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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1750-2023(O&M)
Date of decision:-23.09.2024

The Managing Director, Haryana State Warehousing Corporation and another

...Petitioners

Versus

Ram Avtar Gupta

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Gaurav Mohunta, Advocate with
Mr.Satyendra Kumar, Advocate
for the petitioners.

Mr.Wazir Singh, Advocate
for the respondent.

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SUVIR SEHGAL, J.(ORAL)

1. Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside orders dated 02.02.2023, Annexures P1 and P2 passed by the learned Additional District Judge, Karnal, whereby objections, Annexure P5, filed by the JD/petitioners to the execution petition filed under Section 36 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act") have been rejected.

2. Mr. Gaurav Mohunta, counsel for the petitioners, submits that the respondent was awarded a contract for construction of godowns and some dispute arose between the parties, which was referred for adjudication to arbitration. He submits that award dated 15.10.2018,

Annexure P3, was passed in favour of the respondent awarding an amount of Rs.96,35,122/- along with interest. Counsel submits that the respondent filed objections under Section 34 of the Arbitration Act, which were rejected and in an execution filed by the respondent, petitioners filed objections, which have been declined by the order impugned herein. Mr. Mohunta submits that the award passed by the learned Arbitrator was inadequately stamped and the requisite stamp duty as laid down in Indian Stamp (Haryana Amendment) Act, 2018, which was applicable from 04.10.2018, had to be affixed. He has relied upon Section 33 and 38 of the Indian Stamp Act, 1899 to submit that in the absence of adequate stamp duty, the award had to be impounded and the impugned order deserves to be set aside to this extent.

3. Relying upon Section 36 of the Arbitration Act, Mr.Wazir Singh, counsel for the respondent submits that the award passed under the Arbitration Act has to be executed as a money decree and objections by the JD/petitioners to the execution petition are not maintainable.

4. I have heard counsel for the parties and considered their respective submissions.

5. In ***M.Anasuya Devi and another Versus M.Manik Reddy and others, (2003) 8 SCC 565***, Supreme Court has held that objection as to non-stamping of the arbitral award is required to be dealt with at the stage of enforcement of arbitral award and not at the stage of objections under Section 34 of the Arbitration Act. The observations of the Supreme Court are reproduced hereunder:

> *"4. After we heard the matter, we are of the view that in the present case this issue was not required to be gone into at the*

stage of proceedings under Section 34 of the Act. In fact, this issue was pre-mature at that stage. Section 34 of the Act provides for setting aside of the award on the grounds enumerated therein. It is not in dispute that an application for setting aside the award would not lie on any other ground, which is not enumerated in Section 34 of the Act. The question as to whether the award is required to be stamped and registered, would be relevant only when the parties would file the award for its enforcement under Section 36 of the Act. It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act. In that view of the matter, the exercise undertaken to decide the said issue by the Civil Court as also by the High Court was entirely an exercise in futility. The question whether an award requires stamping and registration is within the ambit of Section 47 of the Code of Civil Procedure and not covered under Section 34 of the Act."

6. It is evident from the above, that Apex Court has held that the parties can raise objection on account of non-registration as also for non-stamping under Section 17 (e) of the Registration Act at the time of the execution of the award. It is clear that the deficiency in stamp duty can be objected to at the stage of execution.

7. An examination of the impugned order passed by the Executing Court shows that the Court has misdirected itself by dismissing the objection regarding the deficiency of stamp duty.The Court has misread "stamp duty" to be the "Court fee" payable on the execution

petition. The impugned order, therefore, cannot be sustained to this limited extent.

8. Accordingly, impugned order dated 02.02.2023 passed by the Executing Court is partly set aside. The finding recorded by the Executing Court qua the maintainability of the execution petition is upheld. Matter is remitted to the Executing Court to re-determine the issue of deficiency in stamp duty and to proceed in accordance with law.

9. Petition is disposed of.

10. Parties are directed to appear before the Executing Court on 11.11.2024 for further proceedings. Executing Court shall make an endeavour and decide the objection as expeditiously as possible.

11. Pending application, if any, is disposed of.

(SUVIR SEHGAL)
JUDGE

23.09.2024
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No