

(2012) 03 P&H CK 0111

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5426 of 2011

The Shivalik Cooperative Labour
and Construction Society Ltd.,
Chandpur

APPELLANT

Vs

The Punjab State

RESPONDENT

Date of Decision: March 2, 2012

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 21, 36, 85
- Constitution of India, 1950 - Article 227

Citation: (2012) 3 ARBLR 190

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

Bench: Single Bench

Final Decision: Allowed

Judgement

L.N. Mittal, J.

This is revision under Article 227 of the Constitution of India impugning order dated 16.2.2011, Annexure P/12 passed by learned District Judge, Rupnagar thereby dismissing execution petition filed by the petitioner herein for execution of arbitration award dated 5.11.1999, Annexure P/1 passed by the Arbitrator.

2. Dispute between the parties was referred to the Arbitrator who gave award Annexure P/1. Petitioner filed application under the Arbitration Act, 1940 (in short, the old Act) for making the award rule of the court. Respondent preferred objections against the award. The aforesaid application of the petitioner as well as objections of JD were dismissed in default vide order dated 16.10.2002. Petitioner filed application for restoration of its application for making the award rule of the court but the restoration application was dismissed by the trial court vide order dated 20.11.2007 and affirmed in appeal by lower appellate court vide order dated 15.10.2009. Petitioner preferred Civil Revision No. 7644 of 2009 challenging the

aforesaid orders of the courts below. During the course of hearing of the said revision petition, it was found that Arbitrator was appointed on 12.10.1998 and therefore, the Arbitration and Conciliation Act, 1996 (in short, the new Act) is applicable and consequently award was not required to be made rule of the court and award could be executed straightway by filing execution petition under section 36 of the new Act. Accordingly, CR No. 7644 of 2009 was dismissed as withdrawn with liberty to file execution petition for enforcement of award Annexure P/1.

3. Respondent opposed the execution petition alleging that as per agreement between the parties, Arbitrator was to be appointed under the old Act and therefore, provisions of the old Act are applicable and the award was required to be made rule of the court before execution thereof, but since the award has not been made rule of the court, the execution petition is not maintainable.

4. Learned District Judge vide impugned order dated 16.2.2011, Annexure P/12 dismissed the execution petition upholding objection of the respondent. Feeling aggrieved, the instant revision petition has been filed.

5. On the preceding date of hearing, Law Officer appeared for respondent - State of Punjab. However, today none is appearing for State of Punjab. No Law Officer of State of Punjab is present in the Court when the case has been taken up for hearing. It is happening in many cases before this Bench that State of Punjab is not being represented by any Law Officer when the cases are taken up for hearing. The matter has also been brought to the notice of the Advocate General, Punjab but it appears that no remedial steps have been taken. In one case, it was told that three Law Officers have been assigned to this Bench. However, in spite thereof, there is no appearance on behalf of State of Punjab in the instant case when it has been taken for hearing. Accordingly, I have heard learned counsel for the petitioner and perused the case file and I proceed to decide the revision petition on merits.

6. Counsel for the petitioner contended that respondent appointed Arbitrator vide order dated 12.10.1998, Annexure P/13 pursuant to request dated 20.9.1998 made by the petitioner and consequently, in view of section 21 of the new Act, the arbitration proceedings commenced on 20.9.1998 i.e. after commencement of the new Act and consequently, in view of section 85 of the new Act whereby the old Act was repealed, the arbitration proceedings are governed by the new Act.

7. There is considerable merit in the aforesaid contention of counsel for the petitioner. According to section 85 of the new Act, the old Act was repealed and provisions of the old Act were, however, applied in relation to arbitral proceedings which commenced before the new Act came into force whereas the new Act was made applicable to arbitral proceedings which commenced on or after the new Act came into force. According to section 21 of the new Act, arbitration proceedings commence on the date on which, request for referring the dispute to arbitration is

received by the respondent. In the instant case, petitioner made request to respondent for appointing the Arbitrator vide letter dated 20.9.1998 pursuant to which the respondent appointed Arbitrator vide letter dated 12.10.1998, Annexure P/13. Thus, in view of section 21 of the new Act, arbitral proceedings in the instant case commenced after the new Act had come into force. Consequently, in view of section 85 of the new Act, arbitral proceedings in this case are governed by the new Act and not by the old Act.

8. Learned District Judge was influenced by clause 59 of the agreement regarding appointment of Arbitrator stipulating that arbitration shall be conducted in accordance with the provisions of the old Act or statutory modification thereof. Relevant part of the arbitration clause is reproduced hereunder:

The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof.

9. A bare perusal of the aforesaid clause in the agreement reveals that the arbitration had to be conducted in accordance with the provisions of the old Act or any statutory modification thereof. Learned District Judge relied on only first part of the aforesaid clause and completely ignored the second part of the clause. A bare reading of the aforesaid relevant part of the clause reveals that arbitration had to be conducted in accordance with old Act or statutory modification thereof. The new Act is statutory modification of the old Act because by the new Act, the old Act was repealed and the field is now governed by the new Act. Consequently, even according to the relevant part of the arbitration clause between the parties, the arbitration had to be conducted in accordance with the new Act.

10. For the reasons aforesaid, it is manifest that impugned order of the executing court is completely perverse and illegal and suffers from jurisdictional error because the executing court refused to exercise jurisdiction which vested in it. Finding of the executing court is based on misreading and mis-interpretation of relevant part of arbitration clause as noticed hereinbefore. The impugned order is, therefore, unsustainable.

11. For the reasons aforesaid, the instant revision petition is allowed. Impugned order Annexure P/12 is set aside. Execution petition filed by the petitioner is restored to the files of learned District Judge, Rupnagar who shall proceed with the same in accordance with law.

12. Parties are directed to appear before learned District Judge, Rupnagar on 29.3.2012.

13. Copy of this order be sent to Advocate General, Punjab and also to Principal Secretary, Department of Home and Administration of Justice, Punjab for appropriate action to ensure representation on behalf of State of Punjab and its Officers/officials whenever their cases are taken up.