

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.3782 of 2015 (O&M)

Date of Decision.29.09.2016

J.K. Sabharwal

.....Appellant

Vs.

G.D. Vashishat and Associates Pvt. Ltd. and others

.....Respondents

Present: Mr. Vaneet Soni, Advocate
for the appellant.

Mr. Sapan Dhir, Advocate
for respondent No.1.

Mr. Neel Mason, Advocate and
Ms. Karnika Bansal, Advocate
for pro forma-respondent No.3.

-.-

AMIT RAWAL J. (ORAL)

C.M. No.9418-CII of 2016

There is application on behalf of pro forma respondent No.3 for deletion from array of parties. He submits that he was given up in the arbitration proceedings but yet again has been impleaded as pro forma respondent No.3.

For the aforementioned fact, the application is allowed and the name of respondent No.3 is ordered to be deleted from the array of parties.

FAO No.3782 of 2015 (O&M)

The appellant-respondent before the Arbitrator is aggrieved of the impugned order dated 02.02.2015 whereby the objections moved under Section 34 of the Arbitration and Conciliation Act, 1996 seeking setting aside of the arbitral Award dated 17.10.2011 has been dismissed on the ground that there was no arbitration agreement and therefore, there can be no arbitration.

Mr. Vaneet Soni, learned counsel appearing for the appellant submits that in case the aforementioned finding has to be accepted then the Objecting Court ought to have set aside the Award as the objection petition was containing many objections including the one noticed in the impugned order and therefore, the order under challenge is not sustainable. If the aforementioned finding is to be accepted then the order was liable to be set aside.

Per contra, Mr. Sapan Dhir, learned counsel appearing for respondent No.1 submits that the order under challenge is legal and justified and the Award of the Arbitrator is also based upon preponderance of the evidence and no interference is called for.

I have heard learned counsel for the parties and appraised the paper book. For the sake of brevity, the finding rendered by the Objecting Court dismissing the objection reads as under:-

“Thus, there can be reference to arbitration only, if there is an arbitration agreement between the parties. It is clear from the definition of “arbitration agreement” that, deliberately, the same is given in wide terms. Though, no form of such an agreement has been prescribed; nonetheless, it must be in writing. In the case in hand, learned counsel for the petitioner has failed to show on record any document containing the arbitration agreement between the parties; accordingly, in the considered opinion of this court, the petition is not maintainable before this court. Hence, without going into the merits of the case, in view of discussion made above, the present petition is dismissed being not

maintainable. Memo of costs be prepared. File be consigned to record room after due compliance.”

If the aforementioned finding has to be accepted in letter and spirit, there was no occasion for the Objecting Court to dismiss the objection instead the Award was required to be set aside in that eventuality. The parties cannot be left in lurch. One side the objection was dismissed being not maintainable as there is no arbitration agreement between the parties whereas on the other hand, the Award has also been upheld. This type of situation, in view of the specific finding as noticed above, cannot be permitted to be maintained. I am of the view that the Objecting Court ought to have exercised the discretion in a pragmatic manner and with application of mind but not in the manner and mode as has been done resulting into preposterous situation.

For the foregoing reasons, the order under challenge is set aside and the matter is remanded back to the Objecting Court to decide the objection in view of the observations given hereinabove as expeditiously as possible and preferably within a period of 5 months from the date of receipt of certified copy of this order. The appeal is allowed with the above directions.

The parties shall appear before the Objecting Court on 27.10.2016.

(AMIT RAWAL)
JUDGE

September 29, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No