



EFA No. 13 of 2017 (O&M) 1

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

115

EFA No. 13 of 2017 (O&M)
Date of Decision: 29.05.2024

Bhoop Singh

..... Appellant

Versus

Virender Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Girotra, Advocate for the appellant.

ANIL KSHETARPAL, J.(ORAL)

1. This Execution First Appeal has been filed to challenge the correctness of a detailed order passed by the Additional District Judge, Rewari, while dismissing execution petition filed under Section 36 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '1996 Act').

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief are required to be noticed.

3. In a partnership deed, the partners decided to refer the dispute, if any, to the two named Arbitrators namely Sh. Maninder Singh, Advocate, District Court, Rewari and Sh. Nawal Singh, Advocate, District Court, Rewari. The dispute arose between the partners and the matter was referred to two- member Arbitral Tribunal. At that stage, the respondent No. 1- S.Virender Singh, one of the partners objected to continuation of Sh.Maninder Singh, Advocate as an Arbitrator on the ground that he was representing the appellant in pending litigation. When that application was

pending, both the Arbitrators nominated an umpire namely Sh. Dinesh Rao,

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Advocate. Both the named Arbitrators recused from the Arbitral Tribunal. At that stage, the Umpire called upon the contesting parties to nominate their respective Arbitrators. The appellant nominated Mr. Sanjay Gupta, Advocate as his nominated Arbitrator whereas the respondent No. 1 did not nominate anyone. At that stage, the Umpire nominated Sh. Sanjay Baliyan, Advocate as a member of the Arbitral Tribunal. The award was passed by the Arbitral Tribunal and execution petition was filed. At that stage, respondent No. 1 filed an execution petition claiming that the constitution of Arbitral Tribunal was illegal and hence, the award is without jurisdiction. The court has upheld that objection.

4. This appeal has been filed to challenge the correctness of the order passed by the Executing Court.

5. Heard learned counsel representing the appellant at length and with his able assistance, perused the paper book.

6. Learned counsel representing the appellant submits that the Umpire nominated Sh. Sanjay Gupta, Advocate as an Arbitrator, as respondent No. 1 failed to nominate. He further submits that no objection was taken before the Arbitral Tribunal by respondent No. 1, though he did not further participate in the proceedings. He submits that the award passed by the Arbitral Tribunal is like a decree which is require to be implemented. He submits that Section 11 of the 1996 Act will not be applicable in the present case.

7. This Court has considered the submissions made by learned counsel for the appellant.

8. It is not in dispute that as per partnership deed, there is provision for referring the dispute to two named arbitrators namely Sh.

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provision for their substitution. There is also no provision enabling them to appoint an Umpire. In this case, the Umpire ultimately chose a member of the Tribunal, which is neither envisaged in the partnership deed nor in the 1996 Act. The constitution of the Arbitral Tribunal and its procedure is governed by the 1996 Act. Section 11 of the 1996 Act enables the Supreme Court or the High Court to designate/nominate Arbitrator or members of the Arbitral Tribunal. The members of the Arbitral Tribunal can either be constituted by virtue of an agreement between the parties or be nominated by the High Court or the Supreme Court. It is not a permanent body. Hence, substitution of Arbitrator is also required to be regulated either by the agreement of the parties or by the provisions of the Act. In this case, there is no agreement between the parties that the provisions of Act shall not be applicable. Once the constitution of the Arbitral Tribunal is without jurisdiction, the conduct of respondent No. 1, sought to be highlighted by the learned counsel representing the appellant, would not debar him from challenging the constitution of the Arbitral Tribunal.

9. Keeping in view the aforesaid facts, no ground to interfere is made out.

10. Hence, dismissed.

11. All the pending miscellaneous applications, if any, are also disposed of.

29.05.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE