

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

CR-1692-2019 (O&M)

Date of Decision:- 17.8.2023

Emmsons International Ltd.

...Petitioner

Versus

Punjab State Warehousing Corporation

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Abhinav Aggarwal and Mr. Yogender Verma,
Advocates for the petitioner.

Mr. Vikas Singh, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 2.1.2019 (Annexure P-4) vide which a review application filed pursuant to an order dated 8.2.2018 passed by this Court in FAO-5336 of 2017 (Annexure P-2) so as to challenge order dated 31.3.2017 passed by learned Additional District Judge, Chandigarh, in an objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), has been dismissed.
2. A Memorandum of Understanding (MOU) was arrived at between the petitioner and the respondent on 8.5.2003 as per which the petitioner was to secure export orders in the name of the respondent and pursuant to which a contract had been entered into between the respondent and a company based

in Belgium namely 'M/s Sofarimex'. Upon a dispute having arisen, arbitration clause was invoked and accordingly, an Arbitrator was appointed. The Arbitrator delivered his award on 15.1.2010 for an amount of Rs.8,95,25,989/- which was challenged by the petitioner by way of filing a petition under Section 34 of the Act before learned Additional District Judge, Chandigarh. The said petition, however, was dismissed by the learned Additional District Judge, Chandigarh vide order dated 31.3.2017.

3. The petitioner assailed the said order dated 31.3.2017 by way of filing an appeal in this Court i.e. FAO No. 5336 of 2017 which was disposed of on 8.2.2018 by passing the following order :-

“ This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996.

The primary contention raised before me by the learned senior counsel is that in view of the enactment of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 read with notification dated 02.05.2016 of the Chandigarh Administration the objections had to be decided by the Commercial Court and despite having been brought this to the notice of the learned Judge the same was not transferred to the competent Court and this aspect has not even been considered or adverted to in the impugned order.

In the circumstances, I deem it appropriate to permit the appellant to first file a review on this limited ground before the Court.

Appeal stands disposed of at this stage.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.”

(emphasis supplied)

4. A perusal of the aforesaid order would indicate that the controversy raised therein was pertaining to the jurisdiction of the Court which had decided the objections under Section 34 of the Act.

5. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, which came into force w.e.f. 2.5.2016 specifically provides that commercial disputes were required to be adjudicated upon by the Courts so designated in accordance with provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Pursuant to promulgation of the aforesaid Act, the Chandigarh Administration had issued notification dated 2.5.2016 (Annexure P-1) conferring powers in respect of the aforesaid Act upon 1st Additional District Judge, Chandigarh. The said notification dated 2.5.2016 reads as under :-

“CHANDIGARH ADMINISTRATION
HOME DEPARTMENT
NOTIFICATION

Dated, Chandigarh 2/5.2016

No.8/7/2-II-I(8)-2016/ 10305

In exercise of the powers conferred by section 3 (1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 2016) the Administrator, Union Territory, Chandigarh in consultation with Punjab and Haryana High court hereby constitutes the court of First Additional District Judge, Chandigarh, as Judge of Commercial Court to try the cases specified under the said Act.

Chandigarh dated
the 26.04.2016

ANURAG AGARWAL, IAS
HOME SECRETARY,
CHANDIGARH ADMINISTRATION”

6. In the present case, the objections under Section 34 of the Act were admittedly not decided by the Court designated as a Judge of Commercial Court, as had been designated vide notification dated 2.5.2016 (Annexure P-1).

7. This Court while passing order dated 8.2.2018 in FAO No. 5336 of 2017 had permitted the petitioner to file a review application on the limited ground to the Court concerned and it was pursuant to the said order dated 8.2.2018 (Annexure P-2) passed by this Court that a review application was filed by the petitioner before the Court of ADJ, Chandigarh seeking review of order dated 31.3.2017 but the same has been dismissed by the learned ADJ, Chandigarh mainly on grounds of non-maintainability of a review petition.
8. The learned counsel for the petitioner submits that while it may be correct that the Arbitration Act does not have a specific provision for review of an order but it was only pursuant to an order passed by this Court in an appeal filed by the petitioner challenging order dated 31.3.2017 that this Court had granted him permission to first file a review application before the Court concerned i.e. the Court which had passed order dated 31.3.2017 (which had been challenged in the said FAO No. 5336 of 2017) and that as such, the Court of learned ADJ, Chandigarh was required to have applied its mind afresh.
9. Opposing the petition, the learned counsel representing the respondent submitted that since the petitioner never made any application to the Court concerned for transfer of the case to the Commercial Court, the same virtually amounts to waiver and thus, the petitioner cannot raise this ground at this stage so as to set at naught the entire proceedings.
10. This Court has considered rival submissions addressed before this Court.
11. The instant case certainly has some peculiar facts inasmuch as when the petitioner filed an appeal before this Court i.e. FAO No. 5336 of 2017 so as to challenge order dated 31.3.2017 passed by learned ADJ, Chandigarh

dismissing his petition under Section 34 of the Act, this Court instead of adjudicating upon the said appeal on merits granted liberty to the petitioner to file a review petition in the first instance before the Court of learned ADJ. When the said review application was filed, the Court of learned ADJ, however, dismissed the same on grounds of maintainability.

12. Normally, when any petition/complaint is instituted before a Court which does not have jurisdiction, it would be the opposite party which would be raising an objection in respect of the same and the Court on its own is not obliged to point out such lack of jurisdiction. However, the present case has some distinct facts inasmuch as it was in year 2010 that a petition under Section 34 of the Act was filed which came to be decided in year 2017 and it was during the pendency of the petition under Section 34 of the Act that the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 was promulgated leading to passing of notification dated 2.5.2016 (Annexure P-1) by the Chandigarh Administration vide which a Commercial Court was designated. In such circumstances, it was for the Court itself which was divested of its jurisdiction to have transferred the case to the designated Court even if no such request was made by either of the parties. The same not having done and the case having proceeded before the Court not having jurisdiction, the order passed by the said Court cannot sustain.
13. Even if, despite order dated 8.2.2018 (Annexure P-2), the impugned order as regards non-maintainability is held to be correctly passed, the instant case is such where this Court would not hesitate to invoke *suo-motu* powers under Article 227 of the Constitution of India, to tidy up the situation and to

provide the petitioner a remedy to have his objections under Section 34 of the Act adjudicated by a Court competent to adjudicate, particularly when no fault can be attributed to the petitioner. The change in procedure/jurisdiction had occurred, when the petition under Section 34 of the Act was still pending. Consequently, it is held that the proceedings conducted by the Court of learned ADJ, Chandigarh after 2.5.2016 (Annexure P-1) were without jurisdiction as it was only the Court of 1st ADJ, Chandigarh which had been designated as the Commercial Court, Chandigarh which had jurisdiction over the matter pursuant to notification dated 2.5.2016 (Annexure P-1). The entire proceedings conducted in this regard by learned ADJ, Chandigarh being without any jurisdiction are set aside. The matter is remanded back to the Court concerned to be decided afresh by the designated Court. The learned District Judge, Chandigarh to entrust the petition under Section 34 of the Act to any designated Court, as may be exercising jurisdiction, who shall decide the petition under Section 34 of the Act afresh in accordance with law. The parties are directed to appear before the Court of learned District Judge on 18.9.2023.

14. The petition stands disposed off accordingly.

17.8.2023
kamal

Whether speaking /reasoned
Whether Reportable

(Gurvinder Singh Gill)
Judge
Yes / No
Yes / No