

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 5938-2006 (O&M)

Date of decision: 08.02.2018

Precision Electronic Components Pvt. Ltd.

.....Petitioner

versus

Rajesh Sharma and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.S.S.Narula, Advocate for the petitioner
M/s Aman Kashyap and Sahil Sharma, Advocate
for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

Petitioner has invoked the jurisdiction of this Court under Article 227 of Constitution of India for setting aside the order dated 6.9.2006 passed by the learned District Judge, Gurgaon, whereby the learned District Judge has suo moto and in the absence of any objection petition, refused to execute the arbitration award dated 19.3.2005.

The brief facts of the case are that respondent no.2 Arbitrator in Arbitration proceedings between the present petitioner Precision Electronic Components Private Limited and respondent no.1 Rajesh Sharma, passed the following award on 19.3.2005:-

- (i)As per evidence on record, on allotment, the respondent Shri Rajesh Sharma became the owner of 1,85,000 equity shares of the said company and in consideration of the allotment of the said shares, he executed the document titled as*

'Relinquishment Deed'. It is admitted between the parties that the said 'Relinquishment Deed' read as a whole conveys unequivocal intention of the respondent to transfer his Plot no.7, Electronic City, Sector -18, Gurgaon to the Company. The Company paid the full consideration of the said plot to the respondent, who was the owner of the said plot, in the form of 1,85,000 equity shares of Rs.10/- each and the company acquired full rights/ titles/ interest/ possession of the said plot in pursuance of the document dated 24.10.1998 titled as 'Relinquishment Deed'. Ever since the execution of the document on 24.10.1998, the said possession of the company and the respondent has never done any act in relation to the plot and contrary to it, the company raised construction on the said plot and indicated it as its assets in the annual balance sheet filed with the Registrar of Companies and other necessary quarters (Annual Balance Sheets of the Company as on 31.03.2001 and as on 31.03.2004 have been placed on record by the claimant). I, therefore, hold that the respondent had relinquished all his rights/ title/ possession/ interest in Plot No.7, Electronic City, Sector-18, Gurgaon, in favour of the claimant company, Precision Electronic Components Private Limited (formerly PEC International Pvt. Ltd.) and after the execution of the 'Relinquishment Deed' dated 24.10.1998 in favour of the company, the claimant-company has not only been an equitable owner but has been absolute owner of the

plot for all intents and purposes since 24.10.1998. I further hold that the respondent Shri Rajesh Sharma neither has any interest or title either in the said plot no.7, Electronic City, Sector -18, Gurgaon, nor has any claim on the equity shares of M/s Precision Electronic Components Private Limited (formerly PEC International Pvt. Ltd.), having sold the shares in pursuance of the “Agreement to Sell”.

(ii) Since the respondent has himself admitted the fact of his relinquishment and legal rights in the said plot after having received full consideration amount of Rs.18,50,000/- in the form of 1,85,000 equity shares of Rs.10/- each of M/s Precision Electronic Components Pvt Ltd. (formerly PEC International Pvt. Ltd.), but the technical and legal requirement for registration of the Transfer Deed under Transfer of Property Act remains to be completed, the respondent is directed to complete all legal and technical requirements including registration of transfer/ Sale Deed for transferring the above-said plot No.7, Electronic City, Sector-18, Gurgaon, in favour of the claimant-company. However, expenses of all such legal and technical requirements including Stamp Duty for registration of Transfer Deed would be borne by the claimant-Company as per established practice.

It is to be noted here that in the said proceedings before the Arbitrator, the petitioner has filed the statement of claim. Respondent filed reply and thereafter, the petitioner-claimant led his evidence and respondent

also examined him as a witness and got his statement recorded. After hearing both the parties, said award was passed on 19.3.2005. Thereafter, on 8.9.2005, the petitioner filed an application under Section 36 of the Arbitration and Conciliation Act, 1996 (for short, 'Arbitration Act') before the learned District Judge, Gurgaon for execution of the award.

It comes out from the impugned order passed by learned District Judge, Gurgaon dated 6.9.2006 that in the said execution also, respondent no.1 did not appear and was proceeded against ex-parte, whereas respondent no.2 Arbitrator produced the original arbitration proceedings. The order passed by the learned District Judge, Gurgaon shows that the learned District Judge, Gurgaon has refused to execute the award, stating that the executability of the award is doubtful, no relief can be granted. From the perusal of the impugned order, it comes out that though no objection petition was filed by the respondent under Section 34 of Arbitration Act and he was proceeded against ex-parte, but the learned District Judge, Gurgaon of his own motion took the following grounds to deny the relief:-

1. Plot no.7 Electronic City, Sector 18, Gurgaon was allotted to sole proprietor concern of respondent no.1 Rajesh Sharma and clause 2 of the deed of conveyance prohibits sale, gift, mortgage or otherwise creating any right, title or interest therein without the prior permission in writing of Haryana Urban Development Authority. Therefore, respondent no.1 Rajesh Sharma could not have transferred the property.

