

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

FAO-127-2017 (O&M)

Date of Decision: April 04, 2022

Dharminder Kumar

..... APPELLANT

Versus

PUNJAB STATE CIVIL SUPPLIES CORPORATION AND OTHERS

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashish Gupta, Advocate for the appellant.

LISA GILL, J.

Appellant has filed this appeal challenging order dated 30.08.2011 whereby petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short – ‘Arbitration Act’) filed on 21.10.2008 has been dismissed as well as order dated 02.03.2016 passed by learned District Judge, Moga, whereby appellant’s application for correction and review has been dismissed. Appellant filed petition under Section 34 of the Arbitration and Conciliation Act against award dated 29.10.2007 regarding crop year 1997-98 passed by respondent No. 3.

It is noted at very outset that appellant is not a proprietor or a partner or Director etc. of the firm – M/s Ishan Industries, Moga qua whom impugned award dated 29.10.2007 was passed. Appellant filed a petition under Section 34 of the Arbitration Act on the premise that appellant’s name is wrongly mentioned as Shiv Kumar with mala fide intention whereas appellant’s name is Dharmindar Kumar and not Shiv Kumar. It is further stated that appellant has nothing to do

with the Firm in question i.e. M/s Ishan Industries which was sued through its partners – Nirmala Devi, Renu and one Shiv Kumar. The award in question, it is further stated, was never supplied to the appellant. As soon as appellant came to know about passing of the award, he applied for the same and filed the petition under Section 34 of the Arbitration Act well within time. Nirmala Devi has since passed away. Appellant it is stated was sought to be implicated in a false FIR. The award was also attacked on the ground that Managing Director has no power to refer the matter to an Arbitrator. Moreover, the alleged agreement is stated to be a unilateral one, not signed by an authorized person. Agreement is claimed to be a forged and fabricated one.

Various pleas on merits, challenging award dated 29.10.2007 were also raised in the petition under Section 34 of the Act which are not being referred to as the same would not be relevant for the controversy at hand. Respondent opposed the petition while submitting that partners of M/s Ishan Industries were appearing in the arbitration proceedings through their counsel and the present petition was instituted merely as a device to delay execution of the award. As per partnership deed dated 13.08.1995, Nirmala Devi, Shiv Kumar and Renu are reflected as partners of M/s Ishan Industries and appellant – Dharminder Kumar it is stated has no concern with the respondent – Firm. It was denied that the respondent – Corporation ever treated the appellant as Shiv Kumar and in fact the respondent – Corporation had no concern with the appellant Dharminder Kumar.

Learned Additional District Judge, Moga vide impugned order dated 30.08.2011 dismissed the petition under Section 34 of the Arbitration Act while specifically holding that as the impugned award was passed against M/s Ishan

Industries, Moga, the appellant having no concern therewith had no cause of action for filing the objection petition.

Appellant, it is stated, thereafter filed an application seeking correction/review of decision dated 30.08.2011, Annexure A6 which was ultimately dismissed on 02.03.2016. Thereafter, present appeal has been filed after delay of 1668 days.

Learned counsel for the applicant-appellant argues that the appellant has in fact been pursuing his remedy in a bona fide manner though erroneously. It is submitted that the learned Additional District Judge has wrongly passed impugned order dated 30.08.2011. Once finding was recorded that the appellant had nothing to do with the partnership firm, objection petition should have been allowed and the award set aside. It is, thus, prayed that present appeal be allowed.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

Learned counsel for the appellant is unable to deny that the very basis and foundation of the objections filed by the appellant is that appellant has nothing to do with the firm – M/s Ishan Industries, Moga qua which award dated 30.08.2011 was passed. It is also the case of the respondent – Corporation that appellant has nothing to do with the said Firm and is not concerned therewith at all. Award dated 30.08.2011 has admittedly been passed against the firm – M/s Ishan Industries. Appellant has categorically stated in his cross examination that he has never met Nirmala Devi, Shiv Kumar or Renu etc. and neither does he have any relations with them. Appellant has further stated that respondent – department has never made any attempt to attach his property. Therefore, the contention that appellant's name is wrongly mentioned as Shiv Kumar and impugned award has been obtained by the respondent - corporation by

misrepresenting facts before the Arbitrator, has been rightly rejected. It is also not denied by learned counsel for the appellant that present appellant, Dharminder Kumar, was never named as an accused in the criminal case and in fact learned counsel for the appellant is unable to point out the reason why anticipatory bail was filed at all on his behalf. Learned Additional District Judge, Moga in this respect has observed as under:

“ The fact that Dharminder Kumar filed an application for bail in criminal case lodged by the department against partners of Ishan Industries, Moga or that the said bail application was opposed by department tooth and nail, does not provide objector/petitioner a locus standi to file the present objection/petition. Because Dharminder Kumar was never named as an accused in that criminal case and if Dharminder Kumar had adopted to file an application for anticipatory bail in that case, he cannot derive any benefit therefrom or claim locus standi to challenge the award in dispute before the court. It is the admitted case of Dharminder Kumar that department of Punsup has never tried to attach his property in execution of impugned award. It appears that Dharminder Kumar has filed the instant objection/petition with ulterior motive to delay and prolong the recovery of impugned award at the instance of partners of Ishan Industries, Moga. It was incumbent upon objector/petitioner to prove that he has a locus standi or he was a partner of Ishan Industries, Moga only then he could challenge the impugned award before the court. The contention that any person could challenge the award which was against the public policy is not tenable because there is nothing on record that impugned award was against public policy nor learned counsel for objector/petitioner has cited any law in support of that connection.”

Argument that once finding was recorded to the effect that appellant had nothing to do with the award in question, then award dated 30.08.2011 itself

should have been set aside, is indeed fallacious, untenable, hence rejected. Such vein of arguments, buttresses the observation of learned Additional District Judge that objection petition was filed with an ulterior motive to delay and prolong the proceedings. Furthermore, there is no sufficient or reasonable explanation for delay of 1668 days in filing of the appeal. To say that the appellant was pursuing his application for review in a bona fide manner does not pass muster. This so for the reason that after passing of decision dated 30.08.2011, appellant filed an application under Sections 151, 152 of CPC on 26.09.2011 seeking correction of clerical and typographic mistake in decision dated 30.08.2011. It is stated in the application that while holding that appellant had no concern or connection with the firm – M/s Ishan Industries, finding on issue No. 1 has been wrongly recorded in favour of the respondent – award holder and the same is a typographical error. After filing of reply to the said application, appellant filed an application on 17.09.2012 for treating the application under Sections 151, 152 of CPC for correction, as an application for review of decision dated 30.08.2011. It is apparent that reply to this application was duly filed on 17.10.2012 by the respondent – Corporation with specific and categoric stand that such an application is not maintainable. Thus no benefit thereof can be availed by the applicant/appellant.

No other argument was raised.

Thus, finding no merit, this appeal is dismissed on merits as well as being hit by delay and laches.

April 04, 2022
rts

(LISA GILL)
JUDGE

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