in absence of pleadings in this regard. The document allegedly came into existence subsequent to filing of the objection petition. The same was pleaded in reply to the arbitration case filed before this Court. It is also an admitted fact that the petitioner himself filed a suit to challenge the said document. Under these circumstance, it cannot be said that this document has been procured by the respondent subsequent to his examination in the court. On the contrary, mere delay in filing the application for amendment cannot be taken as a valid ground to deny the relief if proposed amendment is otherwise necessary for complete and effective adjudication of the matter in controversy. In view of the above, I do not find any merit in the submissions of the petitioner that the impugned order demonstrates any error much less illegality committed by the Court below as would call for intervention.

For the foregoing reasons, the petition is dismissed leaving the parties to bear their own costs. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

12.2.2016
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