

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

-.-

RSA 4810 of 2019 (O&M)
Date of decision: 10.01.2020

Union of India and others*Appellants*

Versus

M/s Shanti Construction Company and another*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Sudhir Nar, Advocate
for the applicant/appellants

-.-

Rekha Mittal, J. (Oral)

CM 128 C of 2020

Heard.

Only amended memo of parties (Annexure A1) is taken on
record.

Disposed of accordingly.

Main case

Challenge in the present appeal has been directed against
concurrent findings recorded by the Courts whereby suit for mandatory
injunction directing the appellants/defendants to release balance payment of
Rs.1,73,310.60, as per terms and conditions of contract/agreement No.
24/EE/94-95 dated 18.02.1995 and Rs.80,000/- lying deposited as security
was decreed by the trial Court vide judgment and decree dated 23.01.2004

and appeal preferred by unsuccessful appellants/defendants came to be dismissed by the Additional District Judge, Ludhiana vide judgment and decree dated 24.01.2018.

The sole submission made by counsel for the appellants is that since contract between the parties contained an arbitration clause and in the written statement filed by the appellants, a specific plea was raised in regard thereto that the matter is liable to be referred to the arbitrator, the civil Court does not have jurisdiction to entertain and try the present suit, as such, the impugned judgments are liable to be set aside on this score alone. He would inform that earlier this Court accepted the appeal filed by M/s Shanti Construction Company and another in RSA No. 3911 of 2010, decided on 17.08.2016 (Annexure P2) and the matter was remitted for decision of the appeal afresh, in view of the observations made in the concluding para of the judgment.

Be that as it may, it is undisputed position of the case that the defendants/appellants did not move an application under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to the Arbitrator, in view of alleged arbitration clause contained in the agreement between the parties. This Court, while deciding RSA 3911 of 2010 accepted contention of the respondents/plaintiffs and set aside the judgment passed by the appellate Court to the effect that the matter needs reference to the arbitrator, and held, quoted thus:-

“Without commenting on the merit and demerit of the case, I am of the view that the lower Appellate Court ought not to have allowed the appeal by setting aside the

judgment and decree of the trial Court simply by holding that the agreement contained the arbitration clause. The suit was contested by the respondents-defendants by filing the written statement, but did not take up the objections for referring to the arbitration, in essence, did not move an application under Section 8 of the 1996 Act. Once the written statement is filed and they participated in the proceedings, they deem to waived a right. The lower Appellate Court ought not to have dismissed the suit on account of a jurisdictional error, much less, availability of arbitration clause. I deem it appropriate that since the lower Appellate Court being the last Court of fact and law, is required to examine the evidence both oral and documentary threadbare, the matter is required to be remitted back to decide the appeal afresh keeping in view the aforementioned observations and accordingly, the judgment and decree of the lower Appellate Court is hereby set aside and the matter is remitted back to the lower Appellate Court to decide the appeal afresh on merits as noticed above.”

The controversy now sought to be raised by the appellants is squarely covered against them, in view of the aforesaid observations. It is surprising that despite judgment dated 17.08.2016 passed by this Court which had attained finality, the appellants still sought to raise a plea that the matter needs reference to arbitral Tribunal in view of arbitration clause in the contract. In this view of the matter, it can safely be held that contention

raised by the appellants is patently misconceived and accordingly rejected.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is dismissed in limine.

As the appeal has been decided on merits, application for condonation of delay in filing and re-filing the appeal is of academic relevance.

(Rekha Mittal)
Judge

10.01.2020
Mohan Bimbra

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