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High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5657 of 1999

R.K. Plastics	APPELLANT
Vs	
Punjab Land Development Reclamation and Corporation Ltd.	RESPONDENT

Date of Decision: July 26, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Limitation Act, 1963 - Article 119, 30

Citation: (2002) 2 CivCC 47 : (2001) 4 RCR(Civil) 783

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: P.S. Rana, for the Appellant; Chetan Mittal, for the Respondent

Final Decision: Allowed

Judgement

M.L. Singhal, J.
This is a revision against the order dated 9.11.1999 of District Judge, Chandigarh. This revision has arisen in the following circumstances:

2. Shri R.R. Bhardwaj (Arbitrator) gave award which was made rule of the Court vide order dated 9.6.1992 of Subordinate Judge, Ist Class, Chandigarh, in favour of M/s R.K. Plastics against the Punjab Land Development and Reclamation Corporation Limited, Chandigarh (hereinafter referred to as the Corporation). Objections filed by the Corporation against the award were dismissed. Corporation filed appeal No. 102 of 1992 against order dated 9.6.1992 before the learned District Judge, Chandigarh.

3. During the pendency of the appeal, the Corporation made an application u/s 151 of the CPC whereby it was prayed that the decree passed by Sub Judge, Ist Class, Chandigarh dated 9.6.1992 making award the rule of the Court, be set aside and further action be taken against the respondents for playing fraud upon the

Corporation. It was alleged in this application that agreement was signed by Shri M.M. Chhabra in the year 1985 alleging himself to be the sole proprietor of M/s R.K. Plastics. On 4.12.1989, claims were made by M/s R.K. Plastics through sole proprietor Piare Lal before the Arbitrator. At no state, the concern-M/s R.K. Plastics disclosed the fact that its sole proprietorship had been changed from Shri M.M. Chhabra to Shri Piare Lal. It was also not clear whether Shri M.M. Chhabra was the sole proprietor of M/s R.K. Plastics in the year 1985 because he had only signed for M/s R.K. Plastics. It was further alleged in the application that Shri Piare Lal had never met eny official of the Corporation and he had never been seen by any official of the Corporation. It was not known whether there was any such person in existence or he was an imaginary figure. There was another agreement with M/s R.K. Plastics in the year 1988 which was signed by Shri Rajiv Marwaha. Out of this agreement also, one claim was referred to the Arbitrator. On 9.1.1991, Rajiv Marwaha also filed one affidavit. One application was filed on 15.1.1991 in which Piare Lal had mentioned that he was authorised signatory of M/s R.K. Plastics. There is another affidavit dated 13.8.1990 filed by Piare Lal stating that he is the sole proprietor. In this case, claim was filed on 16.12.1992 on behalf of M/s R.K. Plastics by Shri R.K. Chhabra as sole proprietor. On 15.12.1998 one application was moved by Parteek Chhabra, son of Shri P.R. Chhabra, stating himself to be the sole proprietor of M/s R.K. Plastics. It was further stated that M/s R.K. Plastics being the sole proprietorship concern could not file claim by itself as it was not a juristic person and the claim could only be filed by sole proprietor himself. In both the case mentioned above, Shri P.S. Rana, Advocate, was the counsel throughout for M/s R.K. Plastics. There was some fraud being played by M/s R.K. Plastics. These facts came to the knowledge when the appeal was being prepared for arguments on 27.10.1999. M/s R.K. Plastics has committed a fraud and cheated the Corporation by receiving the award amount alone with interest. It was prayed that the decree be set aside and criminal action be taken against the decree holder the present respondents for procuring this award.

4. This application was opposed by M/s R.K. Plastics. It was urged that this application is not maintainable under any provision of law whatever, the Corporation had filed objections against the award which were dismissed by the Court vide order dated 9.6.1992 and the award was made rule of the Court. No such objection or point was raised when the objections were filed against the award dated 23.3.1990. No such objections or points were taken in the grounds of appeal filed against the order dated 9.6.1992, whereby award had been made rule of the Court and objections were dismissed. Award cannot be set aside on any ground whatsoever if an objection is not taken within a period of 30 days from the date of receipt of notice of the filing of the award. Since no such objection was taken in the objection petition, the same could not be taken in appeal, more particularly, when the appeal was filed in the year 1992 and it has been pending since then. It was urged that the objection petition cannot be allowed to be amended and no

