

2023:PHHC:099734

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

CR-4362-2023 (O&M)
Date of Decision: 3.8.2023

M/s R.K. & Co. Patran

... Petitioner

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Santosh Sharma, Advocate for the petitioner.

Mr. Abhilaksh Gaind, Advocate with
Mr. Rakesh Roy, Advocate for respondent No.2 – NHAI.

GURVINDER SINGH GILL, J. (Oral)

1. By way of filing the instant petition, the petitioner assails order dated 27.7.2023 (Annexure P-1) passed by respondent No.4 – The Commissioner, Patiala Division Patiala-cum-Arbitrator appointed under National Highway Act, 1956, vide which his application for leading additional evidence, has been declined.
2. Learned counsel for the petitioner submitted that the evidence sought to be led in the shape of photographs and videos of locality in question and documents including sale-deeds etc. is material evidence for just decision in the matter and in case the same is not permitted to be brought on record, the correct determination of compensation may not be possible. The learned counsel pressed into service a judgment passed by Hon'ble Delhi High Court

in Glenocore International AG Versus Dalmia Cement (Bharat) Limited, 2018 R.A.J. 672 to contend that leading of additional evidence is permissible at any stage, subject to relevancy of such evidence.

3. Notice of motion.
4. At this state, Mr. Abhilaksh Gaind, Advocate has put in appearance on behalf of respondent No.2 – NHAI and accepts notice.
5. Learned counsel representing respondent No.2 – NHAI has, however, opposed the petition on the ground that the documents now sought to be placed on record particularly sale-deeds etc. were very much in the knowledge of the petitioner and that no reason is forthcoming as to why the said documents could not be placed on record previously.
6. This Court has considered the rival submissions addressed before this Court.
7. It is apposite to refer to order dated 22.3.2023 passed in CR-5353-2022 by a Coordinate Bench of this Court, wherein the petitioner had earlier approached against an order passed by the Arbitrator declining his request for spot inspection. The relevant extract from order dated 22.3.2023 reads as under:

- “3. Learned Senior counsel for the petitioner after arguing at some length restricts his prayer that the impugned order may not be treated as an impediment against the petitioner for invoking the right under the provisions of Act for leading evidence.
4. Learned counsel for the respondent raises a plea with regard to the maintainability of the petition stating that an appeal is maintainable. However, to cut short the controversy and to avoid further prolonging of the litigation, he is not pressing the said issue.
5. In the peculiar facts and circumstances of the present case and in view of the restricted prayer, the petition is disposed of, accordingly. It is

clarified that the impugned order would not stand in the way of the petitioner for availing the remedies in accordance with the statutory provisions of the Act.”

8. The aforesaid order indicates that this Court had previously left it open for the petitioner to avail remedies in accordance with the statutory provisions of Arbitration and Conciliation Act, 1996.
9. While broad principles of Code of Civil Procedure, 1908 can be said to apply to the arbitration proceedings, but the Arbitrator cannot be said to be bound by all the provisions of Code of Civil Procedure, 1908 as is mandated under Section 19 of Arbitration and Conciliation Act, 1996, which reads as under:

“19. Determination of rules of procedure.—

- (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
 - (2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.
 - (3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.
 - (4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.”
10. In Glenocore International’s case (supra), the Arbitrator had granted liberty to one of the parties to file additional documents just prior to the final hearing, which was assailed by the other party before Hon’ble Delhi Court during course of a petition for enforcement of a foreign award. The Hon’ble Delhi High Court turned down the said challenge while observing as under:

“35. The contention that the arbitral tribunal did not adopt the judicial approach as it permitted Glencore to produce additional documents is also without substance.”

11. The abovesaid case leaves no manner of doubt that additional evidence may be permitted to be led in fit cases. Having regard to the fact that the documents sought to be placed on record i.e. Photograph, Videography, sale-deeds etc. would have material bearing on the outcome of the proceedings as regards assessment of compensation, the instant petition is accepted. The impugned order is set aside and the petitioner is permitted to place on record the documents/evidence in question subject to right of the respondents to rebut the same or to produce any evidence to challenge the authenticity of such documents.
12. However, having regard to the fact that the application was moved at a belated stage, the same is being accepted subject to payment of non-refundable costs of Rs.2,00,000/-, which shall be deposited in “Chief Minister Punjab Relief Fund”.

3.8.2023

Pankaj

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No