

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.3473 of 2013 (O&M)

Date of decision:19.09.2016

Vijay Kumar

... Appellant

Vs.

DHBVN and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rose Gupta, Advocate
for the appellant.

Mr. P.S.Poonia, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The appellant is aggrieved of the impugned order dated 18.03.2013, whereby, the matter regarding the consumption of electricity charges after a round of civil litigation was referred to the Arbitrator.

Mr. Rose Gupta, learned counsel appearing on behalf of the appellant submits that award was in consonance with the provisions of Arbitration and Conciliation Act 1996 (hereinafter referred to as “1996 Act”) and the objections of the respondents were not falling within the realm of Section 34 of 1996 Act. Even the alleged checking of the meter came to be debated before the Arbitrator which was done in the absence of the appellant. The objecting Court has re-appreciated the evidence which is not permissible in the eyes of law and thus, urges this Court for setting aside the findings under challenge.

Per contra, Mr. P.S.Poonia, learned counsel appearing on behalf of the respondents submits that it was a clear cut case of theft. Since the resolution of dispute was through arbitration, the matter was sent to the Arbitrator. Though the appellant had earlier invoked the jurisdiction of the Civil Court yet the Arbitrator had not assigned any reasons in setting aside the alleged demand. The award is not in consonance with the provisions of Section 31(3) of 1996 Act and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book.

For the sake of brevity, the operative part of the impugned order reads thus:-

“6. In the present case, the dispute between the parties was with regard to the checking conducted by Nigam in the premises of the respondent no.1 on 5.9.97 and consequent penalty imposed upon him. Respondent No.1 filed civil suit no.267 of 1997 against the Nigam, which was decreed and checking report was held to be illegal, null and void and memo imposing penalty of Rs.1,35,413/- on the basis of the said checking report was also set aside. Nigam preferred appeal and the same was disposed of vide judgment dated 10.10.2002 and the trial Court judgment was set aside and Consumer/respondent No.1 was given the liberty to avail remedy of departmental appeal before the competent authority.

Thereafter, respondent No.1 filed an appeal and the Arbitrator was appointed. Thereafter, the parties led their respective evidence before the Arbitrator and impugned award dated 20.11.2009 was passed. However, the Arbitrator held that finding and decision of the Court in civil suit no.267 of 1997 and judgment dated 9.11.2001 is in order and as such, penalty imposed upon the consumer was ordered to be withdrawn and refund of the amount deposited was ordered. In this manner, the Arbitrator has only declared the finding in civil suit no.267 of 1997 to be in order, whereas the same had already been set aside. Once the parties had entered into arbitration, the Arbitrator was required to record reasons and thereafter, announce the award with his own reasonings and he could not have adjudicated upon the validity of the judgment of the Civil Court. However, no reasons have been recorded by the Arbitrator as to how he held the checking report dated 5.9.97 and penalty imposed upon the consumer to be illegal. As such, impugned Award is not sustainable and it is contrary to fundamental policy of Law for non recording of reasons. Same is accordingly set aside and the petition is accepted. However, parties shall bear their own costs. Matter is remitted to Arbitrator to decide the same afresh after recording reasons. Arbitration file be sent back. File be consigned to record room.”

I am of the view that the impugned order is perfectly legal and justified but the direction qua remitting the matter back to the same Arbitrator is not proper. The award of the Arbitrator is not in consonance with the provisions of Section 31(3) of 1996 Act but I am of view that the matter should not be remitted back to the same Arbitrator as there is every possibility of the same very mistake being committed. I do not intend to refer the matter back to the Objecting Court as it would be futile exercise in view of the observations given herein-above.

Both the learned counsel for the parties are ad idem that some retired independent Arbitrator, probably who is a retired personnel of Dakshin Haryana Bijli Vitran Nigam, may be appointed for adjudication of the lis with the consent of the parties. Ordered accordingly.

With the aforementioned observations, the impugned order of the objecting Court is hereby upheld and the award is set aside.

Accordingly, appeal stands disposed of.

(AMIT RAWAL)
JUDGE

September 19, 2016

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No