

(2001) 02 P&H CK 0155

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision 2063 of 1998

HMT Limited

APPELLANT

Vs

B.K. Construction Co.

RESPONDENT

Date of Decision: Feb. 12, 2001

Acts Referred:

- Arbitration Act, 1940 - Section 10, 9

Citation: (2001) 4 RCR(Civil) 512

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Anand Chhibbar, for the Appellant;

Final Decision: Allowed

Judgement

R.L. Anand, J.

This is a civil revision and has been directed against the order dated 11.1.1997 passed by the learned Additional District Judge, Chandigarh, who affirmed the order dated 5.10.1993 passed by the Court of Sub Judge First Class, Chandigarh. Some facts can be mentioned in the following manner :-

2. Work of shifting of Oil Storage Tank at the premises of HMT Limited, Pinjore was given to respondent No. 1-B.K. Construction Company vide order dated 24.10.1983. An agreement to this effect was entered into on 29.3.1984. The respondent-Company started execution of the contract on 15.1.1984. The total work was for about Rs. 42,875/-. The work worth Rs. 36,000/- was executed. The Construction Company allegedly failed to complete the work. Clause 30 of Schedule A was invoked in terms of the said agreement. The Construction Company vide letter dated 25.4.1988 nominated their Arbitrator and further requested the HMT to nominate their Arbitrator. HMT nominated their Arbitrator. The dispute was referred to the Joint Arbitrator of the two Arbitrators. In October, 1988, nominated Arbitrator of the HMT resigned from service and as such vacancy arose. HMT appointed a fresh

Arbitrator on 9.2.1998 in place of the Arbitrator who resigned from service.

3. The stand of respondent No. 1 is that respondent No. 2 Bal Mukand Sharma will officiate as sole Arbitrator in the given circumstances because of the resignation of the earlier Arbitrator appointed by the Company. Notice dated 16.2.1989 was given by respondent No. 2 to the parties who participated in the arbitration proceedings.

4. The stand of the company is that respondent No. 2 cannot act as a sole Arbitrator. It is not the intention of the parties as per the Arbitration Clause. Rather both the parties are supposed to nominate an umpire in the event of any difference of opinion between the two Arbitrators, one appointed by the company and one by the Contractor.

5. Notice of the petition was given to the respondents. The petition was contested by the Construction company and it was maintained that respondent No. 2 Bal Mukand Sharma is the sole Arbitrator because the petitioner-Company was reluctant to nominate its own Arbitrator. Since the petitioner did not appoint a fresh Arbitrator in place of the Arbitrator who had resigned, therefore, respondent No. 2 Bal Mukand Sharma is the sole Arbitrator. Both the Courts below held that in this case, the provisions of Section 9 of the Indian Arbitration Act will be made applicable. Respondent No. 2 will be competent to act as a sole Arbitrator. Aggrieved by the impugned orders, the present revision has been filed.

6. I have heard Mr. Anand Chhibbar, Advocate, for the petitioner and with his assistance I have gone through the record of the case.

7. The relevant clause of the Agreement reads as follows :-

"In case, any dispute or difference shall arise between the company or the Civil Engineer or their behalf and the Contractor or any matter within the scope of this contract, except as matters entirely left to the discretion of the Civil Engineer under the provisions of the agreement, then either party shall forthwith give to the other written notice of such dispute or difference and such dispute or difference shall be referred to the Joint Arbitration of two Arbitrators, one to be appointed by the Employer and the other by the Contractor, and failing agreement between the two Arbitrators, on any matter or matters, to the sole arbitration of any umpire nominated by the Arbitrators, before they enter upon the reference and the decision of the Arbitrators/Umpire shall be final and binding on the parties to the dispute.

Unless the parties otherwise agree such reference shall not take place until after the completion, alleged completion or abandonment of the work or the determination of the contract."

8. Mr. Anand Chhibbar, the learned counsel for the petitioner submits that both the Courts have not rightly interpreted the provisions of Sections 9 and 10 of the Indian Arbitration Act. According to the learned counsel, in this case, the provisions of

Section 10 are applicable which provides that where the arbitration agreement provides that reference shall be given to the Arbitrators, one to be appointed by the each party and the third by the Contractor, the agreement shall have the effect as if it provided for the appointment of an umpire and not for the appointment of a third Arbitrator by the two Arbitrator appointed by the parties. Thus, a reading of Section 10 in the light of the Arbitration Clause clearly spells out that it was the intention of the parties to appoint one Arbitrator each and it was further agreed by the parties that these nominated Arbitrators shall, before entering upon the reference, make a decision that in the event of dispute between them, the matter shall go to the umpire. In this case, both the petitioner and the contractor party appointed the Arbitrators in terms of the Arbitration Clause. With the resignation of the Arbitrator appointed by the Company, it appointed another Arbitrator. Thus, the Arbitrator so nominated by the Company and the Arbitrator appointed by the Contractor will resolve the dispute. Before they enter upon the reference, they shall also make understanding that in the event of dispute between them, the matter shall go to a particular umpire.

9. In this view of the matter, I am of the opinion that the provisions of Section 10 of the Indian Arbitration Act in this case are applicable and not the provisions of Section 9 which talks of the reference to two Arbitrators which is not the present case here. The agreement was with regard to the 3 Arbitrators, one to be appointed by each party and the third will take shape of the umpire when the 2 Arbitrators i.e. one appointed by the each party differ.

10. In this view of the matter, this revision is allowed by setting aside the impugned orders. The matter shall be disposed of by the 2 Arbitrators, one appointed by the petitioner and one by the Contractor and before entering upon the reference, they shall also inter se agree that in case of difference of opinion, the matter shall go to a particular person who shall be treated as umpire and the decision of umpire shall be binding on the contracting parties. There shall be no order as to costs.

11. Revision allowed.