

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

213

CR-16459-2018 (O&M)

Date of Decision : 07.02.2024

PRITPAL CHOPRA (SINCE DECEASED)
THROUGH HIS LR

..... Petitioner

Versus

HARYANA STATE ELECTRICITY BOARD

..... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjiv Kumar Yadav, Advocate for the petitioner.

Mr. S.K. Mahajan, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present revision petition under Article 227 of the Constitution of India has been preferred for setting aside the order dated 18.01.2017 (Annexure P-1) passed by the Trial Court whereby the application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 filed by the petitioner herein has been dismissed, and the order dated 27.09.2018 passed by the lower Appellate Court vide which the appeal preferred by the petitioner was also dismissed.

2. The facts of this case disclose how a dispute which took roots in a civil suit was culminated by an arbitration award and was then again revived in the same civil suit. The brief facts of the present *lis* are that on 02.07.1991 a contract was entered into between Pritpal Chopra (since deceased) to dismantle the residential quarter of a property owned by the respondent-Board. On 05.03.1992 an indemnity bond to pay the sales tax was given to Pritpal Chopra. On 29.05.1996 a civil suit for recovery of sales tax along with interest was filed by the respondent-Board against Pritpal Chopra (since deceased). In the said

suit, an application under Section 8 of the Arbitration and Conciliation Act, 1996 was filed by Pritpal Chopra (since deceased). Vide order dated 02.04.2002 the case was referred to an Arbitrator. The said order was challenged by the respondent-Board before this Court by preferring CR-4261-2002. The said revision petition was dismissed and the respondent-Board was permitted to raise all the issues before the Arbitrator. On 02.08.2004 an Arbitrator was appointed. The Arbitrator passed the award on 28.02.2006. Strangely, after the passing of the award by the Arbitrator, an application was filed by the respondent-Board on 09.05.2006 for taking up the file for deciding the case in accordance with law. Subsequently, another application dated 08.08.2008 was filed for directing the Arbitrator to dispose off all matters and claims submitted to him by both the parties and to treat the application dated 09.05.2006 as withdrawn. The second application was dismissed vide order dated 11.08.2008. It is apt to note that in the order dated 19.05.2008, whereby the Pritpal Chopra (since deceased) was proceeded against ex-parte, it was noticed that he had been served however since none appeared on its his behalf, he was proceeded against ex-parte. While dismissing the second application filed by the respondent-Board vide order dated 11.08.2008, the matter was fixed for ex-parte evidence on 08.09.2008. On 12.05.2009 ex-parte judgment and decree was passed by the Trial Court and suit of the respondent-Board was decreed. On 30.03.2012 when the petitioner herein, who is the son of Pritpal Chopra, came to know about the ex-parte judgment and decree when execution proceedings were pending, filed an application under Order 9 Rule 13 CPC. The said application was dismissed vide impugned order dated 18.01.2017. An

appeal preferred by the petitioner herein also came to be dismissed vide impugned order dated 27.09.2018. Hence, the present revision petition.

3. Learned counsel for the petitioner would contend that the petitioner's father (Pritpal Chopra) was proceeded against ex-parte vide order dated 19.05.2008 however the father of the petitioner had died on 27.07.2006 and the legal heirs were never impleaded in the said case by the respondent-Board. It is further the contention that the application under Order 9 Rule 13 CPC has been dismissed on the ground that the petitioner, who is the son of Pritpal Chopra, had active knowledge of the pendency of the civil suit as he worked with his father as contractor with the respondent-Board. It has further been held that the petitioner had knowledge regarding the dispute between his father (Pritpal Chopra) and the respondent-Board. The second reason given is that the impugned judgment is not a nullity for having being passed against a dead person as the defendant died during the proceedings and the case as filed originally was not filed against a dead person.

4. Per contra, learned counsel appearing on behalf of the respondent-Board would contend that the petitioner was well within the knowledge of the pendency of the suit between the respondent-Board and his father (Pritpal Chopra) and after the death of the father the petitioner chose not to appear and hence the ex-parte judgment and decree has rightly been passed.

5. I have heard the learned counsel for the parties.

6. In the present case initially the suit was filed by the respondent-Board against Pritpal Chopra. The suit was for recovery of sales tax along with interest. On an application filed by Pritpal Chopra (since deceased) the matter was referred to an Arbitrator. The said order dated 02.04.2002 challenging the

reference made to the Arbitrator was challenged by the respondent-Board before this Court and the revision petition being CR-4261-2002 came to be dismissed on 29.03.2004. On 02.08.2004 an Arbitrator was appointed who gave his award on 28.02.2006. It is after the Arbitrator had given his award that an application dated 09.05.2006 for revival of the suit and for decision on merits was filed by the respondent-Board who was the plaintiff in the suit. Pritpal Chopra died on 27.07.2006. Vide zimni order dated 19.05.2008 Pritpal Chopra was proceeded against ex-parte and it was noted that he stands duly served. Subsequently, another application dated 08.08.2008 was filed by the respondent-Board stating therein to direct the Arbitrator, who pronounced an incomplete award dated 28.02.2006, to dispose off all matters and claims submitted to him by the parties and to treat the application dated 09.05.2006 as withdrawn. The said application was dismissed vide order dated 11.08.2008. It is strange that the Court went on to fix the suit for ex-parte evidence when a specific request was made by the respondent-Board in its application dated 08.08.2008 that *“this application may be read in place of application dated 09.05.2006 and application dated 09.05.2006 may be treated as withdrawn”*. When the respondent-Board (plaintiff) itself did not want to pursue the application dated 09.05.2006, there was no question of fixing the case for ex-parte evidence. Further, the Courts below have erred in dismissing the application filed by the petitioner under Order 9 Rule 13 CPC as it cannot be presumed that the petitioner herein had knowledge of the proceedings before the civil court. Admittedly, the original defendant Pritpal Chopra died prior to the order dated 19.05.2008 whereby he was proceeded against ex-parte. Once a suit was being sought to be revived, rightly or wrongly, and the defendant had died, it was incumbent on the plaintiff to implead his legal heirs which was not

done in the present case. As such, it cannot be presumed that the legal heirs were aware about the pendency of the suit. The impugned order (Annexure P-1) dismissing the application under Order 9 Rule 13 CPC cannot be sustained in law and the same is accordingly set aside. The impugned order (Annexure P-2) dismissing the appeal of the petitioner is also set aside.

7. At this stage this Court refrains from commenting as to whether the application for revival of the suit was actually maintainable after the award had been made by the Arbitrator since that is not an issue before this Court. However, such like litigation makes the aims and objects of the Arbitration and Conciliation Act, 1996 come to a naught.

8. In view of the above the present revision is allowed and the impugned orders Annexures P-1 and P-2 are set aside. The matter is remanded back to the Trial Court concerned who shall decide the application under Order 9 Rule 13 CPC afresh in accordance with law. The parties are directed to appear before the Trial Court on **22.02.2024** at 10.00 am.

9. It is made clear any observations made herein shall not be treated as an expression of opinion on the merits of the case.

10. Disposed off. Pending applications, if any, also stand disposed off.

07.02.2024
D.Bansal

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO