In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No. 4102 of 2005

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Date of decision:11.8.2005

Haryana Dairy Development Cooperative Federation Ltd.

....Petitioner

Vs.

Makkar Transport

....Respondent

.....

Present: Mr. Pankaj Gupta, Advocate for the petitioner.

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S.S. Saron, J.

This revision petition has been filed by the Haryana Dairy Development Co-operative Federation Ltd. (`Federation' – for short) under Article 227 of the Constitution of India for quashing the orders dated 28.5.2005 (Annexure P-1) and 7.6.2005 (Annexure P-2) passed by the learned Civil Judge (Senior Division) Chandigarh, in execution proceedings in pursuance of which it is alleged that the Executing Court has changed/ altered the original order dated 15.1.2004 (Annexure P-3). A further prayer has been made for dismissing the execution application filed by the respondent with costs throughout.

An agreement dated 1.9.1988 was entered into between the parties regarding hiring of milk tankers for transportation of milk. Clause

27 of the said agreement inter-alia provided that in case of any dispute between the parties arising out of the contract, the same shall be referred to a sole Arbitrator i.e. the Chairman of the petitioner Federation. The respondent filed a claim for recovery of Rs.94,120/- before the Arbitrator. However, the Chairman of the petitioner Federation, who is the Arbitrator, did not decide the matter within the stipulated period of four months from the date of his entering into reference. The respondent filed an application under Sections 5, 6, 11, 12 and 20 of the Indian Arbitration Act, 1940, (for short - 'the Act') in the Court of the Sub Judge, First Class, Chandigarh who vide order dated 31.10.1992 appointed the then Chairman of the petitioner Federation as a new Arbitrator and allowed him a further period of four months for making the Award. The Chairman of the petitioner Federation dismissed the claim of the respondent on the ground of limitation vide order dated 29.5.1995. The respondent - Makkar Transport through its Proprietor again filed an application under Sections 5, 8, 11, 12 and 20 of the Act in the Court of the then Senior Sub Judge, Chandigarh. The said Court vide order dated 4.12.1997 revoked the authority of the Chairman of the petitioner Federation as the Arbitrator and appointed Shri Gorakh Nath, District & Sessions Judge (Retd.) to act as an Arbitrator in place of the Chairman. The Arbitrator made an arbitral award dated 18.10.1999 and awarded a sum of Rs.2,05,200/- in favour of the respondents and against the petitioner-Federation along with interest @ 12% per annum from the date of award till the date of decree. A copy of the said award was received by the respondent on 5.11.1999. The respondent then filed an application under Sections 14 and 17 of the Act for making the award dated 18.10.1999

passed by Shri Gorakh Nath, District & Sessions Judge (Retd.) as a rule of the Court. The petitioner-Federation filed its objections under Section 30 of the Act against the said award. The learned Civil Judge (Senior Division), Chandigarh vide his order dated 15.1.2004 (Annexure-P.3) dismissed the objections of the petitioner-Federation and made the award dated 18.10.1999 as a rule of the Court. Decree was passed in favour of the respondent and against the petitioner. Besides, the respondent was allowed interest at the rate of 12% per annum on the awarded amount i.e. Rs.2,05,200/- from the date of decree till realization of the awarded amount. It was ordered that decree sheet be accordingly prepared and award shall be made part of the decree. Against the order dated 15.1.2004 (Annexure P-3), the petitioner Federation filed an appeal in the Court of the District Judge, Chandigarh, which is pending adjudication.

During the pendency of the appeal, the respondent filed an execution application for execution of the order dated 15.1.2004 (Annexure P-3) to which the petitioner Federation filed objections. The objection that was taken by the petitioner Federation is that since no judgment and decree has been passed by the Court, the execution application is not maintainable. In the meantime, however, the Haryana State Cooperative Apex Bank Limited, Sector 17, Chandigarh, received attachment warrants. Accordingly, it deposited a sum of Rs.3,30,520/- in the Executing Court by way of pay order dated 19.11.2004 from the account of the petitioner Federation. The petitioner Federation filed two applications in the Court, one dated 29.11.2004 seeking a stay of realization of the amount of attachment during the pendency of the objections and the other dated 8.2.2005 seeking

remittance of the amount deposited by the Haryana State Cooperative Apex Bank Limited, Sector 17, Chandigarh, from the account of the petitioner Federation and for dropping the execution proceedings. In both the above said applications, the petitioner Federation pleaded that the execution application was not maintainable as the trial Court has failed to pass any `judgment' and `decree' in the case. The learned Executing Court vide its impugned order dated 28.5.2005 (Annexure P1) decided both the applications dated 29.11.2004 and 8.2.2005 and modified the original order dated 15.1.2004 (Annexure P-3) by substituting the word "Judgment" in place of word; "Order" as was initially recorded. The original records were received from the record room by the Executing Court on 7.6.2005 and the Executing Court made correction by substituting the word "Judgment" in place of "Order", on 7.6.2005 (Annexure P-2). As already noticed, both the orders dated 28.5.2005 (Annexure P-1) and 7.6.2005 (Annexure P-2) whereby the earlier order dated 15.1.2004 (Annexure P-3) has been modified are assailed in this petition.

