

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 118

CR-1657-2019 (O&M)

Date of decision : 19.03.2019

Chief Engineer, Punjab Roads
and Bridges Development Board

..... Petitioner

VERSUS

M/s Som Datt Builders Pvt. Ltd.
and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Akshita Chauhan, AAG, Punjab.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 24.08.2018, passed by the Additional District Judge, Commercial Court, Ludhiana (for short, the Trial Court), dismissing the application filed by the petitioner seeking permission therein to lead evidence in support of the objection petition filed by the State under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act).

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that through an arbitration award dated 14.02.2017 the respondents were held entitled to receive from the petitioner an amount of ₹9,31,54,580/- alongwith interest @ 8% per annum w.e.f. 08.11.2014 till the date of passing of the award. The respondents were further held entitled to ₹10 lakhs as costs. The petitioner was granted three months' time to satisfy such award failing which the awarded amount was ordered to carry further interest @ 9% per annum from the date of the award.

Through a petition under Section 34 (2)(a) of the Act the petitioner filed its objections to the aforesaid award dated 14.02.2017. While

such objections were pending adjudication, an application was filed by the petitioner seeking therein permission of the Trial Court to lead evidence. Such application was dismissed through the order under challenge in the present proceedings.

Learned State counsel appearing on behalf of the petitioner has been heard.

In “*Emkay Global Financial Services Ltd. vs Girdhar Sondhi*”

(2018) 9 SCC 49, the Hon'ble Apex Court has held as under: -

21. It will thus be seen that speedy resolution of arbitral disputes has been the reason for enacting the 1996 Act, and continues to be the reason for adding amendments to the said Act to strengthen the aforesaid object. Quite obviously, if issues are to be framed and oral evidence taken in a summary proceeding under Section 34, this object will be defeated. It is also on the cards that if Bill No.100 of 2018 is passed, then evidence at the stage of a Section 34 application will be dispensed with altogether. Given the current state of the law, we are of the view that the two early Delhi High Court judgments, cited by us hereinabove, correctly reflect the position in law as to furnishing proof under Section 34(2)(a). So does the Calcutta High Court judgment. We may hasten to add that if the procedure followed by the Punjab and Haryana High Court judgment is to be adhered to, the time limit of one year would only be observed in most cases in the breach. We therefore overrule the said decision. We are constrained to observe that Fiza Developers was a step in the right direction as its ultimate ratio is that issues need not be struck at the stage of hearing a Section 34 application, which is a summary procedure. However, this judgment must now be read in the light of the amendment made in Section 34(5) and 34(6). So read, we clarify the legal position by stating that an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the Arbitrator. However, if there are matters not contained in such record, and are relevant to the determination of issues arising under Section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both parties. Cross-examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, as the truth will emerge on a reading of the affidavits filed by both parties. xxx xxx xxx”

As per the afore quoted portion of the judgment in *Emkay*

Global's case (supra) it has clearly been held by the Hon'ble Apex Court that

the proceedings under Section 34 of the Act are summary proceedings and in such proceedings no issues or leading of oral evidence should be allowed as this would delay the finalization of the arbitral proceedings which would be against the main object behind enacting the Act. It has further been held that in an application for setting aside an arbitral award ordinarily nothing should be permitted which is not before the Arbitrator but if there are matters not contained in such record, and are found relevant to the determination of the issues arising under Section 34(2)(a) of the Act, the same may be brought to the notice of the Court by way of affidavits to be filed by both parties but without cross-examination of the persons swearing such affidavits unless the Court finds it absolutely necessary to do so.

When the application filed by the petitioner to lead evidence is read in the light of the law laid down by the Hon'ble Apex Court in *Emkay Global's* case (supra), it is found that the Trial Court has rightly rejected the petitioner's application as the contents of such application are found to be absolutely vague. No reasons have been given therein as to what evidence is sought to be led and for what purpose. What is sought to be proved is also not forthcoming either from the contents of the application or from the submissions made at the bar.

In view of the above, no merit is found in the present petition and the same is accordingly dismissed.

No costs.

19.03.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No