

2023:PHHC:098106

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CR-4149-2023 (O&M)
Date of Decision:-31.07.2023

Hari Bhumi Senior Secondary School

... Petitioner

Versus

Shri Ram Transport Finance Co. Ltd. & another

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rohit Mittal, Advocate for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 25.5.2023 (Annexure P-1) passed by learned Additional District Judge, Jind [Executing Court]. The petitioner is the Judgment Debtor against whom award dated 23.12.2013 (Annexure P-2) was passed by Arbitrator. During the course of execution proceedings, the executing Court had passed order dated 9.12.2016 issuing conditional warrants against the petitioner. The said order was challenged by the petitioner by way of filing Civil Revision No. 4731-2017, which was disposed of vide order dated 3.3.2023 (Annexure P-4). The said order reads as under :-

“This petition was filed in 2017 challenging the order dated 09.12.2016 (Annexure P1), passed by the executing court issuing conditional warrants against the petitioner.

Notice of motion was issued on 24.07.2017. The operation of the impugned order was stayed. The petitioner was directed to place on record, the copy of the award passed against him. In spite of passing of more than 5-1/2 years, needful has not been done.

In view of the conduct of the petitioner that after getting an interim order from the Court, he has not even produced on record the basic document i.e. award passed against him, no case is made out for interference.

The revision petition is dismissed.

Needless to say that the petitioner would be at liberty to avail remedies in accordance with law and raise his objections before the executing court."

2. On 25.5.2023 when the matter was taken up by the executing Court, the following order was passed :-

“Reply to the application for filing of objections already moved by the JD is not filed by the DH. It is argued by the learned counsel that there is no need to file reply as objections have already been filed by the JD, therefore, arguments on petition may be heard. A perusal of record reveals that objections have already been filed. In such circumstances, the application is dismissed being infructuous as objections have already been filed. Learned counsel for JD requested an adjournment for arguments on objection. Request considered and allowed. Now, to come up on 03.07.2023 for arguments on objections.”

3. The learned counsel for the petitioner, while assailing the aforesaid order dated 25.5.2023 (Annexure P-1), submits that the executing Court fell in error in not permitting the petitioner to file additional objections, although the High Court vide its order dated 3.3.2023 (Annexure P-4) had duly permitted for the same. The learned counsel has further submitted that the award of Arbitrator, in any case, is nonest in the eyes of law as it is a case of

unilateral appointment of an Arbitrator, since the Arbitrator has been appointed by the Decree Holder.

4. This Court has considered the submissions addressed before this Court.

5. A perusal of the order dated 3.3.2023 (Annexure P-4) would indicate that a Co-ordinate Bench while noticing petitioner's conduct had dismissed the petition but had granted liberty to the petitioner to avail of remedies in accordance with law and to raise his objections before the executing Court. The said liberty, as granted by the Co-ordinate Bench, cannot be interpreted to mean that the petitioner was permitted to file a fresh set of objections. Rather, it appears that it was not brought to the notice of the Co-ordinate Bench that objections already stood filed in accordance with law. The conduct of the petitioner can hardly be appreciated inasmuch as the petitioner after getting an interim order in his favour had not chosen to place on record a copy of award in his revision petition for a good more than 5 years on an earlier occasion despite having been directed to do so. The purpose apparently seems to delay the executing proceedings. The objections as regards the award being bad on account of unilateral appointment of an Arbitrator cannot be raised at this belated stage during the course of execution proceedings.

6. The petition is sans merit and is hereby dismissed.

31.07.2023

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**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No