

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.3078 of 2016

Date of Decision.17.01.2018

Kay Kube Co.

.....Petitioner

Vs

Union of India and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.K. Singal, Advocate
for the petitioner.

Mr. Ashwinie Kumar Bansal, Advocate
for UOI.

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AMIT RAWAL J.(ORAL)

The present revision petition is directed against the impugned order dated 15.02.2016 whereby the application moved by the Union of India-Objector under Section 151 CPC seeking permission to lead evidence in an Objection Petition filed under Section 34 of the Arbitration and Conciliation Act for setting aside the Award dated 30.06.2012 has been allowed.

Mr. D.K. Singal, learned counsel appearing on behalf of the petitioner submitted that the tender of the contract was accepted by the Union of India-respondent No.1, which was to be completed by the petitioner within 10 months i.e. upto 21.07.1990. The petitioner was unable to complete the said work within the given time and reasons were not exclusively attributable to it. The extension of time was given upto September 1991 but even then the work was not completed and ultimately, a dispute arose between the parties and the Agreement was terminated vide letter 29.05.1992. The matter was referred to

the arbitration as the Agreement contained resolution of dispute by arbitration. Before the Arbitrator, the claimants-Union of India did not file any statement of claims for a period of six years whereas the petitioner had filed the counter-claim. The Arbitrator vide letter dated 31.01.2013 terminated the proceedings qua claim of the Union of India as per Section 25 of the Arbitration and Conciliation Act. Without challenging the aforementioned order, the respondent-Union of India filed the statement of claim on 21.02.2013 i.e. after the Arbitrator had already acted under Section 25. The petitioner filed the statement of counter-claim which was received by the Arbitrator after waiting for a long time for the respondent to file its statement of claims. The respondent continued not to participate in the arbitration proceedings without any objections to the action taken by the Arbitrator under Section 25. The Arbitrator vide award dated 30.06.2012 partly allowed the counter-claim in favour of the petitioner.

The Union of India aggrieved of the aforementioned award, preferred an Objection Petition under Section 34 of the 1996 Act before the Principal Court for setting aside the award. During the proceedings, an application under Section 151 CPC (Annexure P-3) was moved for seeking permission of the Court for fixing the case for evidence on the ground that some relevant record was not available at the time when the award was passed. The aforementioned application was contested but the Objecting Court erroneously allowed the same vide order dated 15.02.2016. The impugned order is not sustainable in the eyes of law, for, once the Arbitrator had terminated the proceedings vide letter dated 31.01.2013, which is not disputed and the reasons given in the application that the record has not been made available is neither here nor there as without seeking permission of the

Arbitrator, respondent-Union of India had filed the statement of claim on 21.02.2013.

The Arbitrator gave six years to the Union of India to file the claim statement but having failed to do so, terminated the proceedings. The Courts below have misconstrued the law laid down by Division Bench of this Court in **M/s Punjab State Industrial Dev. Corporation Ltd. Vs. Sunil K. Kansal 2013 (7) RCR (Civil) 2606** in granting permission to the respondent/objector to adduce evidence.

He further submitted that the *ratio decidendi* culled out by Division Bench of this Court was based upon the decision rendered by Hon'ble Supreme Court in **Fiza Developers & Inter-Trade P. Ltd. Vs. AMCI(I) Pvt. Ltd. (2009) 17 SCC 796** that it is not a matter of course for the parties to lead evidence in support of their respective claims. He further argued that by taking into consideration all the provisions of the Act and the finding rendered by the Hon'ble Supreme Court in **Fiza Developer's case**, Division Bench of this Court answered the question raised before it in the following manner:-

“30. In view of the above, we answer the question of law framed as follows:-

(i) The issues, as required under Order XIV Rule 1 of the Code as in the regular suit, are not required to be mandatorily framed by the Court. However, it is open to the Court to frame questions which may arise for adjudication.

(ii) The Court while dealing with the objections under [Section 34](#) of the Act is not bound to grant opportunities to the parties to lead evidence as in the regular civil suit. The jurisdiction of the Court being more akin to the appellate jurisdiction;

(iii) The proceedings before the Court under [Section 34](#) of the Act are summary in nature. Even if some questions of fact or mixed questions of law and/or facts are to be decided, the court while permitting the parties to furnish affidavits in evidence, can summon the witness for cross-examination, if desired by the other party. Such procedure is

keeping in view the principles of natural justice, fair play and equity. In view of the question of law having been answered, the matter be placed before the learned Single Judge, on 31st October, 2012 for decision according to law.”

