

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 2789 of 2015
Date of decision : January 29, 2016

Union of India and others

..... Appellants

Versus

M/s Joginder Lal Sethi and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Chetan Mittal, Senior Advocate with
Mr. Prateek Gupta, Advocate
for the appellants.

Mr. A. K. Maleri, Advocate
for the respondents.

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).
CM No. 1751-CII of 2016

The application is for preponement of the date of hearing.

For the reasons stated in the application, application is allowed.

The hearing of the appeal is preponed and taken on board.

FAO No. 2789 of 2015

The Union of India is aggrieved of the award dated 10.11.2014 whereby objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the

Act') for setting aside of the award dated 11.7.2011 has been dismissed.

Mr. Chetan Mittal, Senior Advocate assisted by Mr. Prateek Gupta, Advocate appearing on behalf of the appellants submits that a very precarious/analogous situation has arisen, for the reasons that in pursuance to the contract dated 19.9.1994 certain dispute arose between the parties, on 15.4.2005 Rama Nath Chief Engineer was appointed as arbitrator who entered into reference on 16.5.2005. The contractor for the reasons best known to him did not appear before the arbitrator and award dated 24.5.2007 came to be passed. Against the aforementioned award, contractor filed objections. However, the objections were dismissed in default on 14.11.2003. He further submits that instead of contesting the claim of the appellant, much less filing his own claim/counter claim the contractor sought appointment of the arbitrator by invoking the provisions of Section 11 (6) of the Act in arbitration case No. 45 of 2006, this Court vide order dated 22.7.2010 appointed Sh. Krishanjit Singh, Engineer in Chief as an arbitrator. The order aforementioned was passed at the back of the appellant and accordingly a review petition was filed and unfortunately the same was dismissed on 25.5.2011. The arbitrator passed the award, on 11.7.2011, in favour of the contractor and against the same objections under Section 34 of the Act were filed which have been dismissed and as such, the present appeal.

He further submits that an application was moved before the District Judge for clubbing the objections and in this

regard order dated 6.1.2012 was passed. He further informs that after dismissal of the objections filed on behalf of the Union of India the Contractor moved an application for restoration of the objection which is stated to be pending, and thus, prays that until and unless the application seeking restoration and all the objections, much less, pending objections is not decided it would be a fluid situation for both the parties to seek execution of the award.

Mr. A. K. Maleri, learned counsel appearing on behalf of the contractor does not dispute the aforementioned facts and submits that application seeking restoration is slated for 30.1.2016. He further submits that objections filed on behalf of the appellant were not falling within the parameters of Section 34 of the Act and rightly so, have been dismissed. The appellant was given sufficient opportunity to file their claim before the arbitrator, the arbitrator after considering all the facts announced the award in favour of the contractor.

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

I am of the view that the aforementioned analogous situation/predicament of the appellant is writ large. Without commenting on the merits and de-merits of the matter, I deem it appropriate that the application seeking restoration of the objections filed by the contractor cannot be kept pending for adjudication and rather in order to facilitate the adjudication of *lis* between the parties, the aforementioned application should be allowed and objections be decided in accordance with law.

Keeping in view the aforementioned facts and so that the objections filed by the contractor viz-a-viz award dated 24.5.2007 passed in favour of Union of India and objections filed by the appellant against the award dated 11.7.2011 be decided together.

Accordingly, the application seeking restoration of objection petition is allowed. The impugned order dismissing the objections is set aside. Objections filed by the contractor are restored back to their original number. The objections filed by Union of India are also restored back to their original number. It has been informed that the objection petition filed by the appellant was dismissed by the same court where application for restoration was pending. Accordingly, the objecting court is directed to decide the objections one filed by Union of India and another by the contractor together as expeditiously as possible preferably within a period of 45 days from the date of receipt of certified copy of the order.

Record of the arbitration proceedings as well as of the court below be sent back for disposal of the objections.

The appeal stands disposed of.

(AMIT RAWAL)
JUDGE

January 29 , 2016
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