

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

**FAO No.5260 of 2012 (O&M).**

**Date of decision:05.05.2016**

M/s Ajay Construction Company

... Appellant

Vs.

Haryana Police Housing Corporation Ltd. & another ... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

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

Present:- Mr. D. K.Singal, Advocate  
for the appellant.

**AMIT RAWAL J. (Oral)**

The appellant-contractor is aggrieved of the impugned order, whereby, sought indulgence of the Principal Court by invoking the provisions of Section 9 (e) of the Arbitration and Conciliation Act, 1996 (in short "1996 Act") for passing an appropriate order.

Mr. D.K.Singal, learned counsel appearing on behalf of the appellant-contractor submits that vide letter dated 16.06.1997 (Annexure A-1) appointment of the Arbitrator was sought as the payment of the bill had not been released by the Haryana Police Housing Corporation, Panchkula. The Arbitrator, vide letter dated 27.06.1997 entered into a reference, who, was none else but the Superintending Engineer, Haryana Police Housing Corporation Limited, Panchkula which fact is evident from Annexure A-3.

Thereafter, Arbitrator was transferred and he asked for consent whether both the parties wanted resolution through the same very Arbitrator. Accordingly, both the parties gave their consent. This fact is evident from Annexures A-5 and A-6. He further submits that vide letter dated 5/9-11-1999, Executing Engineer submitted an application before the Arbitrator having not complied with the provisions of Section 25 of 1996 Act and did not file the claim, thus, request was made for termination of the proceedings. He also submits that the said objection was over ruled by the Arbitrator, vide order dated 29.12.1999 (Annexure P-9), yet the Managing Director, vide order dated 24.03.2000 (Annexure A-8) rescinded the order appointing Arbitrator for having not deposited the requisite fee which was a condition precedent for filing the claim petition. He further submits that once the Arbitrator had entered into a reference, Managing Director was not having no locus standi qua jurisdiction.

It is in these circumstances, an application was filed before the Principal Court, as per the provisions of Section 9(e) of 1996 Act, which was also rejected and thus, urges this Court for setting aside of the impugned order and order dated 24.03.2000 (Annexure A-8).

Respondents have been served. However, there is no representation on their behalf. Accordingly, I proceed to decide the appeal on merits.

It is the domain of the Arbitrator to terminate the

proceedings and not that of the Managing Director. For the sake of brevity, Section 25 of 1996 Act reads thus:

25. Default of a party.—Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

For the sake of brevity, the contents of letter dated 5.11.1999 (Annexure A-7) and letter dated 29.12.1999 (Annexure P-9) read thus:-

*“HARYANA POLICE HOUSING CORPORATION LTD.  
(A Haryana Government Undertaking)  
301, Urban Estate No. II, Hisar  
REGD*

*HPHC/HSR/99/1977*

*No. \_\_\_\_\_*

*Dated 09.11.99*

*To*

*Joginder Singh, Arbitration,*

*H. No. 660, Sector 6, Panchkula.*

*Sub: Arbitration case-Constn. Of 45 Nos. houses at*

*Faridabad.*

*Ref: Your Letter No. nil dated 23.10.99 received in this office on 2.11.99.*

*It is intimated that no claim petition from M/s Ajay Construction Co., M-95, Front Basement Greater Kailash-2, New Delhi has been received in this office so far.*

*Your goodself is again requested to go through the contents of this office letter No. 1842 dated 11.10.99. This office had quoted section 25 of the Arbitration Act 1996 which stipulates that if the claimant fails to communicate the statement of his claim within reasonable time the Arbitrator shall terminate the proceedings.*

*It is therefore, again requested to terminate the arbitration proceedings in the interest of justice and fairplay.*

*Sd/- 05.11.1999  
EXECUTIVE ENGINEER, (P)  
HR. POLICE HSG. CORPM. LTD.,  
HISAR"*

**Annexure P-9**

**Proceeding of 45 No. Houses in P.LFBD dated 29.12.1999.**

**Present:-** 1. Sh. CB Sharma EEHSR  
2. Sh. Jaswant Singh ADA  
3. Sh. R.K Vij for Ajay Construction Company

- *One EE objected to the late filing of claims. Quoted Section 25 of the Arbitration Act 1996. It is requested*

*termination of the proceedings Sh. Vij Ld. Counsel of the contractor quoted clause 23 to be read with Section 25 & requested to proceeding against the Deptt. Vide Section 25 (b). The arbitrator over ruled both & requested EE to file defence within two months.*

- EE produced clause 25 (a) of the agreement that the arbitrator should not act as such as he has been transferred. Sh. Vij Ld. Counsel of the contractor refer to authorities of the local Hon'ble High Court that the appointment of the present Arbitrator by name & he can act as such. EE/ADA HPHC did not agree with this view. The Arbitrator agreed with Sh. Vij & directed the EE to send his defence within (two months).*
- The next date is fixed 02.03.2000 at 11 A.M. in H.No. 1299, Sector-37 B Chandigarh. No seperate notice will be sent to the parties.*

*Sd/-  
EE*

*Sd/-  
Advocate*

*Sd/-  
Arbitrator"*

In view of the aforementioned facts, the impugned letter dated 24.03.2000 passed by the Director General of Police-cum-Managing Director, Haryana Police Housing Corporation, is not sustainable. For the sake of brevity, impugned order dated 24.03.2000 (Annexure A-8) reads thus:-

*"On the application of M/s Ajay Construction Company,*

*Faridabad for the appointment of an Arbitrator, shri Joginder Singh, the then Superintending Engineer, Haryana Police Housing Corporation was appointed as Arbitrator vide order No. 2955 dated 19.6.97 in respect of the construction of 45 houses at Faridabad. The appointment was subject to the condition that the agency will submit the requisite fee alongwith their claims. Whereas M/s Ajay Construction Company has submitted the claims but has failed to deposit the fee till dated. The Agency has willfully violated the condition of the order which in any case is an essential pre-condition fee application for appointment of Arbitrator as part of the original contract document itself. As such the order appointing the Arbitrator is hereby rescinded.*

*Sd/-  
Director General of Police-Cum-  
Managing Director,  
Haryana Police Housing Corpn.*

*Copy forwarded to: No. 1732-35 Dated 24.3.2000*

- Shri Joginder Singh, Arbitrator retired Chief Engineer, PWD B&R, House No. 660, Sector 6, Panchkula for information and necessary action please.*
- Manager Finance, HPHC, Panchkula for information and necessary action please.*
- Executive Engineer, HPHC, Hissar for information and necessary action please.*

*M/s Ajay Const. Co. M-95, Front Basement, Greater Kailash-2, New Delhi.*

It is in these circumstances, the Managing Director invoked the jurisdiction under Section 9(e) of 1996 Act but the Principal Court also did not come to any aid. Once the mandate of the arbitration proceedings, in case, consented or termination of the proceedings, Managing Director did not have jurisdiction in appointment of the Arbitrator.

For the forgoing reasons, the impugned order dated 24.03.2000 is set aside and the proceedings shall commence from the date when the case would be listed before the Arbitrator after due information about hearing of the matter to the parties through their counsels.

At this stage, Mr. D.K.Singal, learned counsel for the appellants informed the Court that during the interregnum, the Arbitrator has expired. He further submits that his clients would be submitting an application before the concerned authority for appointment of the Arbitrator. Let the necessary steps be taken in this regard.

In view of the aforementioned observations, the appeal stands disposed of.

**(AMIT RAWAL)**  
**JUDGE**

**May 05, 2016**  
savita