Learned counsel for the petitioner contends that the learned trial Court vide its order dated 15.1.2004 (Annexure P-3) had only passed an order making the Award a Rule of the Court and since no `judgment' was passed by the Court, there was no question of drawing up any decree sheet by the Court. Therefore, it is contended that the Executing Court committed a material irregularity in passing the order dated 28.5.2005 (Annexure P-1) by correcting the order dated 15.1.2004 (Annexure P-3) and substituting the word "Judgment" in place of the word "Order". Besides, it is contended that the learned executing Court made the correction in terms of the order

dated 7.6.2005 (Annexure P-2) in pursuance of the order dated 28.5.2005 (Annexure P-1). The primary case of the learned counsel is that only an `order' had been passed on 15.1.2004 (Annexure P-3) by the learned Civil Judge (Senior Division) Chandigarh and no `judgment' had been passed, and therefore, no decree was liable to be drawn up. As such, it is contended that in any case the correction was not liable to be made. Therefore, the execution proceedings filed by the respondent are not maintainable for execution of the order dated 15.1.2004 (Annexure P-3).

I have given my thoughtful consideration to the contentions of the learned counsel for the petitioner. It is appropriate to note that the learned trial Court vide its order dated 15.1.2004 (Annexure P-3) has adjudicated the matter at length. The learned trial Court framed issues in the case and considered the objections and decided the issues. An appeal against the said order is pending before the learned District Judge, Chandigarh. Therefore, it would be inappropriate to comment on the merits of the same, at this stage when the appeal is pending before the learned District Judge Chandigarh. In the relief clause of the order dated 15.1.2004 (Annexure P-3), it was observed by the learned trial Court as follows:-

> "In view of my above consideration on issues No.1, objections filed by Haryana Diary Development Cooperative Federation Ltd. (sic. - under) Section 30 of Arbitration Act, 1940, are devoid of merit and as such are dismissed and the application filed by the contract (sic. - contractor) is allowed with cost. Consequently, award dated 18.10.1999 is made Rule of the Court. Decree is passed in favour of the applicant and against

the objector. Accordingly, applicant- contractor is allowed interest at the rate of 12% per annum on the awarded amount i.e. Rs.2,05,200/- from the date of decree till realization of the awarded amount. Decree sheet be accordingly prepared and award shall be made part of the decree. File be consigned to the record room." ...(Emphasis added)

It may be noticed that in the order dated 15.1.2004 (Annexure P-3) the narration of facts have been recorded, the contentions noticed and dealt with. In terms of the impugned orders dated 28.5.2005 (Annexure P-1) and 7.6.2005 (Annexure P-2), the word "judgment" has been substituted for the word "order" in the heading of the judgment. Otherwise, the contents of the judgment and/or order remain the same. Learned counsel for the petitioner seeks to contend that since the word "order" was written in the heading before recording the narration of facts, then for all intents and purposes the order dated 15.1.2004 (Annexure P-3) is an order and not a judgment and in terms of the provisions of the Act, a decree is to he drawn up on the basis of a judgment.

The contention of the learned counsel for the petitioner Federation is absolutely baseless and devoid of any merit. The trial Court passed a detailed judgment in the case and merely because it was labelled as an order in the heading, it cannot be said that the same is not enforceable or is not a decree. In any case, in view of the objections raised by the petitioner Federation, the same has been corrected also by the trial court for which the Court has necessary powers to correct in terms of Sections 151, 152 and 153 of the Code of Civil Procedure (for short 'C.P.C.'). In fact, it

is not an omission even because the matter has been adjudicated upon by the trial court on merit and it appears that it is only due to the objection raised by the petitioner Federation that the correction was made by substituting the label of the order dated 15.1.2004 (Annexure P-3) by the word `judgment'. Besides, a reading of the relief clause shows that it has specifically been ordered that a decree is passed in favour of the respondents and against the objector (petitioner). Decree has been defined in Section 2 (2) CPC, as follows:-

> "2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include—
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> (a) any adjudication from which an appeal lies as an appeal from an order, or
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> (b) any order of dismissal for default."

Therefore, `decree' has been defined as a formal expression of adjudication, which so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. Therefore, the matter having been adjudicated by the Court and a decree having been ordered to be drawn up, it hardly makes any difference whether the expression "order" was used or "judgment" was used while commencing with the judgment/order.

Consequently, the civil revision is dismissed. However, nothing stated herein shall be taken to be an expression of opinion on the merit as regards the judgment/order dated 15.1.2004 (Annexure P-3) passed by the trial Court in the appeal which is pending before the District Judge, Chandigarh.

August 11, 2005. (S.S. SARON)
JUDGE

sanjay/hsp