

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.1510 of 2016 (O&M)

Date of decision:27.05.2016

Panjab University Staff (Homes) Provision Associates Cooperative House
Building Society Ltd. (PUSHPAC) ... Appellant

Vs.

M/s Sandhu Contractors Private Limited and 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. Ashwani Kumar Chopra, Senior Advocate with
Mr. Harminder Singh, Advocate
for the appellant.

Mr. D.Hasija, Advocate,
Mr. Ravinder Hooda, Advocate and
Ms. Sandhani B.Saikia, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

Appellant is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”) seeking setting aside of the award dated 03.03.2014.

Mr. Ashwani Kumar Chopra, learned Senior Counsel assisted by Mr. Harminder Singh, Advocate appearing on behalf of the appellant submits that an application under Section 11 of 1996 Act was presented

before the District Judge, Chandigarh on 28.10.2002 which was assigned to the Civil Judge (Senior Division). Vide order dated 13.12.2013, the Civil Judge (Senior Division) appointed an Arbitrator but during the interregnum, notification dated 17.09.2003 came to be passed and as per the said notification/scheme, the District Judge had jurisdiction to entertain the application for appointment of the Arbitrator in case, the claim is less than ₹25 lacs and in case, more than ₹25 lacs, Hon'ble the Chief Justice of this Court. An objection qua jurisdiction of the Arbitrator was taken but the same has not been dealt with. According to him, the controversy with regard to the applicability of the notification has already been settled by the Hon'ble Division Bench of this Court in **State of Haryana and others vs. District Judge, Chandigarh and others, 2005(4) RCR (Civil) 664**, wherein, it has been held that Civil Judge and District Judge lacked jurisdiction in considering and entertaining the application under Section 11 of 1996 Act and the matter ought to have been referred to the competent Court of law, i.e., as per the notification dated 17.09.2003. In support of his aforementioned contention, he has also relied upon the judgment of this Court rendered in **FAO No.6807 of 2015 titled as Panjab University Staff (Homes) Provision Associates Cooperative House Building Society Limited (PUSHPAC) vs. Nanu Ram Goel and another, decided on 02.03.2016** and urges this Court for setting aside of the award and as well as, the order under challenge.

Mr. D.Hasija, learned counsel appearing on behalf of

respondent No.1 has referred to paragraph 8 of the Hon'ble Division Bench judgment rendered in State of Haryana's case (supra) to contend that the Hon'ble Division Bench did not decide the controversy with regard to competency of the Civil Judge and dealt with issue as to whether the District Judge had jurisdiction to deal with the said application and to grant the relief sought for. In essence, appointment of the Arbitrator and its jurisdiction for trying and entertaining the application as a natural corollary is not a matter of debate and therefore, the ratio decidendi culled out would not apply. Even otherwise, there is no provision, in the notification, qua repealing and saving clause with regard to the proceedings already initiated and therefore, in absence of any specification qua applicability of the notification with retrospective effect, the proceedings initiated by the Civil Judge appointing the Arbitrator cannot be thrown out on this ground alone.

In support of this aforementioned contention, he has also relied upon the judgment of the Hon'ble Supreme Court in **Anil Chandra and others vs. Radha Krishna Gaur and others (2009) 9 SCC 454** and **Nani Sha and others vs. State of Arunachal Pradesh and others 2007(15) SCC 406** to contend that until and unless the notification does not specify its applicability, the same cannot be interpreted in different manner and thus, urges this Court for affirming the findings rendered in the award, much less, in the order under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the

submissions of Mr. Chopra, for, the Hon'ble Division Bench of this Court after discussing the issue threadbare held that the District Judge lacks jurisdiction in dealing with the application and in the instant case, the application was not straightway submitted before the Civil Judge (Senior Division) but was addressed to the District Judge, who, marked it to the Civil Judge (Senior Division) and by that time, notification came to be passed. The amount of compensation involved is more than ₹25 lacs, even the District Judge lacked jurisdiction to try and entertain the application. Had this fact been brought to the notice of the Civil Judge (Senior Division), perhaps he would have returned the application back to the District Judge. The only remedy for the Civil Judge was to return the matter back to the District Judge and further referring the matter to this Court.

Thus, plea of Mr. Hasija that both the parties have submitted to jurisdiction of the Civil Judge for appointment of the Arbitrator is not able to cut ice, for, even before the Civil Judge (Senior Division) and as well as before the Arbitrator, an objection with regard to appointment of the Arbitrator had been taken. In view of such situation, I am of the view that matter in controversy is squarely falls within the ratio decidendi culled out by the Hon'ble Division Bench judgment of this Court in State of Haryana's case (supra) and as well as, the judgment dated 02.03.2016 rendered by this Court in FAO No.6807 of 2015 in which appellant was one of the parties.

For the foregoing reasons, award and order under challenge are set aside. Accordingly, the appeal is allowed leaving parties to seek the

adjudication of the dispute in the competent Court of law.

At this stage, both the learned counsel for the parties submit for appointment of an independent Arbitrator and in view of the fact that as almost 11 years have gone and with the consent of the parties, I deem it appropriate to appoint Mr. Justice Rajive Bhalla, former Judge of this Court as an Arbitrator subject to his convenience and acceptance to the appointment. On receipt of acceptance, Hon'ble Arbitrator shall enter into reference by calling upon the parties to adjudicate the dispute.

Fixing of the fees and venue shall be at the discretion of the Hon'ble Arbitrator. Since period of 11 years have already gone in resolving the dispute, the Hon'ble Arbitrator may make endeavour to decide the issue as expeditiously as possible, preferably within a period of six months.

In order to seek consent, registry is directed to send a letter to Hon'ble Mr. Justice Rajive Bhalla, former Judge of this Court.

FAO stands allowed.

(AMIT RAWAL)
JUDGE

May 27, 2016
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