

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.949 of 2018 (O&M)

Reserved on: 06.07.2023

Pronounced on:21.07.2023

Kartar Singh		...Appellant
	Vs	
State of Haryana and others		...Respondents

2. LPA No.950 of 2018 (O&M)

Kartar Singh		...Appellant
	Vs	
State of Haryana and others		...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

HON'BLE MR. JUSTICE SANJIV BERRY

Present: Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Rajvir Singh Sihag, Advocate and
Mr. Brahmjot Singh Nahar, Advocate
for the appellant.

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

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JAISHREE THAKUR J.

1. By this common order, this Court proposes to dispose of two LPAs bearing Nos.949 and 950 of 2018 filed by the appellant seeking to challenge order dated 13.03.2018 passed by the Ld. Single Judge whereby application filed by respondents No.1 and 2 seeking recalling of the order dated 15.12.2017 has been allowed.

2. In brief, facts that need to be stated are that two agreements No.39 & 54 of 2009-2010 were executed between the appellant and respondent No.2 for strengthening and widening of around 51 kms road in District Bhiwani. Pursuant to the agreement entered, the work of widening the road was started, however, the same could not be completed by the intended date on account of stay of operation of mining and stone quarries in the State of Haryana. On account of dispute that

arose between the parties, the matter was referred to a Tribunal comprising of one nominee each of the parties and the third Presiding Arbitrator chosen by the Arbitrators appointed respectively by the parties. Since there was delay in completing the arbitral proceedings, appellant had filed two writ petitions i.e. CWP No.10627 of 2015 and 10901 of 2015 titled as *Kartar Singh Vs. State of Haryana and others* seeking a direction to be issued to the Arbitral Tribunal to conclude the proceedings as early as possible. The said writ petitions were disposed of by a consent order dated 17.08.2016 directing the Tribunal to decide the matter as early as possible preferably within a period of six months from the date of receipt of certified copy of the order. At that relevant time, counsel appearing for the respondents had raised no objection to the direction being issued. After passing of the order in the aforesaid writ petitions, arbitral proceedings continued. Thereafter, respondents had filed an application under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 1996 Act) and pleaded that till the pendency of the application, award should not be pronounced but the Tribunal vide order dated 02.06.2017 proceeded to close the case for finalization of award and its publication. Since the award was not being pronounced, the appellant herein filed an application bearing No.18064 of 2017 in CWP No.10901 of 2015 on 10.10.2017 in this Court seeking a direction to the Tribunal to pronounce the award, as the matter stood concluded, however, the award had not been pronounced. Notice on the application was issued to the respondents and the same was accepted in the Court itself by Deputy Advocate General, Haryana on behalf of respondent-State and gave no objection if the time was extended by the Court to conclude the arbitral proceedings. Consequently, the Court extended the time till 31.12.2017 to conclude the proceedings, making it clear that no further

extension shall be granted. On time being extended to pass the award, the arbitral Tribunal passed its award dated 31.12.2017 partly allowing the claim of the appellant.

3. After passing of the award, an application had been filed on 29.01.2018 for recalling of the order dated 15.12.2017, to which reply had been filed. The Ld. Single Judge vide order dated 13.03.2018, which has been impugned in the instant appeals, has recalled order dated 15.12.2017 whereby the application for extension of time for concluding the arbitral proceedings had been allowed.

4. Mr. Ashwani Kumar Chopra, learned Senior Advocate assisted by Mr. Balvir Singh Sihag and Mr. Brahmjot Singh Nahar, Advocates for the appellant would submit that the Ld. Single Judge has recalled order dated 15.12.2017 on the ground that there was an alleged concealment of the pendency of application under Sections 14 and 15 of 1996 Act. He would argue that the question of concealment does not arise, as the application under Sections 14 and 15 of the 1996 Act had been filed by the respondents themselves and therefore, the question of concealment would not arise. It was further argued that initially the order that had been passed on the application seeking conclusion of proceedings pending before the arbitral Tribunal, was passed in the presence of the counsel appearing for the respondent-State, who at that point in time could have raised an issue that the application under Section 14 & 15 of the 1996 Act was pending and not having done so, the onus would not lie on the appellant. Moreover, on the application seeking pronouncement of the arbitral award, since proceedings had been completed, a consent order was given for extension of time to conclude the arbitral proceedings and passing of award. Even at that juncture, there was no argument/objection raised regarding pendency of any application under Sections 14 and 15 of the 1996 Act.

5. Per contra, Mr. Hitesh Pandit, Additional Advocate General, Haryana would strenuously argue that the award could not have been passed in the face of application pending before the Tribunal under Sections 14 and 15 of the 1996 Act and therefore, there is no infirmity in the order passed by the Ld. Single Judge recalling the order allowing extension in time.

6. We have heard learned counsel for the parties and have perused the paper book and find merit in the arguments as raised by learned Senior Counsel appearing for the appellant. Admittedly, the arbitral proceedings were pending before the Tribunal, which led to filing of two writ petitions seeking a direction for early conclusion of the dispute arising between the parties under the agreements entered into. The initial order, that was passed, allowed for Tribunal to conclude its proceedings within a specified time. At that juncture, there was no issue raised by the counsel appearing for the respondents regarding pendency of applications filed by them under Section 14 and 15 of the 1996 Act. It was at that point in time, a plea could have been raised that the award could not be passed unless and until the applications stood disposed of, which was not done. The ground taken for recalling the order for allowing extension in time was that there had been concealment of the fact that applications under Sections 14 and 15 of the 1996 Act were pending. However, the Ld. Single Judge has failed to take into consideration the fact that on the direction given, an award has been passed on 30.12.2017 and it is only thereafter on passing of the award against the respondents herein that an application for recalling of the order allowing extension in time to pass the award had been preferred. Once an award has been passed, all interlocutory applications would merge with the award. The respondents have already availed of their remedy of filing objections under Section 34 of the 1996 Act and the same are pending consideration.

Consequently, in view of facts as stated above, once an award has already been passed and objections filed therein, the order passed by the Ld. Single Judge recalling order allowing extension in time to culminate the arbitral proceedings after pronouncement of the award, is wholly unjustified and accordingly, set aside. In any case, once an award has been passed, the arbitral Tribunal would be rendered *functus officio*.

7. Consequently, both the Letters Patent Appeals are allowed.

(JAISHREE THAKUR)
JUDGE

(SANJIV BERRY)
JUDGE

July 21, 2023
Pankaj*

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