

(2012) 03 P&H CK 0078

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 6705 of 2011

Sandeep Kundu

APPELLANT

Vs

HUDA, Gurgaon and Another

RESPONDENT

Date of Decision: March 27, 2012

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 17, 9

Citation: (2012) 166 PLR 823 : (2012) 4 RCR(Civil) 117

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Manohar Lall, for the Appellant; Deepak Balyan, for the Respondent

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Contractor Sandeep Kundu has filed this first appeal assailing judgment dated 25.08.2011 passed by learned Additional District Judge, Gurgaon. Appellant is contractor of respondents - Haryana Urban Development Authority (HUDA) and its Chief Engineer. Appellant executed some work of respondents. There is arbitration clause in the agreement between the parties. Appellant filed application u/s 9 of the Arbitration and Conciliation Act, 1996 (in short - the Act) in the District Court, seeking interim injunction directing respondent No. 1 - HUDA to furnish bank guarantee, appointment of Local Commissioner to take measurement of the work executed by the appellant and for referring the dispute to Arbitrator.

2. During pendency of the aforesaid application, dispute between the parties has since been referred to Arbitrator. Accordingly, third prayer for referring the dispute to Arbitrator has been rendered infructuous.

3. First prayer for directing respondent No. 1 HUDA to furnish bank guarantee is not pressed before me. Only second prayer for appointment of Local Commissioner survived for adjudication.

4. Learned trial court, vide impugned judgment, observed that since Arbitrator has been appointed, appellant can seek interim relief in arbitration proceedings from the Arbitrator u/s 17 of the Act and accordingly, dismissed the appellant's application u/s 9 of the Act, including application for appointment of Local Commissioner. Feeling aggrieved, contractor has filed this second appeal.

5. I have heard Learned Counsel for the parties and perused the case file.

6. Learned Counsel for the appellant, relying on Division Bench judgment of Delhi High Court in the case of *Prima Developers vs. Lords Co-operative Group Housing Society Ltd.* reported as 2009 (2) ALR 387, contended that Court, u/s 9 of the Act, is competent to appoint Local Commissioner for measurement of the work executed by the Contractor. Reference was also made to Section 9 of the Act, which provides that the Court may make order for interim measures before or during arbitral proceedings or even after making of arbitral Award, but before its enforcement. It is thus contended that Local Commissioner be appointed to do measurement of the work executed by the appellant.

7. On the other hand, counsel for respondents contended that u/s 17 of the Act, Arbitrator has power to pass order for interim measure, and therefore, the appellant contractor should approach the Arbitrator for appropriate order for the aforesaid purpose. Counsel for the respondents cited judgment of Supreme Court in the case of [GAIL \(I\) Ltd. Vs. Bal Kishan Agarwal Glass Industries Ltd.](#), wherein application for interim relief was transferred by Hon"ble Supreme Court from Civil Court to Arbitrator for decision u/s 17 of the Act.

8. I have carefully considered the rival contentions.

9. A bare perusal of Section 9 of the Act reveals that even during pendency of the arbitral proceedings, Court has power to pass appropriate order for interim measure and such order may include appointment of Commissioner to inspect the property and to make measurements at the spot. Judgment of Delhi High Court in the case of *Prima Developers (supra)* also supports this view. However, in that case, Arbitrator had not been appointed and interim measure was sought till the disputes were referred for arbitration. In the instant case, however, Arbitrator has since been appointed and the dispute is pending before the Arbitrator. u/s 17 of the Act, Arbitrator has power to pass appropriate interim order including order of the kind prayed for by the appellant i.e. including order of appointment of Local Commissioner to inspect the spot and make measurements of the work executed by the appellant contractor. Since the Arbitrator is seized of the matter, he would be in a better position to appreciate the whole matter and to pass appropriate order for appointment of Local Commissioner, if need be. Consequently, it would be appropriate if the appellant approaches the Arbitrator for appropriate relief in accordance with law. This view finds support from judgment of Hon"ble Supreme Court in the case of *Gail India Limited (supra)*.

10. In view of the aforesaid, the instant appeal is disposed of with liberty to the appellant contractor to approach the Arbitrator for appropriate relief in accordance with law and the Arbitrator shall decide the application, if any moved by the appellant contractor, as expeditiously as possible. Impugned order of the trial court shall have no bearing on merits of any such application. It goes without saying that the Arbitrator shall decide any such application, in accordance with law, after giving opportunity of hearing to both the parties.