2. The relinquishment deed Ex.AW1/5 does not contain any

clause for reference of any dispute to the Arbitrator.

3. There is no agreement in writing about the arbitration regarding plot no.7, Electronic City, Sector 18, Gurgaon. The agreement Ex.AW1/5 and Ex.AW1/6 are only in respect of sale of share of Rajesh Sharma and M.K.Jain in which company is not a party in the said agreement. Arbitrator could only go into dispute regarding relinquishment of shares whereas Arbitrator in the award has directed Rajesh Sharma for registration of sale deed which is beyond the scope of reference.

It was further held that while executing the award, the Court is not to act as mere rubber stamp. Therefore, it was held that the part of award regarding execution of sale deed (read transfer deed) is concerned, “*it does not appear to be executable*” and no assistance of the Court is required in recognizing the transfer of shares, besides the beneficiaries Sh.M.K.Jain is not a party in this litigation. Therefore, execution of the award being ‘*doubtful*’ no relief can be granted. Hence, the execution was dismissed.

When the petition was filed before this Court, respondent no.1 himself appeared in person on 29.3.2007 and made a statement that he does not oppose the petition. This Court passed the following order on 29.3.2007:-

*Present: Mr.Sharan Sethi, Advocate,
for the petitioner*

Respondent No.1 in person

Rajesh Sharma son of Shri Ravi Dutt, resident of House No.60, Sector -21/A, Chandigarh, Proprietor of Precision Electronic Components is present in Court. He does

not oppose the petition.

Admitted

March 29, 2007

*Sd/- Vinod K. Sharma
Judge*

I have heard learned counsel for the parties and have also carefully gone through the record.

So far as status of the arbitration award is concerned, Section 36 of the Arbitration and Conciliation Act, 1996 provides as under:-

2 [36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for

grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

A bare perusal of sub-section 1 of Section 36 of Arbitration Act shows that the Arbitration Award is to be enforced as if it is a decree of the Court. When award is passed, the opposite party has a remedy to approach the District Court for setting aside the award by filing objections against the award. In the present case, the respondent did not file any objections under Section 34 of the Arbitration Act within the period of limitation and not even at a later stage. Even in the proceedings before this Court, he made a statement that he admits the claim of the petitioner, though at the time of arguments, the petition is sought to be contested on behalf of Shri Rajesh Sharma respondent.

Now, a question would arise as to whether the learned District Judge could refuse to enforce the award on the grounds stated above?

If the grounds are taken one by one, it comes out that in the conveyance deed, if there is a condition that permission of Haryana Urban Development Authority is required, that does not mean that award has become unenforceable. It is a mere formality before executing the conveyance deed and is itself not a ground to decline execution of the award. Further question would arise as to whether the learned District Judge could go behind the award, which has now attained the status of a decree, to hold that there was no arbitration agreement and that the agreement to sell Ex.AW1/5 and Ex.AW1/6 does not contain any reference regarding plot no.7, regarding which conveyance deed is to be executed in terms of the award?

I am of the view that the view taken by the learned District

Judge, Gurgaon that there is a bar in the conveyance deed to execute the transfer of the sale deed is absolutely incorrect. The relevant extract from the conveyance deed Annexure A3 is reproduced as under:-

2. The vendor shall have a first and paramount charge over the said site for the unpaid portion of the sale price and the transferee shall have no right to transfer by way of sale, gift, mortgage or otherwise the site or any right, title or interest therein (except by way of lease on a monthly basis) without the previous permission in writing of the Estate Officer. The Estate Officer while granting such permission may impose such conditions as may be the Chief Administrator from time to time.

