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

**Civil Revision No.5917 of 2011 (O&M)
Date of Decision: 05.07.2017**

ASHOK KUMAR SAGAR

.....Petitioner

Vs

STATE OF HARYANA AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. P.S. Rana, A.A.G., Haryana.

RAJ MOHAN SINGH, J. (Oral)

[1]. The present revision petition has been filed by the petitioner against the order dated 14.05.2009 passed Civil Judge (Jr. Divn.) Tohana and order dated 15.06.2011 passed by District Judge, Fatehabad whereby objections filed by him against the award dated 02.05.2008 were dismissed and the order was upheld in appeal.

[2]. Original record of the arbitration was requisitioned by this Court. Vide order dated 02.02.2017, both the parties were directed to have instructions with regard to any amicable resolution of the dispute keeping in view of the amount involved

in the case.

[3]. It has been informed that there is no possibility of any amicable resolution of the dispute between the parties.

[4]. With the concurrence of learned counsel for the parties, I proceeded to hear the case on merits.

[5]. Learned counsel for the petitioner submitted that Superintending Engineer, Jind Circle was appointed as sole Arbitrator on 28.06.1990 in respect of agreement No.4 of 1987-88 for the work of construction of Hisar, Barwala, Tohana Road KM 66.00 to 70.00 in Hisar district. The said award was not pronounced within the time prescribed and thereafter time was extended by the Court for six months from the date of receiving of the order vide order dated 16.01.2008. In pursuance of the said order of extension, Arbitrator fixed 04.03.2008 as the date of hearing. On the said date of hearing, Executive Engineer of the respondent-State did not attend the hearing and as a result of that the case was further adjourned to 26.03.2008. On the adjourned date the Executive Engineer was again absented and no proceedings were undertaken by the Arbitrator and the case was further adjourned to 12.04.2008.

[6]. Learned counsel further submitted that during the aforesaid intervening period i.e. on 07.04.2008, the Executive Engineer filed reply in defence along with counter claim vide

letter No.1487 dated 07.04.2008 before the Arbitrator. It appears from the record that no notice of the counter claim was issued to the petitioner. The discussions on the counter claim were statedly discussed by both the parties on the date fixed i.e. 12.04.2008 and thereafter award was pronounced on 02.05.2008. Feeling aggrieved against the award, petitioner filed objections in terms of Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award.

[7]. Learned counsel further submitted that the Arbitrator has misconducted himself by showing undue haste in passing the award. On receipt of reply and counter claim on 07.04.2008, no reasonable opportunity of rebutting the aforesaid documents was ever given to the petitioner and the alleged discussion was noticed in the award on 12.04.2008 which cannot be treated to be an opportunity in the eyes of law, particularly when there is no material on record to show that any notice was ever issued to the petitioner in the context of counter claim set up by the State on 07.04.2008.

[8]. I have heard learned counsel for the parties.

[9]. Civil Judge (Jr. Divn.), Tohana while dismissing the objections has observed that the civil Court has very limited role to interfere, particularly after passing of the award. The civil Court can only interfere, if the award is vitiated on account of

non-observance of principles of natural justice. Evidently, the award passed by the Arbitrator can only be set aside, if the Arbitrator has misconducted himself, award has been made after the supersession of the arbitration or the proceedings becoming invalid, award has been improperly procured or otherwise invalid for setting aside the arbitral award, in these conditions reconstructive mechanism can only be resorted to that too on finding that the award is vitiated on account of non-observance of the principles of natural justice.

[10]. Apparently, it appears from the record that after extension of time vide order dated 16.01.2008, the Executive Engineer did not appear on two consecutive dates i.e. 04.03.2008 and 26.03.2008. The case was adjourned for 12.04.2008. The said date can be considered to be an effective date in furtherance of proceedings undertaken by the Arbitrator during the intervening period from 26.03.2008 to 12.04.2008. Reply and counter claim were filed by the respondent-State on 07.04.2008 on which alleged discussion was made on 12.04.2008 and consequent award was passed. In my considered opinion, the aforesaid facts noticed on record cannot be termed to be as providing reasonable opportunity to the petitioner in order to prove his case after filing objections under Section 34 of the Act.

[11]. The impugned orders passed by the Civil Judge (Jr. Divn.) Tohana as well as by the Appellate Court do not show any material to presume that reasonable opportunity of hearing for proving the case by the petitioner was afforded after 07.04.2008. The impugned orders are totally non-speaking on that aspect.

[12]. Keeping in view of above, I deem it appropriate to obligate the Civil Court (Jr. Divn.) Tohana once again to pass fresh order in accordance with law on the basis of material on record of the arbitration file without being influenced by any of the observations made in the preceding part of the order. Let the needful be done within a period of two months after appearance of both the parties on 19.07.2007. Till decision by the Civil Court (Jr. Divn.) Tohana execution of the award shall remain stayed.

[13]. Revision petition stands disposed of accordingly.

July 05, 2017

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No