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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CR-8595-2015 [O&M]
Date of Decision : March 29th, 2016

M/s Sharma and Gangahar Builders Petitioner

Versus

Amritsar Improvement Trust and another .. Respondents

2. CR-8596-2015 [O&M]

M/s Dhillon and Randhawa Builders Colonizers Petitioner

Versus

Amritsar Improvement Trust and another .. Respondents

3. CR-8597-2015 [O&M]

M/s Sharma and Gangahar Builders Petitioner

Versus

Amritsar Improvement Trust and another .. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Bikramjit Aroura, Advocate,
for the petitioner.

Mr. Anil Sharma, Advocate,
for respondent No.1.

SHEKHER DHAWAN, J.

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Challenge in the above titled three Civil Revision Petitions is to the order dated 07.11.2015 (Annexure P-1) vide which application for condonation of delay in filing the objections under Section 34 of Arbitration and Conciliation Act, 1996 (for short, 'the Act') was allowed wrongly and illegally. All above said Civil Revision Petitions, bearing CR Nos. 8595 to 8597 of 2015 are being disposed of by this common judgment.

2. Relevant facts of the case for the purpose of decision of this petition; that in an arbitral proceedings pending before the Arbitrator; respondent No.2 i.e. Arbitrator passed an arbitral award on 08.05.2013 whereby the respondent i.e. Improvement Trust Amritsar was ordered to allow the petitioner to deposit the balance amount after deducting 20% from the original sale price along with 12% interest within 60 days in lump sum. After waiting for a sufficient time the petitioner moved an application before Chairman, Improvement Trust, Amritsar on 27.06.2013 to intimate the balance amount of the shop in question as per the award dated 08.05.2013 and copy of said award was also enclosed. However, respondent No.1 i.e. Improvement Trust filed objections against the arbitral award on 27.05.2014 though the same was much beyond the period of limitation. The objections were accompanied with the application under Section 5 of the Limitation Act, 1963 and the Court below allowed the said application.

3. Learned counsel for the petitioner while assailing the said order submitted that the award was passed in presence of counsel for both the parties on 08.05.2013 and that is the date of knowledge for the respondents but the Court below completely ignored this fact while passing the order under challenge. In support of his arguments reliance has been

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placed upon judgment of co-ordinate Bench of this Court in case **Rajinder Kaur Vs. Union of India, Department of Road Transport and Highways and others, 2014(2) PLR 128** and in case **Tez Kaur Vs. Union of India and others CR-4828 of 2012 decided on 16.09.2013.**

4. While arguing further, learned counsel for the petitioner submitted that in case of filing objections against award, provisions of Section 5 of the Limitation Act are not applicable and the said application is liable to be rejected as per provisions of Section 34(3) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as "the Act"). In support of his arguments reliance was placed upon judgment of Hon'ble Apex Court in case **Union of India Vs. M/s Popular Construction Co. 2002(1) RCR (Civil) 124** wherein such a view was taken.

5. While arguing on this point, learned counsel for respondents fairly conceded that provisions of Section 5 of Limitation Act are not applicable in the case in hand but undisputedly period of limitation is to start when the copy of award was delivered and in the case in hand the copy of award was not delivered by the Arbitrator to the respondents. There was nothing on record that Arbitrator has sent copy of award and the same was received by the objector though Arbitrator was duty bound as per provisions of Section 31(5) of the Act. It is also submitted that as per provisions of Section 34(3) of the Act, a period of 30 days more is granted after the lapse of a period of 3 months and the Court below has already dealt with the entire matter in accordance with the law and the present petition is liable to be dismissed.

6. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that there is no dispute that

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provisions of Section 5 of the Limitation Act are not applicable to the present set of facts. However, as per provisions of Section 31(5) of the Act, the Arbitrator is bound to deliver a signed copy of the arbitral award to each party. The Court below while placing reliance upon judgment of Hon'ble Supreme Court in case **Union of India Vs. Tecco Tricy Engineers & Contractors, 2005(2) RCR (Civil) 420** observed that as in this case Arbitrator failed to deliver the signed copy, the period of limitation did not start to run as per contention of learned counsel for the present petitioner. In **Union of India Vs. Tecco Tricy Engineers & Contractors** (supra) Hon'ble Apex Court observed as under:

“The delivery of an arbitral award under sub-Section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the arbitral tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.”

7. The Court below also rightly observed that as per view taken by

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Hon'ble Apex Court in case **State of Maharashtra and others Vs. M/s Ark Builders Pvt. Ltd.** 2011 AIR SC (Civil) 729, the word “delivered” appearing in Section 31(5) cannot be equated with “dispatched” even and as per provisions of sub-section (5) of Section 31 it does not require that a copy of the arbitral award should be sent off by the Arbitrator to the concerned party, but it is required that copy of the arbitral award be handed over to the proper parties and that is the case before this Court.

8. The Court below has rightly dealt with the matter while condoning the delay in filing the objection under Section 34(3) of the Act and the order dated 07.11.2015 do not call for any interference.

9. In view of the above, all three Civil Revision Petitions stand dismissed.

(SHEKHER DHAWAN)
JUDGE

March 29th, 2016
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