In this case, it is not disputed that the entire sale price has been paid. Therefore, only requirement is to get the permission of the Estate Officer and the Estate Officer while granting permission, may impose such conditions, as may be deemed proper from time to time. So far as question as to whether relinquishment deed (Ex.AW1/4) does not contain any clause of reference of the arbitration and that in the agreement to sell dated 26.10.1998 (Annexure A-5) and (Annexure A-6) the arbitration clause is only regarding transfer of shares, therefore, the arbitrator was not competent to enter into the arbitration regarding plot no.7 and that he went beyond the terms of reference, it comes out that respondent no.1 Shri Rajesh Sharma being the proprietor of Precision Electronic Components Private Limited was allotted Plot no.7 Electronic City, Sector 18, Gurgaon by Haryana Urban Development Authority vide allotment letter dated 22.10.1996 for a total price of Rs.16 lakhs. Thereafter, Shri Rajesh Sharma along with

Mohinder Kumar Jain got incorporated a private limited company under the name and style of M/s PEC International Private Limited under the Indian Companies Act vide certificate of incorporation dated 23.10.1998, for setting up an industrial unit on the plot jointly. Shri Rajesh Sharma was then allotted 1,85,000 equity shares worth Rs.18,50,000/- in the said M/s PEC International Private Limited in consideration of his contributing plot no.7, Electronic City, Sector 18, Gurgaon in favour of the company as initial contribution for the project. For this purpose, Shri Rajesh Sharma executed an agreement of relinquishment of title of property of plot no.7 on 24.10.1998. After allotment of 1,85,000/- equity shares in consideration of transfer of plot to the company, respondent entered into an agreement to sell dated 26.10.1998 (Annexure A5) with Shri Mohinder Kumar Jain for sale of 90,000/- equity shares of face value of Rs.9,00,000/-. He further entered into an agreement on the same date (Annexure A6) to sell remaining 95,100 equity shares of face value of Rs.9,51,000/- in favour of Mohinder Kumar, Smt.Kiran Jain and Smt.Maina Devi. He later submitted the resignation from the directorship of the company w.e.f. 4.1.1999. In accordance with the relinquishment deed, the transfer deed was to be executed as the company became owner of the said plot. Thereafter, some dispute arose between the parties with regard to terms and conditions of the agreement to sell dated 26.10.1998 and same was referred to the sole Arbitrator Shri Vikram Sood, Company Secretary, Chandigarh. From the arbitration award, it comes out that before sole Arbitrator, claimant-company filed the statement of claim, respondent also filed reply and thereafter, both the parties led evidence and thereafter, award was passed.

Now, question would arise as to whether in the absence of any

objection under Section 34 of the Arbitration Act, the Court suo moto could hold that the arbitrator had acted beyond the terms of the reference and that there was no arbitration agreement on the basis of which award has been passed?

I am of the view that the learned District Judge, Gurgaon exceeded its jurisdiction in going behind the decree. In this case no objections were filed by the respondent under Section 34 of the Arbitration Act within the period of limitation or even thereafter or even during the proceedings under Section 36 before the learned District Judge, rather, he was proceeded against ex-parte. Therefore, in the absence of any objection, the learned District Judge was supposed to faithfully execute the award, which has the status of a decree.

So far as the documents discussed by the learned District Judge, Gurgaon are concerned, admittedly, in the relinquishment deed, there is no reference to the arbitration. Through the relinquishment deed, in lieu of transfer of plot to the Precision Electronic Components Private Limited, respondent was allotted equity shares of the face value of Rs.18,50,000/-. Through the agreement to sell dated 26.10.1998 (Annexure A5 and A6) between said Rajesh Sharma and Mohinder Kumar Jain, the said shares in M/s PEC International Private Limited were transferred to Mohinder Kumar Jain. In the said agreement to sell, there is arbitration clause.

The arbitration agreement is defined in Section 7 of the Arbitration Act. The relevant clause sought to be attracted in the present case is clause 7(4)(c), which is reproduced as under:-

7. *Arbitration agreement.*

.....

4 (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

In this case, admittedly, there was exchange of statement of claims and defence, in which both the parties stated that there was an agreement. None of the parties disputed the existence of the agreement and therefore, I am of the considered view that learned District Judge, Gurgaon exceeded its jurisdiction by holding that there was no arbitration agreement and therefore, the Arbitrator could not enter into the agreement. Copy of the statement of claims shows that the arbitration agreement was specifically alleged and the same was admitted in the reply. Mohinder Kumar Jain earlier was one of the Directors of M/s PEC International Private Limited. As referred in the arbitration award, name of the M/s PEC International Private Limited was changed to Precision Electronic Components Private Limited with the approval of the Registrar of Companies, NCT of Delhi and Haryana, Delhi on 10.1.2001.

