

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

206/1

CR-393-2021 (O&M)

Decided on : 14.09.2021

Rajender Sharma

... Petitioner

Versus

M/s Tanmay Developers Pvt. Ltd.

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.S.K.Garg Narwana, Sr.Advocate
with Mr.Mukesh Rao, Advocate, for the petitioner.

Mr.Aashish Chopra, Sr.Advocate
with Mr.Gagandeep Singh, Advocate, for the respondent.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

Prayer in the present revision petition, filed under Article 227 of the Constitution of India, is for setting aside the order dated 15.02.2021 (Annexure P-12) whereby the Learned Addl.District Judge-cum-Presiding Judge, Exclusive Commercial Court, Gurugram has observed that the respondent has to file the statement of truth as ordered by the Court on 02.04.2019 (Annexure P-8). Further directions were issued that in view of the orders passed in CR-4079-2019 inter se the parties, which had been partly allowed therefore the sum and substance of the order was that it was for the party to determine whether to file an affidavit, in the facts and circumstances or not. Therefore, it had been put to counsel for the petitioner-respondent as to whether his client needed to file an affidavit or not. Resultantly, the proceedings were kept for arguments in the petition under Section 34 of the Arbitration & Conciliation Act, 1996.

It is not disputed that the award dated 12.12.2017 (Annexure P-1) passed by the Arbitrator inter se the parties is subject matter of consideration under Section 34 before the said Court. On an earlier occasion, on account of the rejoinder having been placed on record on 31.10.2018 (Annexure P-7) and the cross-objections being dismissed on 02.04.2019 (Anneuxre P-8) and

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certain directions had also been issued of even date i.e. 02.04.2019 that affidavit in the shape of statement of truth had to be filed by the parties. Similar order was also passed on 16.05.2019 (Annexure P-9).

The petitioner had challenged the same in CR-4079-2019, for setting aside the orders dated 31.10.2018, 02.04.2019 and 16.05.2019. The Co-ordinate Bench specifically held that the order dated 02.04.2019 & 16.05.2019 were set aside and no affidavit was required to be filed except where the requirement of advance notice had to be complied with. The relevant part of which this Court is concerned with reads as under:

“1. No affidavit is required to be filed with the application under Section 34 of the 1996 Act except an affidavit needs to be filed only to the extent that the requirement of giving advance notice has been complied with. Hence, the orders dated 02.04.2019 and 16.05.2019 are set aside.”

Whatever observations were made otherwise is apparently on the question of law, while deciding the revision petition. The orders inter se the parties dated 02.04.2019 and 16.05.2019 had been categorically set aside and neither any of the parties had challenged the same any further.

In such circumstances, the subsequent order dated 15.02.2021 (Annexure P-12), which has now been challenged by giving options to the petitioner-respondent to file the affidavit or not, is without any basis, keeping in view the above finding which has been recorded by the Co-ordinate Bench. Resultantly, the said portion is set-aside and the present revision petition is partly allowed.

September 14, 2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No