objection can be added if not raised in the objection petition. This application was filed simply to further delay the decision of the appeal on merits. Objections against the award were filed on 30.4,1990 by the Corporation and after the expiry of more than 9 years, no fresh ground can be permitted to be raised on behalf of the appellant for attacking the award and setting aside the decree . It was further urged that no such objection can be allowed to be raised now after a lapse of 7 years of the pendency of the appeal when this objection could be decided only after adducing evidence. Objection poses disputed questions of fact which cannot be decided without evidence. Application is frivolous. It was denied that Shri Chhabra ever became sole proprietor of M/s R.K. Plastics. He never signed as sole proprietor. He might have signed for M/s R.K. Plastics. Mere signing for M/s R.K. Plastics did not enshrine him as the sole proprietor of M/s R.K. Plastics. It was only Shri Piare Lal Khanna who was the proprietor of M/s R.K. Plastics which was a concern duly registered with the Small Scale Industries department having permanent sales tax number After Shri P.L. Khanna, Shri Rajiv Marwaha became sole proprietor of M/s R.K. Plastics and thereafter Shri P.R. Chhabra became the sole proprietor and at present Shri Parteek Chhabra is the sole proprietor of M/s R.K. Plastics. Mere change in the proprietorship of the concern, is no ground for setting aside the award. Claim petition was signed by Shri P.L. Khanna on 4.12.1989 when he was the sole proprietor. It was Shri P.L. Khanna who started business in the name of M/s R.K. Plastics. He got the concern registered as small scale industry, got the sales tax number and supplied the material to the Corporation and received the payment therefore. If Shri Rajiv Marwaha signed agreement in 1988 for M/s R.K. Plastics when he was not the sole proprietor of M/s R.K. Plastics, that would not enshrine him as the sole proprietor. Shri Rajiv Marwaha became sole proprietor and as such, submitted affidavit dated 9.1.1991. No affidavit dated 13.8.1990 was ever submitted by Shri P.L. Khanna. Sh. P.L. Khanna signed the applications as authorised signatory, It was denied that the same was signed by Shri P.L. Khanna as sole proprietor. Shri P.R. Chhabra rightly filed claim petition on 16.12.1992 as by that time he had become sole proprietor of M/s R.K. Plastic. Parteek Chhabra filed application on 15.12.1995 as he had become sole proprietor of M/s R.K. Plastics by 15.12.1995. There was no question of fraud being played by M/s R.K. Plastics by regularly supplying material to the Corporation for more than 6 years and the Corporation had been receiving material and making payment therefore to M/s R.K. Plastics. In another arbitration case, Corporation took similar type of objection in 1995 and Arbitrator gave the award on 29.12.1995.

5. Vide the impugned order, Annexure P-3, learned District Judge felt that the matter needs further probe. He, therefore, referred this application to Civil Judge (Senior Division), Chandigarh for enquiry into the allegations contained in the application, requiring him to submit his report on 10.12.1999. It was submitted by learned counsel for the petitioner (M/s R.K. Plastics) that application u/s 151 of the CPC was not maintainable after a lapse of 7-9 years. Award was delivered on 23.3.1990. It was

received by registered post in the Court on 23.4.1990. Parties appeared before the Court in response to the notices issued by it. Corporation put in objections which were required to be put in within 30 days of the receipt of notice of filing of the award by the arbitrator. When the Corporation filed objections, no such objection/point was taken that the award is bad inasmuch as it is not clear as to who was the sole proprietor of M/s R.K. Plastics when the claim application was put in before the Arbitrator on behalf of M/s R.K. Plastics. It was submitted that the award was made rule of the Court by Sub Judge Ist Class, Chandigarh, vide order dated 9.6.1992. Corporation did not take up any such point or objection, although the appeal was pending for the last about 7 years. Corporation rose from its slumber and made application in the year 1999. It was also submitted that this objection does not lie in the mouth of the Corporation when the Corporation had been receiving material from M/s R.K. Plastics and making payment therefore to it. It was also submitted that this objection/point should have been raised by the Corporation before the Arbitrator. The Corporation did not raise any such objection/point before the Arbitrator. It did not raise this point/objection before the Court before whom the matter remained pending for about two years before the award being made rule of the Court.

