

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

CM-21500-CII-2019 in/and
FAO No.5135 of 2018 (O&M)
Date of Decision: October 22, 2019

State of Punjab

...Appellant

Versus

Jai Bhushan Malik and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sandeep Singh Deol, DAG Punjab
for the appellant.

Mr. Akash Singla, Advocate
for respondent No.1.

JAISHREE THAKUR, J. (Oral)

CM-21500-CII-2019

1. This is an application for preponing the hearing of the appeal, which is now listed for 21.02.2020.

2. For the reasons mentioned in the application, the same is allowed and the appeal is taken up for hearing today.

FAO-5135-2018

1. This is an application that has been filed seeking to challenge the order dated 17.05.2018 passed by the Addl. District Judge, Sangrur whereby, the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting aside

the award dated 26.10.2016 which has been dismissed primarily on the ground that there was non-compliance of provisions of Section 34(5) of the Act.

2. In brief, the facts are that on account of a dispute that arose between the parties, the matter was referred to Arbitrator in terms of the agreement entered into between the parties. Respondent No.1 preferred a claim petition before the Arbitrator for recovery of its dues for work done, which claim was allowed. Against the said award, the appellant herein filed objections under Section 34 of the Act before the Addl. District Judge, Sangrur. Notice was issued and matter was contested between the parties. Respondent No.1 herein took the preliminary objection that there was non-compliance of provisions of Section 34(5) of the Act, which stipulates the service of prior notice upon the other party and filing of affidavit endorsing such compliance, before filing objections under Section 34 of the Act. The Addl. District Judge, Sangrur, without going into the question as to whether the objections were sustainable, dismissed them holding that there was non-compliance of Section 34(5) of the Act, meaning thereby, no prior notice had been served upon respondent No.1. Aggrieved against the said order, the instant appeal has been filed.

3. Mr. Sandeep Singh Deol, learned DAG Punjab for the appellant would submit that the impugned order, so passed, is liable to be set aside since compliance of Section 34(5) of the Act is not mandatory as held by the Supreme Court in the case of *State of Bihar and others vs. Bihar Rajya Bhumi Vikas Bank Samiti, 2018(5) RCR (Civil) 332*.

4. Per contra, Mr. Akash Singla, learned counsel for respondent

No.1 urges that there is no infirmity in the order so passed, however, he is not able to dispute that the judgment referred to by counsel for the appellant has categorically held that Section 34(5) of the Act is a procedural provision and infraction of which would have no consequence.

5. I have heard counsel for the parties and in view of the fact that in the case of *State of Bihar and others vs. Bihar Rajya Bhumi Vikas Bank Samiti (supra)* the Supreme Court that has held that Section 34(5) of the Act is a procedural provision and that compliance of the same is not mandatory, the impugned order is set aside with a direction to the Addl. District Judge, Sangrur to decide the matter on merits. Consequently, the appeal is allowed. The parties are directed to appear before the concerned court on 05.12.2019.

October 22, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No