

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 224

FAO-5184-2019 (O&M)

Date of decision : 05.03.2020

State of Punjab

..... Appellant

VERSUS

M/s U.P. State Bridge
Corporation Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Saurav Khurana, DAG, Punjab.

Mr.S.K.Chandwani, Advocate, and
Mr.Sameer Chandwani, Advocate,
for respondents No.1 and 5.

DEEPAK SIBAL, J. (ORAL)

The instant appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, the 1996 Act) is directed against the order dated 11.04.2019 passed by the Additional District Judge III, Jalandhar dismissing an application filed by the appellant-State under Section 34 of the 1996 Act.

Learned State counsel submits that as per Section 15(2) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short, the 2015 Act) the State's application filed under Section 34 of the 1996 Act was required to be decided by a Commercial Court but in the instant case the same has been adjudicated upon by the Additional District Judge III, Jalandhar which Court at the time of passing of the impugned order was not designated as a Commercial Court. In this regard reliance is placed on a communication dated 27.01.2020 received by the State from the District & Sessions Judge, Jalandhar wherein it is stated that on 20.04.2016 Additional District Judge-I was the only Court which was designated as a Commercial Court and that only on and after 14.06.2019 the Courts of Additional District Judges I, II and III in each District in the State of Punjab were also designated as Commercial Courts. It has further been stated in the aforesaid communication that on

11.04.2019 i.e. the date when the impugned order was passed by the Additional District Judge-III, Jalandhar, it was not designated as a Commercial Court.

Learned counsel for contesting respondents No.1 and 5 does not dispute the above factual position.

Section 15(2) of the 2015 Act may be advantageously referred to.

The same reads as under: -

“15. Transfer of pending cases.

(1) xxx xxx xxx

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court.

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).”

The afore quoted provision clearly provides that after coming into force of the 2015 Act, wherever a Commercial Court has been established, all suits and applications pertaining to a commercial dispute (including applications under the 1996 Act) are required to be transferred to the duly designated Commercial Court. As per proviso to Section 15(2) only those suits/applications where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division/Court are not to be transferred.

In the instant case the undisputed factual position is that the application filed by the State under Section 34 of the 1996 Act, which related to a commercial dispute between the parties, was finally adjudicated upon by the Additional District Judge III, Jalandhar on 11.04.2019 on which date a Commercial Court had already been established at Jalandhar which was not the Court of Additional District Judge III, Jalandhar as at that time the Court of

Additional District Judge I, Jalandhar was the only Court which had been designated as a Commercial Court. It was on 14.06.2019 that the Court of Additional District Judge III, Jalandhar was also designated as a Commercial Court but with prospective effect. Thus, on 11.04.2019 the Court of Additional District Judge III, Jalandhar being not designated as a Commercial Court did not have the jurisdiction to pass the impugned order and resultantly for that reason alone the impugned order is set aside.

The application filed by the appellant-State under Section 34 of the 1996 Act shall now be placed before a Court which is competent to consider and adjudicate upon the same in accordance with law.

Since the parties have been litigating for the last about a decade, the Competent Court before whom the matter would now be listed is requested to finally decide the application filed by the appellant-State under Section 34 of the 1996 Act expeditiously but not later than six months from the date of receipt of a copy of this order.

The appeal is disposed of in the above terms.

05.03.2020
shamsher

Whether speaking/reasoned

Whether reportable

:

:

[DEEPAK SIBAL]
JUDGE

Yes / No
Yes / No