6. It was submitted that the Corporation should have made an application for amendment of the objections and if that application had been allowed, the Court could have set aside the award and remitted the matter to the Arbitrator for the decision of the objection as well. Learned counsel for the petitioner drew my attention to Jagan Nath Vs. Des Raj and Others, where it was laid down that the Scheme of the Arbitration Act goes on the supposition that an arbitration award would normally meet approval and become the rule of Court, but the objection to such a course is also not ruled out. Limitation for the purpose is prescribed under Article 119 of the Limitation Act, 1963. As is plain from this provision, two different types of applications are conceived of. An application conceived of under Article 119(a) is directed towards making the award the rule of the Court, and on the other hand one under Article 119(b) is directed towards setting aside the award or getting the award remitted for reconsideration and not letting it become the rule of Court. Though the claims in the respective two applications are opposite to each other they are not intergripped as normally a plaint and a written statement are in a civil suit. Each respective application is to stand and fall on its own legs. Each has its own goal to achieve. That seems to be the reason why these two different claims were sub-divided in Article 119 under separate sub-heads. If this distinction is understood, then it does not remain difficult to discern that on the mere fortuitous circumstance of the applicant under Article 119(a) being given the right to amend his application, a corresponding right does not automatically accrue to the applicant under Article 119(b) to amend his objection petition and raise all sort of new pleas and objections supportive of its claim to set aside the award etc. If such a course were to be permitted, it would transgress the salutary rule of limitation prescribed

by the statute. It is thus clear that the trial Judge white permitting the objector-applicant, for setting aside the award, to amend his application-objection, went beyond his jurisdiction and in any case exercised jurisdiction with material irregularity. He also drew my attention to Parkash Chand Ahuja Chandigarh v. Dinesh Finance and Chit Fund Co. (Pvt.) Ltd., Chandigarh, AIR Punjab and Haryana 67, where it was held that an objection challenging the award on the ground of non-existence of arbitration agreement falls u/s 30 and, therefore, the period of limitation should be counted as prescribed under Article 119 and not in the residuary Article of the Limitation Act. The general and unqualified language of Clause (c) of Section 30 includes an award on an invalid reference which may be a nullity. In Haji Ebrahim Kassam Cochinwalla Vs. Northern Indian Oil Industries Ltd., , it was held that where a certain ground to set aside an award is not stated in the petition and the affidavit is filed during the course of hearing of the petition and on the basis of such affidavit applicant applies to set aside the award on ground stated therein, application was held to be a new application which was clearly barred by time, it having been made more than 30 days after the date of notice of the filing of the award. In Bijendra Nath Srivastava (Dead) through LRs. Vs. Mayank Srivastava and others, the Hon''ble Supreme Court held that objection sought to be introduced but not covered by objections raised in the original petition, amendment cannot be allowed. In pith, the submission of the learned counsel for the petitioner was that after such a lapse of time, the Corporation could not be allowed to amend its objections. Corporation was required to put in objections within 30 days of the receipt of notice of filing of award in the Court. Arbitrator entered upon the reference and made award on 23.3.1990. Corporation put in objections on 30.4.1990 against the award and no such objection was raised before the Arbitrator, which were dismissed vide order dated 9.6.1992. During all these years, no such objection/point was raised before the Court and after such a lapse of time amendment of the objections cannot be allowed and without amendment of the objections, the award could not be set aside and the reference remitted to the Arbitrator for re-decision.

7. Learned counsel for the respondent, on the other hand, submitted that nobody knows whether M/s R.K. Plastics was a genuine firm or any imaginary firm and nobody knows who was its sole proprietor at the time when claim was put in. It was submitted that if M/s R.K. Plastics had been able to obtain an award by fraud on the Arbitrator/Court, that fraud should be allowed to be unearthed. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, it was held that no Court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim. Where the Insurance Company after the passing of the award by Motor Accident Claims Tribunal, discovers that the award has been passed on a fake claim, it could be fully justified in approaching the Claims Tribunal for recall of the award. It was submitted that courts of law are meant for

imparting justice between the parties. When one comes to the Court, must come with clean hands, was the view taken by Hon''ble Supreme Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, wherein it was further held that it can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party. These submissions also found favour with Hon''ble Supreme Court in Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., .

8. It is true that fraud vitiates everything Judgment obtained through fraud is an absolute nullity and nobody can be allowed to thrive on fraud. In this case, however, the categoric case of M/s R.K. Plastics was that it was regularly supplying material for more than two years to the Corporation and the Corporation had been receiving material and making payment to M/s R.K. Plastics. If that was so, where was the fraud played by M/s R.K. Plastics on the Corporation, after such a long lapse of time, this point/objection could not have been allowed to be taken by the Corporation.

9. For the reasons given above, the revision is allowed. Learned Distt. Judge is directed to decide the appeal as expeditiously as possible, in any event, within three months of receipt of copy of this order.