None of the conditions prescribed therein enabled the respondent-Union of India to lead evidence. In other words, he submitted that once the Union of India failed to lead any evidence or the filed the claim within the prescribed period, the same would tantamount to filling up lacuna which is not the scope of the Arbitration and Conciliation Act, 1996, thus, urges this Court for setting aside the order under challenge.

Per contra, Mr. Ashwinie Bansal, learned counsel appearing on behalf of the respondent-Union of India submitted that the objection petition was based primarily on the ground that the Arbitrator did not give any opportunity to the claimants i.e. Union of India to file the statement of claims and the document which was required to place on record was seized by the CBI and therefore, it was essential and necessary to place on record in order to support the claim submitted in the claim petition. In support of his contention, he relied upon the *ratio decidendi* culled out by Allahabad High Court in **Mahesh Kumar Agarwal and another Vs. Suresh Chand Agarwal and others** **2015(68) RCR (Civil) 771** to contend that the Court is not empowered to deny opportunity to the objector to lead evidence to prove allegations.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bansal. The reasons assigned by the Objecting Court reads thus:-

“Judicial file perused. The main ground by petitioner for challenging the award is that petitioner has not been allowed to adduce evidence by the arbitrator. The record was already seized by CBI which has been produced by CBI before

*the Court. Record could not be produced as it was not available and same was in custody of CBI and was in the Court. Once there are such allegations that arbitrator has misconducted in not allowing the petitioner to lead evidence in the arbitration proceedings and also entertained time barred counter claim of respondent, that also in illegal way. So, there is requirement of giving opportunity to petitioner to lead evidence and only thereafter Court can return its findings on the allegations/grounds taken in the petition. The law is settled on this point by the Hon'ble High Court of Punjab and Haryana in **Punjab State Industrial Development Corporation Ltd. Vs. Sunil K.Kansal 2013(1) Arb. LR 327** where in such situation Hon'ble High Court has settled the law that it is open to the Court to frame questions which may arise for adjudication. In considered view of this Court, there is necessity of framing issues/questions of law and giving chance to the petitioner on this point and thereafter chance will be given to the respondent to rebut, if there will be any necessity. So, in this view, this application is hereby allowed."*

On conjoint reading of the principles culled out by Hon'ble Division Bench of this Court, it is now settled law that principles of framing issues under Order 14 Rule 1 as required to be framed in suit would not apply to the objection petition under Section 34 of the 1996 Act, as the jurisdiction of the Court being more akin to the appellate jurisdiction and being summary in nature. Even if some questions of fact or mixed questions of law and facts are to be decided, the Court while permitting the parties to furnish affidavits in evidence, can summon the witness for cross-examination, if desired by the

other party. Therefore, I am of the view that the order of the Objecting Court framing the, following, issues was not an import of the judgment rendered by Division of this Court in *M/s Punjab State Industrial Dev. Corporation Ltd.'s case* (supra) as concededly Union of India had failed to file the statement of claim for a period of six years and the proceedings qua their claim were terminated vide letter dated 31.01.2013:-

- “1. Whether respondent No.2 arbitrator has misconducted by not allowing the petitioner to adduce evidence in the arbitration proceedings? OPP*
- 2. Whether award passed by the arbitrator is against public policy of India and result of non application of mind? OPP*
- 3. Whether award has been passed contrary to the conditions of contract agreement? OPP*
- 4. Whether arbitrator has entertained time barred counter claims of respondent in illegal manner, if so, its effect? OPP*
- 5. Whether arbitrator has not returned reasons for grant of claims? OPP*
- 6. Whether petitioners are entitled for relief of setting aside award as prayed for? OPP*
- 7. Whether petition is not maintainable? OPR*
- 8. Whether allegations as put in the petition are totally vague? OPR*
- 9. Relief.”*

No other issue arises of pressed for. Now case is fixed for evidence of petitioner. To come up on 8.3.2016. Petitioner is directed to furnish affidavits in examination in chief and provide its copies in advance to the opposite counsel.”

Even the statement of claim filed subsequently on 21.02.2013 without recalling of the order 31.01.2013 was only a farcical exercise, thus, the impugned order is set aside with direction to the Principal Court to call upon the parties to file the affidavit as per the principle No.(iii) enunciated by the

Division Bench of this Court in M/s Punjab State Industrial Dev. Corporation Ltd.'s case (supra).

The revision petition stands allowed in the above terms.

January 17, 2018
Pankaj*

(AMIT RAWAL)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes