

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-8182-2018 (O&M)
Date of decision: 21.11.2019

R.C. Nayyar

.....Petitioner

versus

Executive Engineer, Punjab Mandi Board, Shaheed Bhagat Singh
Nagar (Nawanshahr) Punjab and another

.....Respondents

CR-8184-2018 (O&M)

R.C. Nayyar

.....Petitioner

versus

Executive Engineer, Punjab Mandi Board, Shaheed Bhagat Singh
Nagar (Nawanshahr) Punjab and another

.....Respondents

CORAM: Hon'ble Mr. Justice Deepak Sibal

Present: Mr.Naresh Markanda, Senior Advocate with
Ms.Kavita Markanda, Advocate and
Ms.Neihal Dogra, Advocate for the petitioner

Deepak Sibal, J. (Oral)

Through this order, I shall dispose of two identical petitions being CR Nos.8182 of 2018 and 8184 of 2018. For facility of reference, facts are being taken from CR 8182 of 2018.

The present petition is directed against the order dated 22.08.2014 passed by the Civil Judge (Junior Division), Chandigarh (for short, the Trial Court), through which an Arbitration Award dated 28.12.2012 has been made Rule of the Court. Also under challenge is the order dated 24.07.2018 passed by the Additional District Judge, Chandigarh

(for short, the Appellate Court) dismissing an appeal filed by the petitioner against the aforesaid order of the Trial Court.

The facts in brief which need to be noticed for adjudication upon the present petition are that the disputes between the parties were referred to an Arbitrator who after considering the same passed an Award dated 28.12.2012. On 28.01.2013 the petitioner filed a petition under Section 14(2) of the Arbitration and Conciliation Act, 1940 (for short, the Act) for the issuance of a direction to the Arbitrator to file his Award dated 28.12.2012 (along with proceedings) in the Court. While such petition was pending, on 17.04.2013 the Arbitrator also filed a petition under Sections 14 and 17 of the Act for filing in Court the aforesaid Award passed by him. Notice of the petition filed by the Arbitrator was issued to the petitioner on service of which he appeared before the Trial Court through his counsel on 22.08.2013. On his appearance, the matter was adjourned to 28.09.2013 for filing of Power of Attorney and reply/objections. Thereafter, the matter was adjourned on several occasions but the petitioner did not file any reply/objections. On 30.05.2014, after going through the interim orders, the Trial Court was of the opinion that unnecessary adjournments were being sought and got in the matter and the petition filed by the Arbitrator under Sections 14 and 17 of the Act for filing of his Award was getting delayed. In this regard, the Trial Court passed a specific order and the matter was posted for hearing on 01.07.2014 on which date, since two parallel proceedings with regard to filing of the Award, one filed by the petitioner and the other by the Arbitrator were going on before the Court, the petitioner's petition was disposed of as infructuous. The proceedings initiated by the Arbitrator were adjourned by the Trial Court to 22.07.2014. Thereafter, the matter was

adjourned on several occasions and finally through the order impugned in the present petition the Trial Court, after holding that the petitioner had adequate notice with regard to the filing of the Award by the Arbitrator and since within 30 days of such notice no objections had been filed by him directed that the Award passed by the Arbitrator be made Rule of the Court. The petitioner filed an appeal to challenge the aforesaid order of the Trial Court which was dismissed by the Appellate Court. It is in these circumstances that the petitioner has knocked the doors of this Court through the present petition.

Mr.Naresh Markanda, learned senior counsel appearing on behalf of the petitioner submitted that though notice of a petition filed by the Arbitrator under Sections 14 and 17 of the Act was served on the petitioner and that he had appeared before the Trial Court in pursuance thereto, such summons could not be considered to be a valid notice under Section 14(2) of the Act as through such notice only the factum of filing of a petition by the Arbitrator under Sections 14 and 17 of the Act was brought to the notice of the petitioner and that no separate notice with regard to filing of the Award had been issued. In support of his arguments, reliance was placed on a judgment of the Apex Court in East India Hotels Ltd. vs. Agra Development Authority (2001) 4 SCC 175.

The disputes between the parties had been referred to a Sole Arbitrator who after considering such disputes passed an Award dated 28.12.2012. On 28.01.2013 the petitioner filed a petition before the Trial Court under Section 14(2) of the Act for issuance of directions to the Arbitrator to file his Award before the Court. While such petition was pending, on 17.04.2013, the Arbitrator on his own filed a petition before the

Trial Court under Sections 14 and 17 of the Act for filing his Award. Notice of the Arbitrator's Petition was issued to the petitioner upon service of which he put in appearance before the Trial Court through his counsel on 22.08.2013 and sought and got time to file reply/objections. Order of the Trial Court dated 22.08.2013 which is relevant reads as under:-

*“Present: Counsel for applicant
Counsel for arbitrator*

Sh.Ankur Gupta, Advocate filed MOA on behalf of R.C.Nayyar. Now, case is adjourned to 28.9.13 for filing POA reply/ objections.

Sd/- CJ (JD) / 22.8.13”

Thereafter the Arbitrator's petition for filing of his award was adjourned on several occasions but no reply/objections to the same were filed by the petitioner.

On 30.05.2014 the Trial Court did not appreciate the unnecessary delay in the disposal of the matter and passed the following order:-

*“Present: Sh.P.K.S.Gill, counsel for the petitioner
Proxy counsel for the respondent*

The perusal of the file shows that the application under Section 14 and Section 17 of Indian Arbitration Act 1940 for submitting the Arbitration Award dated 28.12.2012 was filed by the Arbitrator on 17.4.2013. The perusal of the file further goes on to show that Sh.Ankur Gupta, Advocate file his memo of appearance on 22.8.2013. Since then case is being fixed for different purposes i.e. reply/ objections as well as for filing power of attorney as well as for consideration. It is relevant to mention that on each and every date counsel for both the parties have been asked to appear together to have a clear picture with regard to the present case as it becomes

really difficult for the Court to adjudicate the matter in absence of other counsel as both of them take different pleas. Accordingly, they are directed to appear sharp at 12.00 PM on the next date of hearing i.e. 1.7.2014 and are further directed to submit the written submissions in the present case.”

A perusal of the afore quoted order reveals that the petitioner had notice of the Arbitrator's petition filed by him under Sections 14 and 17 of the Act to file his Award and that in spite of grant of adequate opportunities he did not file any reply/objections to the same.

Since two parallel proceedings with regard to filing of the Award, one initiated by the petitioner and the other by the Arbitrator were pending before the Trial Court, on 01.07.2014 the petition instituted by the petitioner was disposed of as having been rendered infructuous through the following order:-

“Present: Sh.Dinesh Gupta, counsel for the petitioner

It is an admitted fact that the award dated 28.12.2012 had already been filed in the Court on 17.04.2013 and objector Sh.R.C.Nayyar is in due knowledge of the same.
Ahlmad is directed to tag the file in which petition u/s 14(2) of Arbitration Act, 1940 was filed with the file of award. Accordingly, the petition u/s 14(2) of the Arbitration Act, 1940 stands disposed of being infructuous.

Sd/- Dr.Sukhda Pritam/ CJ (JD)/ 01.07.2014”

(Emphasis supplied)

The afore quoted order is a clear indicator with regard to the factum of the petitioner being in knowledge of the petition filed by the Arbitrator for filing his award before the Court.

The afore quoted orders of the Trial Court dated 22.08.2013,

30.05.2014 and 01.07.2014 which were all passed in the presence of the

petitioner's counsel, leave no room for doubt that through the intervention of the Court the petitioner had notice of the filing of a petition by the Arbitrator under Sections 14 and 17 of the Act through which he had sought to file his Award dated 28.12.2012 in the Court.

In the light of the above, this Court has no hesitation to conclude that the petitioner, through the process of the Court, had notice of the filing of the Award by the Arbitrator but in spite of the same no objections to the same were filed by him. Rather, a perusal of the interim orders passed by the Trial Court reveal that the petitioner sought to unnecessarily delay the process with regard to the Award having been made Rule of the Court as he failed to file his reply/ objections for one year.

In East India Hotels Ltd.'s case (*supra*), the Hon'ble Supreme Court held that notice under Section 14(2) of the Act need not be in writing and could also be oral. It further went on to observe that what was essential was that there must be service of notice or intimation or even communication of the filing of the Award to the parties and that mode of service of such notice was immaterial.

Paragraph no.9 of the afore referred judgment which is relevant reads as under:-

“9. From a perusal of the above provision, shorn of unnecessary details, it is clear that notice under sub-section (2) of Section 14 of the Act need not be in writing and that it can also be oral. What is essential is that there must be service of notice or intimation or communication of the filing of the award to the parties, mode of service of such a notice being immaterial. But such information, communication and knowledge must be by or pursuant to an order of the court. However, after filing of an award by the Arbitrator or the Umpire in the court, if it merely records the presence of the

parties or their counsel but does not indicate that notice of filing of the award be given to the parties, no service of notice can be attributed from that fact, as notice must be referable to an act of the court.”

In view of the above discussion as also the law enunciated by the Hon'ble Supreme Court in East India Hotels Ltd.'s case (*supra*) both the petitions being CR-8182-2018 and 8184-2018 are dismissed.

No costs.

21.11.2019

gk

**(Deepak Sibal)
Judge**

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No