

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

**FAO No.2760 of 2017 (O&M)
Date of Decision.10.07.2018**

Trident Techlabs Pvt. Ltd.

...Appellant

Vs

Punjab State Power Corporation Ltd.

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aditya Jain, Advocate
Mr. Yash Mishra, Advocate and
Ms. Nidhi Jaswal, Advocate
for the appellant.

Mr. P.P.S. Thethi, Advocate
for the respondent.

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AMIT RAWAL J.(ORAL)

The present appeal has been preferred against the order dated 17.02.2017 whereby though the application submitted under Section 9 of the Arbitration and Conciliation Act, 1996 at the instance of the appellant for stay of the award dated 8.11.2016 granting reliefs to the both the parties, has been allowed but the appellant was also restrained from enforcing the relief granted in para (i) to (iv) of the award, particularly, when the application under sub-section 2 of Section 36 of the 2015 Act was pending .

Learned counsel appearing on behalf of the appellant submitted that grievance in the present appeal is with regard to the finding given in the impugned order whereby the appellant had been restrained to execute para (i) to (iv) of the relief part in its favour, despite the objection petition under Section 34 of the 1996 Act, since

January, 2017 is pending before the Principal Court at Patiala. The Court has treated the objection under Section 34 of the 1996 Act as original petition by giving liberty to parties to lead evidence. The objector has already led evidence and the matter is slated for 03.08.2018 for respondent's evidence. He submitted that the Principal Court cannot assume the role of trial Court as objections can be decided by way of affidavit unless and until one of the parties seeks cross-examination *vis-a-vis* part of the affidavit.

By virtue of the impugned order, the appellant has also been restrained from executing the award without their being any counter-claim or any application filed on behalf of the Punjab State Power corporation Limited (hereinafter called as 'PSPCL'), therefore, the order is not sustainable and liable to be set aside. In support of aforementioned submissions, reliance has been laid to an unreported judgment of Delhi High Court rendered in **Nidhi Builders (P) Ltd. Vs. Director General MD ACCN Product** passed in Execution Petition No.27 of 2014 dated 02.12.2014 whereby it has been held that filing of petition under Section 34 of the 1996 Act does not make whole of the decree non-executable.

Mr. Thethi, learned counsel appearing on behalf of PSPCL submitted that it is too late in a day for permitting the appellant to seek execution of the award, owing to the restraint order in favour of PSPCL *vis-a-vis* para (v) and (vi). The Principal Court should not have treated the objections as an ordinary petition calling upon the parties to lead evidence, in view of the law laid down by this Court in **M/s Punjab State Industrial Dev. Corporation Ltd. Vs.**

Sunil K. Kansal 2013 (7) RCR (Civil) 2606 as the proceedings under Section 34 are summary in nature but is not averse to any direction, which this Court may deem appropriate for expeditious disposal of the petition under Section 34, in order to strike out equities.

I have heard learned counsel for the parties, appraised the paper book, judgments cited at bar and of the view that the Principal Court ought not to have called parties to lead evidence in respect of affidavits filed in support of their claims and reply, in view of the law laid down in the judgment in **M/s Punjab State Industrial Dev. Corporation Ltd.'s case** (supra), wherein it has been held as under:-

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

(i) The issues, as required under Order 14 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.

Be that as it may, without commenting upon merits and

demerits of the objection petition pending consideration before the Principal Court, while upholding the order under challenge, I deem it appropriate to dispose of the appeal by directing the Principal Court to expedite the decision of the objection petition and preferably within a period of two months from the date of receipt of certified copy of this order. If at all, PSPCL has to cross-examine the witness of the appellant herein *vis-a-vis* affidavit, they shall be at liberty to do so and lead evidence, if require in law.

(AMIT RAWAL)
JUDGE

July 10, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No