

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

**CR-6017-2017 (O&M)
Date of Decision:- 15.09.2017**

HMT Limited Tractor Division

.....Petitioner

Versus

M/s Modern Manufacturers Pvt. Ltd. and Ors.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anand Chhibbar, Senior Advocate,
with Mr. Vaibhav Sahni, Advocate
for the petitioner.

RITU BAHRI, J. (Oral)

Present revision petition under Article 227 of the Constitution of India for quashing/setting aside the order dated 23.08.2017 (Annexure P-1), passed by the Arbitrator, whereby application under Section 29-B read with Section 27 of The Arbitration and Conciliation Act, for permission to call the witness for cross-examination filed by the petitioner has been dismissed.

Respondent-M/s Modern Manufacturers Pvt. Ltd. and others under the provisions of The Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the Act') had filed an arbitration proceedings under Section 18 of the Act. On notice of these proceedings, the present petitioner appeared and their defence struck off. Thereafter,

they approached this Court by way of CR-7224-2016 titled 'HMT Limited, Tractor Division, Pinjore Vs. M/s Modern Manufacturers Pvt. Ltd. and others' and vide order dated 05.12.2016 (Annexure P-8), they were allowed to move an application to the Arbitrator to file the reply along with the counter claim.

Pursuant to the said order of this Court, the petitioner filed the written statement and counter claim and thereafter rejoinder has been filed by the respondent-M/s Modern Manufacturers Pvt. Ltd. and others. Further, they filed their defence by way of filing an affidavit (Annexure P-12). Moreover, when the petitioner made an application to cross-examine their witnesses, the impugned order has been passed.

Mr. Manu Bhandari, Advocate, has put in appearance on behalf of the respondents.

Learned senior counsel for the petitioner has referred to a judgment of the Bombay High Court passed in case bearing **Arbitration Petition No.363 of 2011** titled '**Nazim H. Kazi Vs. Kokan Mercantile Cooperative Bank Ltd.**, decided on 05.02.2013, whereby the appeal filed against the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 was allowed as the petitioner was not given sufficient opportunity to prove his innocence and it was held that denying to cross-examine the witness would amount to violation of principles of natural justice.

In paragraph of 37 of the above-said judgment it has been observed that learned arbitrator is bound to follow principles of natural justice and fair play. Though Section 19 of the Arbitration and

Conciliation Act provides that Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 and/or Indian Evidence Act, 1872, the practice and principles of Code of Civil Procedure and evidence are required to be considered by the arbitrator for taking any decision. Learned arbitrator cannot consider disputed documents in evidence without it being proved. The petitioner filed affidavit in lieu of examination in chief and had offered himself for cross examination in support of his deposition on various disputed facts. The petitioner had also asked for permission to cross examine the respondent's witness but was rejected by the arbitrator. It was held that learned arbitrator could not have conducted the matter only on the basis of documents and other material when the petitioner had asked for an opportunity to lead oral evidence and had made himself available for cross examination.

In case of M/s. Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and others' AIR 1972 SC 330, the Supreme Court while dealing with identical provisions under the provisions of Industrial Dispute Act in paragraph (14) of the said Judgment held as under :-

“14. But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by

producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all kwm ARBP363.11 technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt.”

The judgment of the Supreme Court has been subsequently followed in case of **Municipal Corporation of Greater Mumbai** vs. **Hindustan Construction Company Ltd.,** in Arbitration Petition No. **65 of 2008, decided on 03.12.2010.** Para (9) of the said Judgment reads thus :-

“9. Now it is no doubt well settled that an arbitral Tribunal is not bound by the strict rules of evidence which govern civil trial. But, equally ever since the judgment of the Supreme Court in Bareilly Electricity Supply Co. Ltd. Vs. The Workmen, (AIR 1972 SC 330) it is well settled that the principles of natural justice must be observed even if an adjudicating body is not governed by the strict rules of evidence or procedure. The Supreme Court observed that the application of the principles of natural justice does not imply that what is not evidence can be acted upon. The judgment of the Supreme Court would also buttress the contention of the Respondent that the minutes of the meeting of 15 September 2004 could not have been relied upon when neither the

original was produced nor was any justification kvm ARBP363.11 put forth for the absence of the signed copy of the original.”

After hearing the learned counsel for the parties and taking into consideration the above-said judgments, this Court is of the considered view the present revision petition deserves to be allowed as the arbitration proceedings in the present case are at initial stage. Consequently, impugned order dated 23.08.2017 (Annexure P-1) is hereby set aside and the Arbitrator is directed to give two effective opportunities to the petitioner to cross-examine the witness of respondents.

September 15, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No