

(1989) 10 P&H CK 0005

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 1822 of 1989

Paramount Paper Mills

APPELLANT

Vs

Haryana State Electricity Board
and Another

RESPONDENT

Date of Decision: Oct. 17, 1989

Acts Referred:

- Arbitration Act, 1940 - Section 34

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: Kiran Bala Jain, for the Appellant; Prabodh Mittal, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.

This petition is directed against the order of the Additional District Judge, Ambala, dated 3.5.1989 whereby the order of the trial Court dated 15.12.1988 regarding the matter referred to the arbitration was maintained.

2. The plaintiff filed a suit for declaration. There is an application was filed u/s 34 of the Arbitration Act on behalf of the defendant. According to the defendant, the plaintiff is a consumer and he runs Paper Industry and had executed an application-cum-agreement in favour of defendant-bank containing standard terms and conditions and supply of electrical energy at time when electricity connection was given to him. Clause 29 of the said agreement pertains to arbitration of disputes between the Board and consumer and in the event of any difference of dispute arising as to the interpretation of these conditions, the matter shall be determined in accordance with the provisions of this Act or by reference to the Chief Engineer (P& C), H.S.E.B. or his nominee not below the rank of Superintending Engineer. The application was contested on behalf of the plaintiff though execution of the said agreement was admitted. According to the plaintiff, he is challenging the

conditions subsequently issued after the introduction of voluntary disclosure scheme and, therefore, the matter could not be referred to the Chief Engineer. The trial Court came to the conclusion that disputed matter clearly covered by clause 29 of the agreement between the parties and consequently referred the matter to the arbitrator thereunder vide order dated 15.12.1988. In appeal, the learned Additional District Judge, Ambala maintained the said order of the trial Court and observed that "I am of the view that it has never been the case of the plaintiff-appellant that provision of Section 34 of the Arbitration Act, is not attracted in this case, nor it is the case of the parties that the respondent-defendants participated in the proceedings. Moreover, this plea was not raised by the plaintiff-appellant in its reply to the application u/s. 34 of the Act. I am of the consideration opinion that the arguments of the learned counsel for the appellant are attractive but not tenable. Thus, the respondent is entitled to the benefit of provisions of Section 34 of the Arbitration Act."

3. The learned counsel for the petitioner submitted that even if this objection was not raised in the reply to the application u/s 34 of the Act, the same being legal objections, could be raised by the petitioner at any time. The view taken by the Courts below in this behalf, according to the learned counsel, was wrong and illegal. In support of his contention, he referred to M/s.Billaspur Industries Limited, Yamunanagar v. Haryana State Electricity Board, Chandigarh, 1988(2) PLR 245.

4. After hearing the learned counsel for the parties, I do not find any merit in this petition. The two courts below have exercised their jurisdiction u/s 34 of the Arbitration Act in favour of the defendant-Board"and against the plaintiff. I do not find any justification for interference in the said discretion exercised by the two Courts below. Consequently, the petition fails and is dismissed with costs.