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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-4261-2015 (O&M)

Date of decision : 02.03.2016

Food Corporation of India

...Appellant

Versus

Jagat Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.K. Gupta, Advocate
for the appellant.

Mr. Sandeep Bansal, Advocate and
Ms. Harpreet Arora, 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? YES
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant is aggrieved of the impugned order dated 16.03.2015, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act'), have been dismissed.

In pursuance to the Contract having entered into between the Food Corporation of India and the Contractor, the respondent-Contractor had to load and unload food-grains at Rail Head Mukerian, later on it was shifted to Tanda.

On submissions of bills, the payment was released, but when on submission of bill with a difference owing to the fact that the route for delivering the food-grains at Tanda, was longer, the dispute arose and filed suit for recovery before the trial Court on 29.08.1999. An application under Section 8 of the 1996 Act was moved and the same was dismissed. However, this Court vide its order dated 19.08.2002 observed that the parties are referred to the Arbitrator and on application, the Civil Judge vide order dated 16.05.2009 appointed the Arbitrator. During the interregnum, notification dated 17.09.2003 came to be promulgated, which provided the pecuniary jurisdiction to deal with the application, in essence, the District Judge had power to appoint the Arbitrator in respect of the pecuniary jurisdiction less than ₹ 25,00,000/- and above ₹ 25,00,000/-, Chief Justice of this Court. Since, in the instant case, claim was of ₹ 4,50,000/-, Civil Judge did not have jurisdiction, therefore, the matter should have been referred to the District Judge for appointment of the Arbitrator. The aforementioned view of mine is fortified with the judgment rendered by this Court in CWP No.9747 of 2005 titled as “State of Haryana V/s District Judge, Chandigarh and others” decided on 02.09.2005. For the sake of brevity, the operative part of the judgment reads thus:-

"2. Briefly stated, the material facts giving rise to the present petition are as follows:

On 3.7.1998, an agreement was entered into between the petitioner and respondent No. 2, whereby the said respondent agreed to become the approved party for computerised facilities management and consultancy, designing, creation, maintenance and continuous change of internet website for Haryana State Lotteries for the period from 3.7.1998 to 2.7.1999. The period was extended by

another one year. It appears that some disputes arose between the said parties. Accordingly, invoking Clause 37 of the arbitration agreement, respondent No. 2, vide letters dated 4.4.2002 and 28.6.2005 requested respondent No. 4, the persona designata, to adjudicate upon the disputes. Having failed to get any response from the said respondent, within 30 days, the said respondent filed an application under [Section 11](#) of the Act before the Civil Judge (Senior Division), Chandigarh on 23.8.2002, for appointment of an independent Arbitrator, on the plea that respondent No. 4 had forfeited his right to arbitrate in the matter.

3. The application was contested by the petitioner. Issues were thus, framed by the Civil Judge and evidence was led by the both the parties before him. However, before the application could be disposed of by the Civil Judge, on 17.9.2003 a notification was issued by the Chief Justice, Punjab and Haryana High Court, whereby in supersession of the earlier scheme, published on 19.12.1996, a fresh scheme under the Act was framed. Paragraph 3 of the said scheme provided that request for appointment of Arbitrator, wherein the value of the subject-matter did not exceed 25 lac rupees shall be dealt with by the District Judge, whereas the request for appointment of Arbitrator involving the subject-matter exceeding 25 lac rupees shall be dealt with by the Chief Justice himself or he may designate any judge of the High Court for this purpose, by a general or special order.

4. The claim of respondent No. 2, being more than Rs. 25 lacs, in the light of the amended scheme, the Civil Judge, vide order dated 6.5.2004, referred the application to the District Judge for further proceedings. By the impugned order, the District Judge has disposed of the application. Hence the writ petition.

