

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

**FAO No.6807 of 2015 (O&M)
Date of decision:02.03.2016**

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

Nanu Ram Goel 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? Yes
3. Whether the judgment should be reported in the Digest?

Present:- Mr. A.K.Chopra, Senior Advocate with
Mr. Harminder Singh, Advocate
for the appellant.

Mr. Anil Kumar Aggarwal, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The appellant-Society 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'), whereby, the award dated 16.06.2012 passed by the Arbitrator was sought to be set aside on various grounds, including the ground that the order appointing the Arbitrator was not passed by the competent Court.

Mr. A.K.Chopra, learned Senior Counsel assisted by Mr. Harminder Singh, Advocate submits that application under Section 11

of 1996 Act was filed on 29.11.2002 before the Civil Judge, Chandigarh, when the scheme was invoked. During the interregnum, notification dated 17.09.2003 came 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. The Civil Judge, vide order dated 13.12.2003 appointed the Arbitrator. He further submits that there are certain other arguments vis-a-vis awarding of compensation by the Arbitrator but at the moment, he confines his argument vis-a-vis jurisdiction of the order appointing the Arbitrator. The award of the Arbitrator is silent with regard to various objections and one of the objection was regarding his jurisdiction and the same has been negated on the ground that appellant failed to take objection before the Civil Judge. In support of his contentions, he relied upon the Division Bench judgment of this Court rendered in **State of Haryana and others vs. District Judge, Chandigarh and others, 2005(4) RCR (Civil) 664** to contend that identical situation arose in the aforementioned judgment and this Court after examining the same held that Civil Judge and District Judge lack jurisdiction in considering and entertaining the application under Section 11 of 1996 Act. The matter ought to have been referred to the competent Court of law as per the notification dated 17.09.2003.

Mr. Anil Kumar Aggarwal, learned counsel appearing on

behalf of the respondents/contractor submits that notification/scheme dated 17.09.2003 does not have retrospective application, much less, no objection was taken before the Civil Judge vis-a-vis the appointment of Arbitrator and therefore, the appellant is estopped to raise objection in the appeal filed under Section 37 of 1996 Act. He further submits that though the appellant had taken the objection before the Arbitrator but Arbitrator refused to entertain the objection as he had been appointed in pursuance to the order passed by the Civil Judge. He further submits that objections were not falling within the parameters of Section 34 of 1996 Act and rightly so, have been dismissed. He also submits that judgment aforementioned does not apply to the present case in view of the observations given in paragraph 8.

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

For the sake of brevity, few paragraphs of the judgment rendered by this Court in State of Haryana's case (supra) dealing with the facts, as well as, the ratio decidendi culled out would be essential and necessary to be extracted and the same read 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 letter 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 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 suppression 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 remit 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 non judice, 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.

Shorn of facts noticed above, the instant case also falls within the ratio decidendi culled out by the Hon'ble Division Bench of this Court in the aforementioned judgment. Vide order dated 13.12.2003, the Civil Judge appointed the Arbitrator. In my view, in view of the promulgation of the notification dated 17.09.2003, the claim of the contractor exceeded ₹25 lacs, neither the Civil Judge nor District Judge, had the jurisdiction to entertain the application but only within the jurisdiction of Hon'ble the Chief Justice of this Court.

There is another aspect of the matter. This objection was though noticed by the Arbitrator, but he did not entertain the same

owing to the fact that Court had appointed him. In my view, appellant cannot be said to have waived the right to raise objection. The findings rendered by the Court are not sustainable for non-suiting the appellant as the Arbitrator was appointed with the consent of both the parties. This aspect has also been noticed by the Court, which leaves no manner of doubt that at the time of appointment of Arbitrator by the Civil Judge, objection has been taken into consideration and same can still be agitated.

In view of the aforementioned observations, the entire proceedings culminated into filing of the claim petition before the Arbitrator are fallacious, as the Court lacked the jurisdiction in appointment of the Arbitrator. Thus, the award and order are set aside.

Accordingly, the appeal is allowed.

(AMIT RAWAL)
JUDGE

March 02, 2016
savita