

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-261-2020 (O&M)

Date of Decision: April 20, 2021

**HARYANA STATE COOPERATIVE LABOUR & CONSTRUCTION
FEDERATION LTD.**

..... PETITIONER(s)

Versus

**THE UNIQUE COOPERATIVE LABOUR AND CONSTRUCTION
SOCIETY LTD.**

..... RESPONDENT(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Lokesh Sinhal, Advocate
for the petitioner.

Mr. D.K. Singhal, Advocate
for the respondent.

LISA GILL, J.

This revision petition has been filed for setting aside order dated 05.11.2019, passed by the learned District Judge, Panchkula, dismissing the objections filed by the petitioner-judgment debtor in Execution Petition No.188 of 2018, filed by the respondent-decree holder.

Brief facts necessary for adjudication of this matter are that present petitioner was engaged in the execution of government work. On assignment of work by the Government, petitioner got the same executed from various Labour Cooperative Societies by effecting individual contractual agreement with the societies. Present petitioner was assigned the work of construction of low income group houses in the year 1981 at Sector

15, Panchkula by the Haryana Housing Board. Petitioner-Federation entered into three separate construction contracts for execution of the above work with the respondent-decree holder on 20.07.1981. Provision regarding arbitration was provided in Clause 20 of the agreement, which reads as under:-

“If, at any time, during progress of the work or after completion or at any time during the continuance of this agreement, any dispute or difference arise between the Federation and the Society the same shall be referred to the arbitration of the Registrar, Cooperative Societies, Haryana as the sole arbitrator and the provision of the Indian Arbitration Act, 1940 shall apply. The decision so given, shall be final and binding upon the parties.”

The respondent-Society raised a dispute, consequent to which, the Registrar Cooperative Societies, Haryana, appointed one Mr. P.S. Rawat, Superintending Engineer (retired), Haryana State Agricultural Marketing Board, Haryana, as Arbitrator for adjudication of the claim. Arbitration proceedings culminated in award dated 20.02.2008, which was challenged by the petitioner before the Registrar Cooperative Societies, Haryana. It was dismissed vide order dated 15.04.2010 by the Registrar Cooperative Societies, Haryana, on the ground that an appeal was not maintainable in the wake of specific provisions of the Arbitration and Conciliation Act, 1996 (for short ‘the Arbitration Act’). Liberty was afforded to the Federation to avail appropriate remedy, in accordance with law.

However, petitioner, instead of availing the appropriate remedy, filed a revision petition before the Principal Secretary, Department of

Cooperation, under Section 115 of the Haryana Cooperative Societies Act, which was dismissed on 03.08.2011. Civil Writ Petition no.20055 of 2011 was thereafter filed by the petitioner-Federation, challenging the said order. Writ Petition was also dismissed on 03.12.2012. Petitioner-Federation further filed a Letters Patent Appeal No. 955 of 2013, which was dismissed on 15.05.2013. Review application no. 1 of 2013 in LPA-955-2013, was also dismissed.

Petitioner-Federation eventually filed objections under Section 34 of the Arbitration Act, after a delay of 5 years and 8 months, which was dismissed on 17.05.2014. Admittedly, FAO No. 4560 of 2014, challenging order dated 17.05.2014 was dismissed by this High Court on 30.09.2016.

Civil Appeal No. 5332 of 2017, challenging order dated 30.09.2016, passed by this High Court, was dismissed by the Hon'ble Supreme Court on 07.04.2017 while imposing cost of Rs.5 lakhs upon the petitioner.

Execution petition filed by the decree holder on 19.07.2008 had been adjourned sine die on 17.11.2015. An application was filed for listing of the same after decision of FAO No. 4560 of 2014. It is a matter of record that objection petition was filed by the present petitioner on 05.03.2018, after dismissal of its SLP/Civil Appeal, by the Hon'ble Supreme Court, on the ground that it is only the Registrar Cooperative Societies, Haryana, who was competent to decide the reference of dispute as per Clause 20 of the agreement, thus, award dated 20.02.2008, passed by another authority is a nullity, therefore, un-executable.

