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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4594-2002 (O&M)

Date of decision : 11.03.2016

M/s Chopra Cables

...Appellant

Versus

Haryana Vidyut Parsaran Nigam Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek Suri, Advocate
for the appellant.

Mr. Arvind Seth, Advocate
for respondent No.1.

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

AMIT RAWAL, J. (ORAL)

The appellant-Contractor is aggrieved of the impugned order dated 01.06.2002, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') at the instance of the respondent(s), seeking setting aside the Award dated 18.03.1999, have been allowed and the matter has been remitted back.

Mr. Vivek Suri, learned counsel appearing on behalf of the appellant-Contractor relies upon the judgment of Division Bench of Bombay High in case titled as **“Geojit Financial Services Ltd. Vs. Kritika Nagpal”** **decided on 25.06.2013** and contends that the Objecting Court has no power to remand back the matter to the Arbitrator, until and unless, the conditions as

envisaged under sub-Section 4 of Section 34 of the 1996 Act have not been complied with. At the best, the Objecting Court could have set aside the award leaving the party to seek further vindication of their grievance.

Mr. Arvind Seth, learned counsel appearing on behalf of respondent No.1 submits that the objections were falling within the realm of Section 34 of the 1996 Act and as much as that the Award of the Arbitration lacks reasons as per sub-Section 3 of Section 28 of the 1996 Act, thus, rightly so, the objections have been allowed and there is no illegality and perversity in the impugned order.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a merit in the aforementioned contentions. It would be apt to reproduce para No.14 of the judgment cited supra, which reads thus:-

“14. Under sub-section 4 of Section 34, the Court is vested with the discretion, where it is appropriate and where the court is requested by a party, to adjourn the proceedings for a period of time. An adjournment is granted in order to furnish the arbitral tribunal with an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the Tribunal will eliminate the grounds for setting aside the award. Subsection 4 of Section 34, therefore, does not contemplate a situation where the proceedings are remanded back to the arbitrator after setting aside the arbitral award. Once an arbitral award is set aside under Section 34, that brings to a conclusion a proceeding before the Court. What sub-Section 4 of Section 34 envisages is an opportunity to the arbitral tribunal to resume the arbitration proceedings or to take such other action as would eliminate the grounds for setting aside the award. Without meaning to be exhaustive, we can conceive of a situation where the arbitral

tribunal has overlooked a particular item of claim on which parties have led evidence and have addressed arguments. A challenge to the arbitral award in such a case would be on the ground that the arbitral tribunal has failed to decide a claim which was raised, controverted and submitted upon. The provisions of Section 34 enable the Court to adjourn the petition under Section 34 so that instead of setting aside the award, the arbitral tribunal can resume the proceedings and take necessary steps to eliminate a ground of challenge. Section 34(4), however, does not contemplate or vest a power in the Court to remand proceedings back to the arbitral tribunal once the Court has set aside the award. Once an award has been set aside, recourse cannot be taken to Section 34(4) since it is evident that the power can be exercised by the Court while adjourning a petition under Section 34.”

In view of the aforementioned legal position, I am of the view that the Objecting Court has no power to remand back the matter as the case was not falling within the provisions of sub-Section 4 of Section 34 of the 1996 Act, it could have either set aside the award or dismiss the petition, but not in the manner and mode as has been followed.

Keeping in view the aforementioned facts and circumstances, the impugned order dated 01.06.2002 is set aside and the matter is remitted back to the Objecting Court and the Objecting Court shall decide the objections in accordance with law as expeditiously as possible preferably within a period of three months after issuing the notice to the parties.

With the aforesaid observations, the appeal is allowed.

11.03.2016
yogesh

(AMIT RAWAL)
JUDGE