

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

116

1. CR-5375-2019(O&M)
Date of Decision: 23.05.2022

UNION OF INDIA

..Petitioner

Versus

TARSEM PAL BANSAL CONTRACTOR

..Respondent

2. CR-5485-2018(O&M)

UNION OF INDIA

..Petitioner

Versus

M/S TARSEM PAL BANSAL CONTRACTOR

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sudhir Nar, Advocate
Senior Panel Counsel of Union of India,
for the petitioner(s).

Mr. Sunil Garg, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

The two revision petitions arising from a suit filed by the petitioner for recovery of Rs.25,40,706/- as liquidated damages shall stand disposed of.

In Civil Revision No.5375 of 2019, the petitioner assails the correctness of order passed by the Court while rejecting the plaint under Order 7 Rule 11 CPC. In the other civil revision, the Court has allowed the application filed under Order 9 Rule 13 CPC. The learned counsel representing the petitioner contends that the suit is for recovery of liquidated damages falls under the exception clause and therefore, such dispute shall not be arbitrable in view of the judgment passed in M/s Mitra Guha

Builders (India) Company Vs. Oil and Natural Gas Corporation Ltd.

(2020) 3 SCC 222. He further submits that the Court has wrongly allowed the application under Order 9 Rule 13 CPC while setting aside the ex parte decree.

On the other hand, the learned counsel representing the respondent does not dispute the legal proposition, however, submits that the Union of India has filed a counter claim before the arbitrator for the same amount which has been rejected. He further submits that the newspaper in which the notice was published had no circulation in Jalandhar area where the respondent has its office.

The Supreme Court in M/s Mitra Guha Builders (India) Company's case (supra) has drawn a distinction between the clause providing for levy of liquidated damages which has been excluded from the scope of arbitration. It was held that such matter does not fall within the purview of arbitration as it specifically stands excluded under the contract. In the present case, the Union of India claims compensation on the basis of an exception clause. Such being the undisputed position, the order of rejection of the plaint under Order 7 Rule 11 CPC is incorrect.

As regard the arguments of the learned counsel representing the respondent, it may be noted that once the arbitrator had no jurisdiction to arbitrate on levy of liquidated damages on account of contract between the parties to the contrary, then the award, if any, dismissing the counter claim of the Union of India for grant of liquidated damages shall be without jurisdiction.

As regard the order passed by the Court allowing the application under Order 9 rule 13 CPC, it is evident that the respondent was

sought to be served through publication in a newspaper which had no circulation in Jalandhar area, then, the trial Court has correctly set aside the ex parte decree.

Consequently, the order rejecting the plaint under Order 7 Rule 11 CPC is set aside. The Civil Court is directed to proceed with the matter.

With all these observations, both the petitions are disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

May 23th, 2022
Ay

(ANIL KSHETARPAL)
JUDGE

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