Hon'ble Supreme Court in S.N.Prasad vs. Monnet Finance Ltd. And others, 2011(1) SCC 320, while considering the scope of Section 7(4) (c) observed as under:-

10. But the words, 'statements of claim and defence' occurring in section 7(4)(c) of the Act, are not restricted to the statement of claim and defence filed before the arbitrator. If there is an assertion of existence of an arbitration agreement in any suit, petition or application filed before any court, and if there is no denial thereof in the defence/counter/written statement thereto filed by the other party to such suit, petition or application,

then it can be said that there is an “exchange of statements of claim and defence” for the purposes of section 7(4)(c) of the Act. It follows that if in the application filed under section 11 of the Act, the applicant asserts the existence of an arbitration agreement with each of the respondents and if the respondents do not deny the said assertion, in their statement of defence, the court can proceed on the basis that there is an arbitration agreement in writing between the parties.

It appears that since Mohinder Kumar Jain was Director of M/s PEC International Private Limited, name of which was later on changed to Precision Electronic Components Private Limited, therefore, both the parties felt that the said arbitration agreement is applicable to M/s PEC International Private Limited. Before the Arbitrator, no objection was raised by the respondent Rajesh Sharma that the said arbitration agreement is not enforceable between the parties. Even before this Court, he had made a statement admitting the claim. He even did not contest the proceedings under Section 36 of the Arbitration Act before learned District Judge, Gurgaon.

The perusal of the impugned order shows that even the learned District Judge is not definite that the award is not executable. He has observed that award regarding execution of the sale deed (read transfer deed) is concerned, it does not 'appear to be executable'. Further, it was held that executable award 'being doubtful' no relief can be granted. Merely, on the ground of doubt, the execution of award could not be refused. Said award has become final between the parties.

Learned counsel for the respondent has argued that a fraud has

been played on the respondent. It is stated that one N.K.Jain the then Home Secretary was behind all these frauds. Respondent was coerced to part with the said plot. It is stated that Shri Rajesh Sharma as a sole proprietor of Precision Electronic Components Private Limited was allotted industrial plot on 22.10.1996. The company M/s PEC International Private Limited was created on 23.10.1998. On 24.10.1998, relinquishment deed was executed and the agreement of transfer of shares in favour of M.K.Jain was executed on 26.10.1998. There is nothing on file to show that anything was paid to the respondent. In this way, it is sought to be projected that a fraud was committed with the respondent and that the agreement of transfer of plot to Precision Electronic Components Private Limited is without consideration.

I am of the view that this Court is not required to go into the said contentions. The fraud has to be specifically pleaded and proved. Before the Arbitrator, in the reply, no such contention was raised. Even when the matter was pending under Section 36 of Arbitration Act, respondent no.1 chose to absent himself and did not file any reply objecting to the execution of the award on the ground of fraud, as sought to be pressed before this Court. So much so, in the petition filed before this Court, respondent himself appeared in person on 29.3.2007 and stated that he does not oppose the petition. Therefore, such contention of fraud and want of consideration cannot be raised at this stage when this Court is only required to adjudicate upon the legality of the impugned order passed by the learned District Judge, Gurgaon refusing to execute the award. Similarly, the claim that there is no arbitration clause, cannot be raised at this stage since parties had exchanged statement of claim and the reply wherein no such plea was

taken that there is no such arbitration clause. The mere ground that permission of Haryana Urban Development Authority is required before transferring the plot is no ground to refuse to execute the award.

In view of what has been discussed above, I am of the view that the impugned order dated 6.9.2006, passed by learned District Judge, Gurgaon is illegal. The learned District Judge has exceeded its jurisdiction in examining the background and legality of the award. The reasoning given in the impugned order is also found to be incorrect. As such, the impugned order is set aside. The case is remanded back to the learned District Judge, Gurugram with a direction to execute the award dated 19.3.2005, passed by respondent no.2 in accordance with law.

There is an angle of the controversy. Impugned order was passed on 6.9.2006 refusing to order execution of transfer/ sale deed. The said order of District Judge has been found to be illegal. So petitioner is entitled to execution of conveyance/ sale deed. However, from 6.9.2006 till 2018, there is likelihood of enormous increase in the market value and consequential collector rate, requiring payment of higher stamp duty on conveyance / sale deed by petitioner. Petitioner is not to be made suffer because of illegal order of learned District Judge, Gurgaon. Therefore, it is ordered that stamp duty payable on conveyance / sale deed shall be as on 6.9.2006.

The present revision petition stands allowed accordingly.

Parties through their counsel are directed to put in appearance before learned District Judge, Gurugram on 22.2.2018.

08.02.2018

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
No