

(2005) 11 P&H CK 0025

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3973 of 2003

Executive Engineer, Canal Lining,
Division No. 2

APPELLANT

Vs

Shri Vijay Kumar, Govt.
Contractor and Others

RESPONDENT

Date of Decision: Nov. 25, 2005

Acts Referred:

- Arbitration Act, 1940 - Section 14, 17, 21
- Arbitration and Conciliation Act, 1996 - Section 34, 35, 36

Citation: (2006) 3 ARBLR 279 : (2006) 143 PLR 96 : (2006) 2 RCR(Civil) 115

Hon'ble Judges: Ajay Kumar Mittal, J

Bench: Single Bench

Advocate: Baljeet K. Mann, D.A.G, for the Appellant; P.S. Rana, for the Respondent

Final Decision: Dismissed

Judgement

Ajay Kumar Mittal, J.

This order shall dispose of Civil Revision Nos. 3973 of 2003 and 3974 of 2003 as common questions of law and facts are involved therein. However, the facts have been taken from Civil Revision No. 3973 of 2003.

2. Respondent No. 1-Vijay Kumar Contractor was allotted work of polythene lining of Abohar Branch (Lower) RD-7000-7500 by the petitioner vide agreement dated 10.1.1995. The dispute arose between the parties and on a suit filed by respondent No. 1 an Arbitrator was appointed. The Arbitrator passed an award on 30.9.1999. The Arbitrator awarded a sum of Rs. 3,50,750/- to the contractor against claim No. 1 and a sum of Rs. 65,570/- against claim No. 2 and besides this, he also awarded simple interest at the rate of 15% per annum on claim No. 1 w.e.f. 10.2.1995 and on claim No. 2 w.e.f. 10.4.1995. The Arbitrator also awarded interest at the rate of 15% per annum on the awarded amount plus interest thereon from the date of award till

the date of payment. Claims No. 3 and 4 were not adjudicated by the Arbitrator on the ground that the same had not been referred to him. The contractor filed an application under Sections 14 and 17 of the Indian Arbitration Act, 1940 (in short "1940 Act") for making award rule of the Court and passing a decree in terms thereof. Notice of the said application was issued to the petitioner-State who contested the application by raising preliminary objection that the application was not maintainable. The State contested the award on merit as well by raising various objections and according to the State, it could not be made rule of the Court. The contractor by filing rejoinder controverted the objection of the State.

3. From the pleadings of the parties, following issues were framed:

1. Whether award dated 30.9.1999 is liable to be set aside in view of objection raised by the department? OPD

2. Whether award dated 30.9.1999 is required to be made rule of the Court? OPA

3. Relief.

4. The learned Civil Judge (Senior Division), Bathinda, vide impugned order dated 26.3.2002 held under issue No. 1 that the State had not filed any separate objections but had filed objections in the form of reply on 8.6.2000. The award was passed on 30.9.1999 and the same was not challenged within three months, therefore, the objections raised were barred by limitation. Further, it was held that none of the objections as per Section 34 of the Arbitration and Conciliation Act, 1996 (in short "1996 Act") had been pleaded or proved and the objections had been raised under 1940 Act and the objections had also been filed after the expiry of three months of the passing of the award and, therefore, the award dated 30.9.1999 could not be set aside.

5. The learned trial Court while deciding issue No. 2 noticed that the Arbitrator was appointed on 31.5.1999 and he passed the award on 30.9.1999. The proceedings of arbitration Ex. R are of 16.8.1996 when 1996 Act had come into force and 1940 Act had been repealed. In view of Sections 35 and 36 of 1996 Act, the Civil Court held that the award passed by the Arbitrator being final, the same could be enforced as a decree. Since there is no provision for making this award rule of the Court and passing decree in terms of the award under 1996 Act, the application was dismissed as not maintainable.

6. The State feeling aggrieved against the decision of the trial Court on issue No. 1, has filed the present revision petition in this Court. However, the contractor has not challenged the impugned order dated 26.3.2002.

7. The point in issue in the present revision petition is whether in the facts and circumstances of the case, the arbitration proceedings having commenced on 16.8.1996 i.e. when 1996 Act had come into force, the provisions of 1996 Act would be applicable or the provisions of 1940 Act are applicable.

8. The matter in issue is not res integra. The Apex Court in Shetty's Constructions Co. Pvt. Ltd. Vs. Konkan Railway Construction and Another, has laid down as under:-

A mere look at Sub-section (2)(a) of Section 85 shows that despite the repeal of Arbitration Act, 1940, the provisions of the said enactment shall be applicable in relation to arbitration proceedings which have commenced prior to the coming into force of the new Act. The new Act came into force on 26.1.1996. The question, therefore, arises whether on that date the arbitration proceedings in the present four suits had commenced or not. For resolving this controversy we may turn to Section 21 of the new Act which lays down that unless otherwise agreed to between the parties, the arbitration suit in respect of arbitration dispute commenced on the date on which the request for referring the dispute for arbitration is received by the respondents. Therefore, it must be found out whether the requests by the petitioner for referring the disputes for arbitration were moved for consideration of the respondents on and after 26.1.1996 or prior thereto. If such, request were made prior to that date, then on a conjoint reading of Section 21 and Section 85(2)(a) of the new Act, it must be held that these proceedings will be governed by the old Act. As seen from the aforesaid factual matrix, it at once becomes obvious that the demand for referring the disputes for arbitration was made by the petitioners in all these cases months before 26.1.1996, in March and April, 1995 and in fact thereafter all the four arbitration suits were filed on 24.8.1995. These suits were obviously filed prior to 26.1.1996 and hence they had to be decided under the old Act of 1940. This preliminary objection, therefore, is answered by holding that these four suits will be governed by the Arbitration Act, 1940 and that is how the High Court in the impugned judgments had impliedly treated them.

9. In the present case admittedly the Arbitration proceedings had commenced after coming into force of 1996 Act. Therefore, the provisions of 1996 Act would be applicable to the facts of the present case. Once it is held that the present case is governed by 1996 Act, the necessary corollary that follows is that by virtue of Sections 35 and 36 of 1996 Act, the petition filed by the contractor under Sections 14 and 17 of 1940 Act was not maintainable and the objections filed in that application had also to be rejected. In fact, u/s 35 and 36 of 1996 Act, there was no requirement for the contractor to file any petition for making the award a rule of the Court and passing the decree in terms thereof. Thus, there is no infirmity in the impugned order dated 26.3.2002 passed by the trial Court.

In view of above, finding no merit in this revision petition, the same is hereby dismissed.

No costs.