

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

C.R. No.4325 of 2006

Jatinder Kaur & Anr.

...Petitioners

Versus

Smt Arvinder Kaur and Ors.

....Respondents

Date of Order: 11.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Kaushal, Advocate for the petitioners.

Mr. M.S. Sachdev, Advocate for respondent Nos.1 & 2.

AMIT RAWAL, J (ORAL)

Present revision petition is directed against the impugned order dated 22.5.2006 passed by Civil Judge (Jr. Division), Jalandhar whereby the application of the petitioners/defendants for treating the issue regarding maintainability and jurisdiction as a preliminary issue has been dismissed.

Learned counsel for the petitioners submitted that the respondent-plaintiff instituted the suit claiming the following relief:

“Prayer:

It is, therefore, respectfully prayed that the suit for declaration be decreed to the effect that the Arbitral award dated 7.5.1999 is an act of fraud, misrepresentation etc on the part of the defendant Nos.1 & 2 and the alleged arbitrators defendants No.3,4 and 5 hence the same is null and void, being illegal under the law and facts as mentioned there.

Any other relief which this Hon'ble Court may deem fit and proper may also be granted in favour of the plaintiffs and against the defendants.”

On receipt of notice of the suit, written statement was filed with the following Preliminary objection:

“1. That suit for declaration challenging the award is

not legally maintainable and this Hon'ble Court has got no jurisdiction to decide the validity of award dated 07.5.1999.”

In such circumstances, the necessity arose for the defendants to move the application for treating the issue regarding maintainability and jurisdiction as a preliminary issue, which has been rejected by the trial court vide the impugned order.

On the other hand, learned counsel for the respondents submitted that the issues had been framed on 2.3.2001 but the defendants never made any request for treating the issue regarding maintainability and jurisdiction as a preliminary issue, thus lost their right in this respect. He therefore prayed for dismissal of the present petition.

From the pleadings of the parties, following issues were framed by the trial court:

- “1) Whether the plaintiff is entitled to declaration to the effect that arbitral award dated 7.5.1999 is an act of fraud, mis-representation etc being null and void, being illegal under the law?OPP*
- 2) Whether the suit of plaintiff is not maintainable?OPD*
- 3. Whether the Civil court has no jurisdiction to decide the validity of the award dated 7.5.99?OPD*
- 4. Relief.”*

The Court had already framed aforesaid issues on 02.3.2001, however, the application was filed in 2002. In the prevalent circumstances in which the suit had been filed, the question of jurisdiction and maintainability had arisen and the trial Court could direct the parties to lead evidence over the said issue, for, the question was legal and valid.

After hearing learned counsel for the parties and appraising the

paper book and taking into account the facts of the case, the trial Court is directed to decide the dispute of treating the issue regarding maintainability and jurisdiction as a preliminary issue by affording two effective opportunities to the parties to lead evidence in this respect.

Petition stands disposed of.

May 11, 2018
manoj

^(AMIT RAWAL)
JUDGE

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