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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3349-2014 (O&M)
Date of decision : 01.06.2016

Jatinder Gambhir Hospital and another

... Appellants

Versus

M/s Reliance Capital Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.B.S. Sobti, Advocate
for the appellant(s) (in all the appeals).

Mr. Sandeep Suri, Advocate
for respondent No.1 (in all the appeals).

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)

This order of mine shall dispose of the appeals bearing **FAO No.3349 of 2014** titled as **“Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”**, **FAO No.3350 of 2014** titled as **“Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”**, **FAO No.3351 of 2014** titled as **“Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”**, **FAO No.3352 of 2014** titled as **“Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”**, **FAO No.3353 of 2014** titled as **“Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and**

another”, FAO No.3354 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”, FAO No.3355 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”, FAO No.3356 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”, FAO No.3357 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”, FAO No.3358 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”, FAO No.3359 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”, FAO No.3360 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”, FAO No.3361 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”, FAO No.3362 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”, FAO No.3363 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another” and FAO No.2342 of 2014 titled as “Jatinder Gambhir Hospital and another V/s M/s Reliance Capital Ltd. and another”.

The facts are taken from the appeal bearing FAO No.3349 of 2014.

The appellant(s) are aggrieved of the impugned findings rendered by the Objecting Court regarding remanding back the matter to the Arbitrator holding that they were not given the proper notices of the arbitral proceedings and as well as their reference.

Mr. B.B.S. Sobti, learned counsel appearing on behalf of the appellant(s) submits that the scope of remand is limited as per the provisions of sub-Section 4 of Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act'). In this context, he relies upon the Hon'ble Division Bench judgment of Bombay High Court rendered in *Appeal No.35 of 2013* in *Arbitration Petition No.47 of 2009* titled as "*Geojit Financial Services Ltd. Vs. Kritika Nagpal*" decided on *25.06.2013*. If at all, the Objecting Court had formed an opinion that the Award was not in consonance with the principles of natural justice, it could have set aside the Award leaving the parties to open to seek the redressal of the grievance, if any.

He further submits that the respondent(s) did not even send the notice of their intention to appoint the Arbitrator, much less, the provisions of Section 21 of the 1996 Act has not been complied with and thus, urges this Court for setting aside of the observations of the Objecting Court viz-a-viz remand of the matter.

Mr. Sandeep Suri, learned counsel appearing on behalf of the respondent(s) submits that counsel for the claimant had appeared before the Arbitrator and sought adjournments. Though, it has not surfaced in Award, thus, by taking the advantage of the same, the Objecting Court has accepted the objections and remanded back the matter. No harm would be caused if the same Arbitrator is appointed and the parties are given a chance to lead evidence after affording the opportunities of hearing, much less, submission of documentary evidence, thus, urges this Court for affirming the findings of the Objecting Court in entirety.

I have heard the learned counsel for the parties and appraised the paper book and in agreement with the submissions of Mr. B.B.S. Sobti, as the Objecting Court has no power to remand the matter back, at the best, once, it is found that the Arbitrator did not comply with the procedure of principles of natural justice, by not recording any satisfaction with regard to the refusal, much less, ordered for any substituted service, the Award of the Arbitrator should have been set aside, but matter could not be remanded. Though, it has not surfaced as to whether the notice regarding appointment of the Arbitrator, was ever served upon the appellant(s).

The aforementioned observations of mine is fortified by the findings rendered by the Hon'ble Bombay High Court in “**Geojit Financial Services Ltd.'s** case (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.”

For the foregoing reasons, the findings rendered by the Objecting Court regarding setting aside of the Award is upheld and that of the remand is hereby set aside.

The parties shall be at liberty to seek vindication of their grievance in accordance of law.

This order of mine shall not preclude the respondent(s) to seek the appointment of the Arbitrator in accordance with law.

Resultantly, the appeals stand disposed of.

(AMIT RAWAL)
JUDGE

01.06.2016
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