5. The order is assailed on three main grounds, namely, (i) the 2003 scheme, not being retrospective in operation, the Civil Judge should not have referred the application to the District Judge and

ought to have dealt with it at his own level; (ii) on receipt of the reference, the District Judge ought to have returned the case back to the Civil Judge and (iii) if the scheme was to take effect retrospectively, even then the District Judge should have referred the case to the Chief Justice because the subject-matter of the dispute involved was Rs. 29,22,500/- i.e., more than Rs. 25 lacs. In other words, under none of the contingencies, the District Judge was competent to deal with the application. It is thus, pleaded that the impugned order, being without jurisdiction is per se illegal and deserves to be quashed.

6. The petition is resisted by respondent No. 2 mainly on the ground that once the Arbitrator had been appointed, the only remedy available to the petitioner was by way of an application under [Section 12](#) of the Act. It is also alleged that the matter was not relegated to the Civil Judge because of the consent of both the parties before the District Judge and therefore, the present petition is not maintainable.

7. We have heard Mr. Arun Walia, learned Senior Additional Advocate General, Haryana appearing on behalf of the petitioner and Mr. A.P.S. Shergil, learned Counsel appearing on behalf of respondent No. 2.

8. Since admittedly, the matter had not been referred back to the Civil Judge by the District Judge, the question whether the Civil Judge was competent to deal with the application, the same having been filed prior to the 2003 scheme, does not arise for our consideration. Therefore, the only issue, which we are required to adjudicate, is as to whether the District Judge had the jurisdiction to deal with the said application and grant the relief sought for.

9. We are of the considered view that looked at from any angle, the District Judge lacked inherent jurisdiction to deal with the application. Admittedly, at the time when the application under [Section 11](#) of the Act was filed, the scheme, published on 19.12.1996, was in vogue and in terms of this scheme, the Civil

Judge (Senior Division), Chandigarh was competent to deal with the application as the delegatee of the Chief Justice. At the time when the application was disposed of by the District Judge, vide order dated 30.4.2005, the scheme, published on 17.9.2003, whereby the District Judge was designated as the competent authority to entertain the request for appointment of an Arbitrator, was in force. Nonetheless, he could deal with an application under the said provision, only where the value of the subject-matter did not exceed Rs. 25 lacs. In other words, under both the schemes, the District Judge did not have the jurisdiction to deal with the application.

10. We are unable to agree with learned Counsel for respondent No. 2 that since both the parties had agreed before the District Judge not to permit the matter back to the Civil Judge, being a consent order, the petitioner is now estopped from challenging the jurisdiction of the District Judge to deal with the matter.

*11. There is no gain saying that the competence of a Court to try a case goes to the very root of its jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction, which cannot be cured by consent of parties or waiver. (See: “**Seth Hiralal Patni v. Kali Nath**” 1962 (2) SCR 747 and “**Sushil Kumar Mehta v. Gobind Ram Bohra**” 1990 (1) SCC 193. It is equally well-settled that a Court, which has no jurisdiction in law, cannot be conferred with the jurisdiction. (See: **Isabella Johnson v. M.S. Susai** 1991 (1) SCC 494) .*

*12. In view of the above, the District Judge did not have jurisdiction to try the petition. Under these circumstances, we are constrained to hold that the order passed by the District Judge, appointing an Arbitrator, being coram nonjudice, would, as held in “**East India Corporation Ltd. v. Shree Meenakshi Mills Ltd.**” 1991 (3) SCC 230, be a nullity and therefore, cannot be sustained.”*

It is matter of record that Food Corporation had specifically taken the objection before the Arbitrator, viz-a-viz the jurisdiction, in view of the law laid down by the judgment of Division Bench of this Court in “State of Haryana's case” (supra), but the same was not dealt with, thus, the entire proceedings are vitiated, as the Court appointing the Arbitrator, lacked the jurisdiction.

Keeping in view the aforementioned facts and circumstances, the Award of the Arbitrator and as well as the impugned order are hereby set aside.

With the aforementioned observations, the appeal stands allowed.

However, the question viz-a-viz, the payment of the charges of the Arbitrator, in case, the party chooses to seek the appointment of the Arbitrator, in accordance with law, is left open.

02.03.2016
yogesh

(AMIT RAWAL)
JUDGE