

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

**Civil Revision No.4544 of 2016
Date of Decision: 28.11.2017**

M/s Sunil Construction Co

.....Petitioner

Vs

State of Punjab and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Rajan Bansal, Advocate
for the petitioner.

Mr. Charanpreet Singh, A.A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 21.04.2016 passed by the Additional District Judge, Rupnagar whereby the case was remanded to the trial Court for fresh decision and permission was granted to the respondents to amend the objections, if any, already on the record.

[2]. Brief facts are that petition under Sections 5, 8, 11, 12 and 20 of the Arbitration Act (hereinafter to be referred as 'the Act') for revoking the authority of sole Arbitrator to act as an Arbitrator and for appointment of another sole Arbitrator was decided by the trial Court on 25.05.1994. Petition was accepted.

Order of Chief Engineer (Construction), S.Y.L. Canal Project, Punjab was set aside. Superintending Engineer, Drainage Circle, Canal Colony, Patiala was appointed as Arbitrator for adjudication the *lis* between the parties. Arbitrator was directed to submit the award within 4 months after entering upon the reference on receipt of intimation of order passed by the Court.

[3]. Thereafter vide order dated 16.08.1995, the sole Arbitrator was granted extension of time to conclude the arbitral proceedings and to pass the award. The said order was assailed by the respondents in Civil Revision No.4004 of 1995 and the same was dismissed on 09.07.1996 by the High Court.

[4]. The award was given by the Arbitrator, to which objections were filed under Sections 30 and 35 of the Act. An application under Sections 14, 17 and 29 of the Act was filed by the petitioner for directing the Arbitrator to file the award and for making the award dated 10.04.1997 as rule of the Court.

[5]. The trial Court vide order dated 25.04.1998 dismissed the objections filed by the respondents. The award dated 10.04.1997 passed by the Arbitrator was made rule of the Court and the petitioner was held entitled to the interest @ 18% from the date when the arbitrator had entered upon the reference till the date of filing of the application under Sections 14, 17 and 29

of the Act. The petitioner was further awarded interest @ 12% *pendente lite* till the realization of the amount.

[6]. Against the order dated 09.07.1996 passed by the High Court in Civil Revision No.4004 of 1995, SLP (C) No.13636 of 1997 was filed which was converted into Civil Appeal No.958 of 1999. During the proceedings before the Hon'ble Apex Court, it was noticed that the named Arbitrator after his retirement on 31.08.1995 passed the award and in the proceedings for making the award as Rule of the Court, the respondents herein filed objection. The Arguments raised by the appellants in the Hon'ble Apex Court i.e. respondents herein were to the effect that they may be permitted to raise the question regarding competency of the named Arbitrator to pass the award. Respondents (petitioner herein) were duly served in Civil Appeal No.958 of 1999, but they preferred not to appear in the aforesaid case. The Hon'ble Apex Court permitted the present respondents to raise the points in the objection pending before the competent Court. They were also held entitled to amend the objections, if any already filed in the Court incorporating the points to be raised as part of the said objections.

[7]. In the appeal against the order dated 25.04.1998 passed by the Addl. Civil Judge (Sr. Divn.) Rupnagar, the Addl. District Judge, Rupnagar remanded the case to the Addl. Civil

Judge (Sr. Divn.) Rupnagar. The operative part of the order reads as under:-

“From the perusal of the said order, it is clear that appellant/Punjab State was permitted to raise the objections and even to file the amended objection petition before the Court where objection petition was already pending. On the contrary, the appellant/Punjab State could not raise these objections or file amended objection petition because the matter was already decided on 25.04.1998. In these circumstances, the appellant/State was required to file fresh application by raising the objections as permitted by the Hon'ble Supreme Court of India before the concerned Court, where the objection petition was pending and then to get decided these objections regarding competency of the named Arbitrator to pass the award in question. The appellant/Punjab State could not avail the opportunity for raising objections or for filing amended objections because the objection petition was already dismissed by the Court. As such, the present case is liable to be remitted back for giving opportunity to the appellant/State for raising the objections regarding competency of the named Arbitrator as per orders of the Hon'ble Supreme Court of India. In view of above said discussion, the present case is ordered to be remitted back to the court of learned Additional Civil Judge (Senior Division), Ropar where, appellant/Punjab State will raise the objections or file amended objections in view of the orders of the Hon'ble Supreme Court and learned Lower Court shall decide the matter afresh by giving proper opportunity to respondent/contractor M/s Sunil Constructions for being heard. Ahlmad is directed to send

the lower court file complete in all respect along with a copy of this judgment. Appeal filed be consigned to Record Room.”

[8]. Learned counsel for the petitioner submitted that the objections filed by the respondents were dismissed on 25.04.1998 itself by the Addl. Civil Judge (Sr. Divn.) Rupnagar. The relief clause of the said order was to the following effect:-

“Relief

17) In view of my decision on the issues, the objection petition filed by the department is dismissed. The award dated 10.4.1997 passed by respondent No.3 Gurcharan Singh is made rule of the court, however, the petitioner is entitled to the interest @ 18% from the date when the arbitrator had entered upon the reference upon this appointment by the Chief Engineer vide letter dated 7.1.1992 till the date of filing of the application under Section 14, 17 and 29 of the Arbitration Act. The petitioner (Contractor) is further awarded interest @ 12% pend-lite till the realization of the amount. Decree sheet be prepared and file be consigned to the record room”

[9]. Evidently, the present petitioners were duly served before the Hon'ble Apex Court, wherein one of the objection of the respondents (appellants therein) was in respect of competency of the Arbitrator, who had passed the award after his retirement on 31.08.1995. Evidently, in view of objections dated 27.09.1997 (Annexure P-3) with the present revision

petition the objection with regard to passing of award after the retirement of the Arbitrator on 31.08.1995 was neither raised as an objection. The Hon'ble Apex Court allowed the points which were raised before it, to be raised where the objection petition was already pending at that time. Liberty was also granted to amend the objections, if any, already filed in the Court. Right to amend the objections would necessarily mean that the objection which was not part of original objections would be raised by the respondents in the form of amended objections before the trial Court.

[10]. In my considered opinion, the indulgence given by the Addl. District Judge, Rupnagar in the impugned order cannot be held to be beyond the scope of order dated 12.02.1999 passed by the Hon'ble Apex Court. The petitioner(s) were duly served before the Hon'ble Apex Court, but they did not appear to contend that the objections had already been dismissed by the Addl. Civil Judge (Sr. Divn.), Rupnagar on 25.04.1998. Even if, the objections were dismissed by the said order, the scope of order passed by the Hon'ble Apex Court on 12.02.1999 was to allow the respondents to raise the points which were raised before it. It can be noticed that the SLP/Civil Appeal was already pending before the Hon'ble Apex Court when the objections were dismissed by the Addl. Civil Judge (Sr. Divn.) Rupnagar on

25.04.1998. One of the point raised before the Hon'ble Apex Court was the passing of award by the Arbitrator after his retirement on 31.08.1995. Since this objection was not raised by the petitioner in the objections dated 27.09.1997, therefore, the permission granted by the Hon'ble Apex Court to the respondents to amend the objections, if any, already on the record the Court would not give any right to the petitioner to say that on account of dismissal of the objections of the respondents on 25.04.1998, the order of remand would be rendered infructuous.

[11]. No such proposition of law can be culled out from the facts and circumstances of this case. The impugned order dated 21.04.2016 passed by the Addl. District Judge, Rupnagar cannot be faulted with any error of jurisdiction or of any perversity of any kind. This revision petition is dismissed accordingly.

November 28, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No