

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

FAO No. 1402 of 2018 (O&M)

Date of decision: 28.03.2018

M/s Pawan Kumar and Company

...Appellant

Vs.

**District Manager, Punjab State Procurement Corporation Ltd. and
Others**

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Padamkant Dwivedi, Advocate
for the appellant.

AJAY TEWARI, J.(ORAL)
CM No. 5395-CII of 2018

For the reasons mentioned in the application, same is allowed
and delay of 51 days in re-filing of the appeal stands condoned.

CM No. 5396-CII of 2018

For the reasons mentioned in the application, same is allowed
and delay of 13 days in filing of the appeal stands condoned.

Main Case

This appeal has been filed against the judgment and order
dated 06.07.2017 passed by the Additional District Judge, Ferozepur
dismissing an application under Section 34 of the Arbitration and
Conciliation Act, 1996 filed by the appellant.

The primary contention of the appellant was that its
challenge to the arbitration process was not considered. A perusal of

the award reveals that on 15.12.2014 an application was moved by the respondent seeking to amend the revised claim. On 12.01.2015, counsel for the appellant appeared and stated that he had no objection if the respondent is permitted to amend the revised claim. The application was allowed and the copy of the revised claim was supplied to Mr. Chugh who pointed out that as per a previous order certain documents remained to be supplied to him. On 09.02.2015 and on 06.04.2015, the documents which had been requisitioned were supplied to the counsel for the appellant. The matter was adjourned to 11.05.2015 to file amended written reply and thereafter was again adjourned to 08.06.2015 at the request of counsel for the appellant and thereafter once more adjourned to 06.07.2015 at the request of counsel for the appellant. None appeared for the appellant on that date and they were proceeded against ex parte and the matter was fixed for 03.08.2015 for the evidence of the claimant. Respondent led its evidence and ultimately the award was announced on 31.08.2015.

In the circumstances, the issue before this Court is whether a party which chooses to be ex parte and not to appear and is consequently proceeded against ex parte(which order is not challenged) can thereafter claim that its assertions have not been considered. The Court cannot also turn a blind eye to the fact that the dispute in the present case relates to the year 2008. I put it to the learned counsel that before issuing notice, in my opinion, it would be, in the interest of justice, that the awarded amount-which can legitimately be considered

to be a money decree- be secured and consequently asked the counsel whether the appellant would deposit the amount in a fixed deposit so that at least the interest of the party who would be found entitled to the claim be protected.

Counsel sought pass over and has now appeared and has stated that it is not possible for the appellant to make any deposit of amount.

In the circumstances this appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 28, 2018

Poonam (II)

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No