

122.

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

Civil Revision No.800 of 2016 (O&M)

Date of decision:04.02.2016

Ultratech Cement Limited and another ... Petitioners

versus

Punjab State Electricity Board, now Punjab State Power Corporation
Limited

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. D.K. Singal, Advocate,
 for the petitioners.

K.Kannan, J. (Oral)

1. An incompetent appeal filed by a judgment debtor on an objection filed with the Executing Court has resulted in an order making some observations which according to the petitioner are wrong. I set aside all the observations of the appellate court but restore the order of the Executing Court all the same, for, the appeal was not competent to the appellate court. The petitioner says that he should be given liberty to challenge the order passed by the first court before this court. I am prepared to take this revision as a revision passed against the order of the Executing Court. Before the Executing Court, the objection taken was that the decree is a nullity.

Since there was an arbitral clause, a decree cannot become nullity

merely because there was an arbitral agreement unless an order is invited before the trial court by an application filed under Section 8 of the Arbitration Act. Indeed such an application seems to have been filed by the defendant but he remained ex parte and did not secure adjudication under Section 8. There is an ex parte decree which has been passed already and on the basis of such decree, the plaintiff is entitled to seek for further enforcement. An objection before the Executing Court by the defendant that the decree was nullity was clearly erroneous and correctly disposed of by the court below. I find no cause for an intervention and dismiss the revision petition.

2. It is further stated that the application to set aside the ex parte decree was dismissed and he has preferred an appeal to the appellate court. The appellate court will consider the case on merits of his contention for setting aside the ex parte decree. The proceedings undertaken by the appellate court will be guided by what is relevant for consideration in such an application and this adjudication of objection before the Executing Court and his failure to sustain the objection will not come in the way.

(K.KANNAN)
JUDGE

04.02.2016
sanjeev