IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.7944 of 2015 (O&M)
Date of decision:10.11.2016

Punjab State Civil Supplies Corporation Ltd. ... Appellant

Vs.

Guru Hardip Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Deepak Sabherwal, Advocate
for the appellant.

Mr. Anil Kumar Ahluwalia, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

C.M.No.22534-CII-2016

The application is allowed, subject to all just exceptions. Documents, Annexures R-1 to R-10 are taken on record.

FAO No.7944 of 2015 (O&M)

Notice of motion.

Mr. Anil Kumar Ahluwalia, Advocate accepts notice on behalf of respondent No.1, in whose favour petition bearing No. ARB RT No.10 of 2013 under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") for setting aside the arbitration Award dated 25.01.2013, has been decided.

Mr. Deepak Sabherwal, learned counsel appearing on behalf of

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the appellant - PUNSUP submits that M/s Taj Industries through its partners was allocated paddy for the crop year 2002-03. There was default by the Miller. The aforementioned firm was a partnership firm consisting of two partners, namely, Tarsem Kumar son of Raj Kumar and Guru Hardip Singh son of Guru Harjit Singh. The matter was referred to the Arbitrator and in those proceedings, the firm was proceeded against ex parte but respondent No.1 herein that Guru Hardip Singh contested the aforementioned proceedings on the premise that he has already retired from the partnership way back on 11.02.2003 by placing on record the relinquishment deed of partnership, cancellation of special power of attorney granted by him in favour of Tarsem Kumar and affidavit but the same were rejected by the Arbitrator on the premise that similar application challenging the jurisdiction of the proceedings initiated under Section 16 of 1996 Act was dismissed, vide order dated 02.04.2012. He further submits that Guru Hardip Singh did not lead any evidence in support of the aforementioned documents. The documents, so placed on record were emphatically denied. It is in this aspect of the matter, the arbitration award, aforementioned came to be passed, whereby, a sum of ₹1,95,47,430/- on account of principal amount was awarded with the post interest of ₹8,250. The objection petition of Guru Hardip Singh has been allowed on the premise that he was no longer partner, thus, award of the Arbitrator suffers from biasness as no reasons have been assigned regarding the documents placed on record, i.e., intimation, relinquishment deed, affidavit, letters to MD PUNSUP, District

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Muktsar and D.M.District Food & Supply Controller, Muktsar (DFSC) regarding the retirement from the partnership firm, thus, the order under challenge is not sustainable in the eyes of law. The objections were not maintainable as the respondents herein had failed to prove the aforementioned documents, in accordance with law.

Mr. Anil Kumar Ahluwalia, learned counsel appearing on behalf of respondent No.1 submits that the award was not only suffering from 'Patent Illegality' but also against the public policy, thus, the objections filed under Section 34 of 1996 Act, were maintainable and the Objecting Court after examining the same found that the Arbitrator did not call upon the appellant to rebut the documents as the same were submitted in the office of PUNSUP with the stamp of diary number and date. He further submits that the FIR was registered against the both partners but only Tarsem Kumar was convicted on 27.01.2012 as no challan was filed against him. He has also filed the appeal before the Lower Appellate Court and the Lower Appellate Court by taking lenient view, vide order dated 29.04.2015 had reduced the sentence from 03 years to 01 year, therefore, it does not lie in the mouth of the PUNSUP to impugn the findings of the Objecting Court based upon the factual aspect and thus, the appeal is liable to be dismissed.

I have heard learned counsel for the parties and appraised the paper book and of the view that if such was a situation, at least the parties before the Appellate Court ought to have sought the indulgence of the Court for leading evidence by filing the affidavit and summoning the record from the concerned department with regard to the genuineness and authenticity of

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relinquishment deed, letters to the M.D, PUNSUP and DMDFSC and various other documents which are now placed on record along with miscellaneous application bearing 22534-CII-2016, as per the ratio decidendi culled out by the Hon'ble Supreme Court in **Fiza Developers & Inter-Trade P. Ltd vs. AMCI (I) Pvt. Ltd. 2009(4) RCR (Civil) 288.**

In my view, the truth could have been ascertained in case the aforementioned course would have been adopted. No doubt, the proceedings initiated under Section 34 are summarily but as per the principle culled out by the Hon'ble Supreme Court in Fiza Developer's case (supra), such course is possible. Since the awarded amount is phenomenal, I deem it appropriate to set aside the order under challenge and remand it back to the Objecting Court by giving liberty to the parties to take course as indicated above, in view of the dictum laid down in Fiza Developer's case (supra) and lead evidence in support of the submissions by filing affidavit. Both the parties shall be afforded 03 effective opportunities each, thereafter the objecting Court shall decide the objections afresh in accordance with law.

The appeal stands disposed of.

The parties through their counsel are directed to appear before the Objecting Court on 08.12.2016.

(AMIT RAWAL)
JUDGE

November 10, 2016
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Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

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