Objection petition filed by the petitioner was dismissed by the learned District Judge, Panchkula vide impugned order dated 05.11.2019 while imposing cost of Rs.25,000/-. It is held that apart from the fact of the Registrar being competent to refer the dispute for disposal to any other person in terms of Section 103 of Haryana Cooperative Societies Act, the petitioner had duly participated in the proceedings which culminated in award dated 20.02.2008 and that the petitioner had never raised this objection at any earlier point of time. Learned District Judge, Panchkula further observed as under:-

‘21. All the facts discussed, therefore, only show that the applicant has no respect for the law and somehow or the other, it wants to deprive the ‘Decree Holder’ of the fruits of the decree/award. After going through the entire record and keeping in view the various rounds of litigation and stand of the JD/applicant, what can be conclusively held by this Court is that the entire endeavour of the applicant/JD is nothing else but to ensure that the decree holder does not enjoy the fruits of the decree despite the same having been passed in its favour in year 2008 and DH has failed to get payment of the work done even after passing of about three decades.’

Aggrieved therefrom, this revision petition has been filed.

Learned counsel for the petitioner vehemently argued that once the award itself is a nullity, it is open to the petitioner to take this ground before the Executing Court, and that the Executing Court has incorrectly dismissed the objections, filed by the petitioner. It is submitted that if an award is without jurisdiction, it can be challenged at any time and merely because this ground was not raised earlier cannot be held against the petitioner. It is further submitted that reference to Section 103(1)(T) of the

Haryana Cooperative Societies Act by the learned District Judge, Panchkula is misplaced. This is so on account of the specific provision in the agreement between the parties. It is, thus, prayed that this petition be allowed and consequently order dated 05.11.2019, passed by the learned District Judge, Panchkula, dismissing the objections filed by the petitioner, be set aside.

Learned counsel for the respondent while refuting the arguments raised by learned counsel for the petitioner submitted that learned District Judge, Panchkula has correctly dismissed the objections filed by the petitioner. Petitioner, it is submitted, is merely using delay tactics in order to avoid execution of the award, passed way back in the year 2008. It is, thus, prayed that this petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

Factual position of the award having been passed on 20.02.2008 and subsequent numerous unsuccessful attempts of the petitioner to challenge the same, is a matter of record. It is further not in dispute that exemplary cost of Rs.5 lakhs was also imposed upon the petitioner by the Hon'ble Supreme Court while dismissing its appeal on 07.04.2017. Present is a classic case where petitioner has unabashedly engaged in dilatory tactics. At this stage, it is relevant to note that the ground of the Arbitrator not being competent to pass the award was never ever raised by the petitioner at any earlier stage. Learned counsel for the petitioner is unable to deny this aspect that never in the grounds of appeal or revision before any of the Authorities, this Court or the Hon'ble Supreme Court was this ground ever taken. Learned District Judge, Panchkula has correctly dismissed the

objections filed by the present petitioner. It shall indeed be a paradox in itself if the petitioner is permitted to agitate a question, which would necessarily have arisen in its appeal/objection under Section 34 of the Arbitration Act, which already stand dismissed. It would amount to giving another lease of life to a lis, which stands decided. Furthermore, learned counsel for the petitioner is unable to point out any illegality in the learned District Judge, Panchkula, holding that the Registrar was well within his rights, to appoint Mr. P.S. Rawat as Arbitrator. Present is a case, which in fact calls for imposition of exemplary cost, however, due to the fervent request and prayer addressed by learned counsel for the petitioner, I desist from doing so.

No other argument was addressed.

Present revision petition being totally devoid of any merit, is dismissed.

April 20, 2021

Sunil

**(LISA GILL)
JUDGE**

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