IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6441 of 2016 (O&M)
Date of decision : 11.11.2016

Punjab Roads and Bridges Development Board and another ...Petitioners

Versus

M/s Som Datt Builders Pvt. Ltd. and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Dinesh Kumar Gupta, Advocate and
Mr. P.S. Bajwa, DAG, Punjab for the petitioners.

Ms. Anusuya Salwan, Advocate and
Mr. Rajbir Wasu, Advocate for respondent Nos.1, 1A and 2.
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AMIT RAWAL, J. (Oral)

The present revision petition is at the instance of Punjab Roads and Bridges Development Board and another against the Contractor to whom contract was awarded for completion of work. A dispute arose between the parties resulting into passing of the award on 01.06.2013. The arbitration proceedings were commenced in June, 2011. The claim of the contractor before the arbitrator was regarding the labour cess and entry tax though the Arbitrator had rejected and declined labour cess but accepted the entry tax. Both the parties being aggrieved of the same filed the objection petitions. The objection petition of the petitioners was preferred at Ludhiana and whereas that of the respondents is at Patiala qua declining of the labour cess.

It has been stated that both the objection petitions have now been tried by the Ludhiana Court. The objection petition at the instance of the petitioners was instituted in the month of August, 2013. During the pendency of the aforementioned objection petition, an application (Annexure P-3) dated 09.07.2015 came to be filed seeking permission of the Objecting Court to lead evidence with regard to the information sought from the Assistant Excise and Taxation Commissioner regarding assessment year 2010-11.

Learned counsel for the petitioner submits that aforementioned information is essential and necessary for the adjudication of the controversy and no harm would be caused to the respondents in case the affidavit in support of the aforementioned evidence is filed, the contractor would have a right to cross-examine the concerned witnesses. In support of his contentions, he has relied upon ratio decidendi culled out by Division Bench of this Court in *M/s Punjab State Industrial Development Corporation Ltd. Vs. Sunil K. Kansal, 2013(7) RCR (Civil) 2606* and as well as *Fiza Developers & Inter-Trade P. Ltd. Vs. AMCI (I) Pvt. Ltd., 2009(17) SCC 796*.

He submits that in objection petition filed by the contractor regarding the declining of the labour cess, identical relief has been granted and, therefore, such relief is necessary and essential, much less, is on the basis of parity.

Ms. Anusuya Salwan, learned counsel assisted by Mr. Rajbir Wasu, learned counsel appearing on behalf of respondent Nos.1, 1-A and 2 submits that order under challenge is perfect, legal and justified as information sought to be place on record does not support the case of the petitioners inasmuch as that on perusal of the information, the claim qua entry tax has been rejected on the premise of non-furnishing of particulars, thus, it would have no relevancy for the adjudication of the lis.

She further submits that assuming for the arguments sake, though not admitting, the application is lacking cogent reasons, much less, explanation in not filing it at appropriate time when arbitration proceedings were pending, much less, during the pendency of the objection petition, for, the arbitration proceedings were commenced in June 2011 and concluded on June, 2013 and order of the revenue, though is not relevant, is dated 27.10.2012. The information sought by the petitioner is on 19.05.2014 and supplied on next date i.e. on 20.05.2014. However, the application has been moved after a lapse of 1 year and 2 months. Moving of the application and revision petition is nothing but an adoption of dilatory tactics without realising the fact that interest factor is on.

She further on instructions from his client submits that in the objection petition filed by the contractor, the similar liberty granted to file affidavit shall not be availed, in essence, the affidavit if so filed be treated as withdrawn and submits that objection petition of both the parties being summary in nature is decided strictly in accordance with ratio decidendi culled out in *Fiza Developers & Inter-Trade P. Ltd.'s case* (Supra).

I have heard learned counsel for parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Gupta, for, facts as noticed above would reveal that approach of the petitioner in moving application and seeking information have not only been tardy but is lackadaisical. Even on going through the order of the revenue dated 27.10.2012, claim qua entry tax has been declined, thus, in my view would not have any direct or indirect bearing upon pendency of the objection petition. Since, Ms. Salwan, Advocate has on the basis of statement made by his client has fairly conceded that she would not be pressing for affidavit, thus, it would be totally farcical exercise in permitting the parties to cross-examine the witnesses in support of affidavit filed by the contractor and same is ordered to be treated as withdrawn. There is no dispute to the ratio decidendi culled out by Division Bench as well as by the *Fiza Developers & Inter-Trade P. Ltd.'s case (Supra)* but the fact remains that there has to be some concrete material enabling the Court for adjudication of the objection to be necessary and essential. Having failed to prove the same in view of the observations made hereinabove, I am of the view that this was nothing but totally misconceived attempt to delay the adjudication of the objection petition de hors of the fact that award contains the element of interest. The public money should not be wasted by the Officers by moving of the application at the drop of the hat.

I have already commented on such action of the authorities in so many judgments, yet the Department is prolonging the adjudication for unexplanatory reasons.

In view of what has been noticed above, no ground for interference is made out.

Revision petition is dismissed.

11.11.2016 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**