

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 2404 of 2013 (O&M)

Date of decision : August 30, 2018

V. K. Bharti and another

..... Petitioners

Versus

M/s Ballarpur Industries Ltd. and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Jain, Advocate
for the appellant.

Mr. Rajat Khanna, Advocate
for the respondent.

AMIT RAWAL, J (oral).

The present revision petition is directed against the order dated 10.11.2009 passed by the Civil Judge (Sr. Division) and the order dated 13.12.2012 whereby the objection petition for setting aside the ex-parte award dated 29.7.1995.

This case has a checkered history. The dispute with regard to which the arbitration award came to be passed, on the premise, that agreement dated 23.12.1992 was entered into between the petitioner and respondent to pluck and sell the fruits. The petitioner was to pay fixed amount of money to the respondent as per the terms and conditions of the agreement. Since some dispute arose with regard to payment, Balwant Singh Anand, Advocate was appointed as Arbitrator but the appointment was questioned by the petitioner by moving application under Section 5 of the Arbitration and Conciliation Act 1996. The aforesaid application was dismissed on 12.8.1997, but the arbitrator had already entered reference, the

Civil Revision Petition No. 4997 of 1997 was filed in this Court. Vide order dated 1.2.2006 (Annexure P-3) while disposing of the revision petition the petitioner was granted liberty to file objections. Concededly the objections were filed on 26.10.2009 and were dismissed owing to the fact that they were barred by the law of limitation.

Mr. Amit Jain, learned counsel appearing on behalf of the petitioner submitted that the respondent-award holder had filed an application for making the award rule of the Court and in those proceedings the petitioner as per zimni orders Annexure P-5 was proceeded against ex-parte. Objections could not be filed within the time prescribed, for, the application for setting aside the ex-parte award was pending adjudication and the issues had already been framed. That application came to be decided on 16.9.2009 and immediately thereafter the objection petition, as stated above, was filed but without affording any opportunity the same was dismissed, thus, urges that there is violation of principles of natural justice.

A specific stand in this regard was taken in the objection petition, i.e. the land in dispute where the trees had grown was declared surplus, because a FIR in this regard has been lodged against the petitioner when attempted to perform their part in terms of the agreement. The appeal before the lower appellate court had also been dismissed. Therefore, the present revision has been filed.

Per contra, Mr. Rajat Khanna, learned counsel appearing on behalf of the respondent has submitted that the objection petition was time barred by 14 (fourteen) years from the date of award. Rightly so, the objection petition has been dismissed. No documentary evidence has been produced to the effect that the objection petition prima facie was qua

declaration of the land being surplus. No one appeared before the arbitrator despite the fact that the notice dated 4.7.1995 was sent on behalf of the petitioner to the arbitrator not to proceed with the arbitration proceedings, thus urges this court for affirming the impugned order. The objections cannot be filed in sake of it until there is some substance.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the arguments of learned counsel for the petitioner. Zimni orders (Annexure P-5) are not in dispute. It is a matter of record that application for declaring rule of court was submitted on 23.8.1995 in which the petitioners were proceeded against ex-parte. The application for setting aside the order dated 16.7.1996 was submitted and it was being opposed by the respondents. Issues were framed on 27.8.1997 and ex-parte proceedings were set aside on 16.9.2009 subject to payment of costs of Rs.500/-. In these circumstances the objection petition was filed on 26.10.2009. It is a matter of record that after granting adjournment on two occasions i.e. on 29.9.2009, 20.10.1999, on 26.10.2009 the parties were called upon for 4.11.2009 and on 10.11.2009 the objection petition was dismissed.

In my view the petitioner should have been given an opportunity to lead evidence in support of the objections, subject to any time frame, however the focus of the court was on limitation part. The court remained oblivious of zimini orders, otherwise objection petition could not have been dismissed being barred by law of limitation, thus the orders under challenge are illegal, erroneous and are not sustainable in the eyes of law. The same are hereby set aside. The revision petition is allowed. The objection petition is ordered to be restored back to its original number and

remitted to the trial court with a direction to dispose of the same within a period of six months by giving three three effective opportunities to the parties to the *lis*.

Parties through their counsel are directed to appear before the court below on 26.9.2018.

August 30, 2018
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No