

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.4848 of 2015

Date of decision:23.5.2017

Michael Ohri and another

...Petitioners

Versus

Jasbir Singh Mann

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Munish Gupta, Advocate for the petitioners.
None for the respondent

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the appellate order dated 14.5.2015 passed by the learned Additional District Judge, whereby miscellaneous appeal of the defendant was allowed against the order dated 11.1.2013 passed by the learned trial Court, plaintiffs have approached this Court by way of instant civil revision petition, filed under Article 227 of the Constitution of India, for setting aside the impugned order dated 14.5.2015 (Annexure P-5).

Notice of motion was issued.

Learned counsel for the respondent put appearance on 7.4.2016 and on his request, case was adjourned for 27.7.2016. However, thereafter, he never put appearance. Similar is the position today. Neither anybody has come present to oppose this revision petition nor any request for pass over has been made on behalf of the respondent.

Heard learned counsel for the petitioners.

Placing reliance on a Division Bench judgment of this Court in **Hind Samachar Limited, Jalandhar Vs. XYZ, 2003 (43) SCL 501**, he submits that in view of the peculiar facts and circumstances of the case, the order dated 11.1.2013 passed by the learned trial Court was not appealable and only revision before this Court could have been filed by the defendant-respondent.

The observations made by the Division Bench of this Court in para 36 of its judgment in the case of **Hind Samachar Limited, Jalandhar** (supra), which can be gainfully followed in the present case, read as under:-

“ Having dealt with all issues canvassed by learned counsel, we now endeavour to draw conclusions based on our interpretation of Section 37 of the Arbitration Act, 1996. In the absence of judicial precedent on the pointed issue, we will embark upon file controversy on first principles. We have already concluded above that even a remedy of appeal would not be available unless expressly provided for, while interpreting Section 5 of the Arbitration Act, 1996. We have also concluded that the term 'orders' referred to in Section 37 of the Arbitration Act, 1996, refers to orders passed under Part I of the Arbitration Act, 1996. The question then is whether the remedy of appeal is excluded against an order passed by a 'judicial authority' under Section 8 of the Arbitration Act, 1996 ? In our view, it is. The reason for the aforesaid conclusion are the words 'and from no others' qualifying the word 'orders' [it] leaves no doubt that Section 37(1) of the Arbitration Act, 1996, does not delineate an inclusive list of appealable order, but defines the exhaustive list of orders from which an appeal under the provisions of the Arbitration Act, 1996, is competent. Since the list is exhaustive, and since an order passed by a 'judicial authority' under Section 8 of the Arbitration Act, 1996, is not included therein, it would be inevitable to conclude that the remedy of appeal therefrom is expressly

excluded.”

In view of the above, it has gone undisputed before this Court that the order dated 11.1.2013 passed by the learned trial Court could have been challenged only by way of revision petition and no appeal was maintainable against the said order. In this view of the matter, the impugned order dated 14.5.2015 passed by the learned Additional District Judge has been found to be an order without jurisdiction and the same cannot be sustained. Accordingly, the impugned order is hereby set aside.

However, respondent-defendant is granted liberty to challenge the order dated 11.1.2013 by way of revision petition before this Court. It is also made clear that if the respondent files an appropriate revision petition against the order dated 11.1.2013 passed by the learned trial Court, within a period of two months from today, present petitioners would not raise the issue of limitation against the respondent, because instant revision petition remained pending before this Court for more than 1 ½ years.

With the abovesaid observations made and directions issued, the present revision petition stands disposed of, however, with no order as to costs.

23.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No