2016 M L D 958

[Peshawar]

Before Nisar Hussain Khan and Muhammad Ghazanfar Khan, JJ

MALIK TILLA MOHAMMAD---Appeal

Versus

DIRECTOR GENERAL EXCISE AND TAXATION and another---Respondents

F.A.O. No.74 of 2012, decided on 7th April, 2015.

Arbitration Act (X of 1940)---

----Ss.34 & 39---Stay of proceedings in a suit in presence of an arbitration clause in the agreement between the parties---Scope---Plaintiff filed a suit for declaration with permanent injunction against defendants---During pendency of suit, defendants filed an application under S.34 of Arbitration Act, 1940 for stay of proceedings---Arbitrator was appointed who submitted his Award which was accepted by plaintiff---Defendants objected the same, on the grounds that objections of Finance Department had not been addressed in a proper manner and Provincial Government being necessary party was not made party and award was set aside by Trial Court and not made Rule of Court---Held, that in agreement deed executed between plaintiffs and defendant it was mentioned that in case of dispute between parties, the dispute would be referred to arbitration under Arbitration Act, 1940---Arbitrator while proper and necessary party and without its impleadment no effective decree could be passed---Trial Court had therefore rightly passed an order for impleading Finance Department as party to suit and impugned order could not be interlard with---Such circumstances, appeal was dismissed, accordingly.

Farmanullah Khattak for Appellant.

Adnan Naveed for Respondent.

Date of hearing: 7th April, 2015.

JUDGMENT

MUHAMMAD GHAZANFAR KHAN, J.---Through the instant appeal under Section 39(vi) of the Arbitration Act 1940, Malik Tila Muhammad, appellant herein, has assailed the judgment/order dated 4-12-2012 passed by the learned Civil Judge-V Peshawar, whereby the Award dated 28/3/2012 drawn by the Arbitrator within the meanings of Section 30 of the Arbitration Act 1940 was set aside and not made Rule of the Court.

2. Brief resume of the case is that Malik Tila Muhammad, plaintiff/petitioner herein, brought a suit for declaration coupled with permanent injunction against the defendants to the effect that he is a Tobacoo Development Cess Contractor for the year 2008-09 and suffered a loss of Rs. 6.6 million on account of restraining order passed by the learned Additional District Judge-I Lakki Marwat with effect from 1/7/2008 to 26/7/2008 and thus his case was commended by the said defendants only for Rs. 1.8 million but defendants Nos.3 and 4 disagreed with the same who only waived of Rs. 0.887 million as penalty though it was not yet imposed. Therefore, notice for recovery followed by final notice dated 16-9-2010 for unpaid contractual amount was issued to him which was challenged through the instant suit to be declared as wrong, illegal, null and void.

3. It was during pendency of the suit when on application of the defendants under Section 34 of the Arbitration Act, an Arbitrator was appointed who submitted his Award dated 29/2/2012 which was accepted by the plaintiff but defendants Nos.1 and 2 objected the same, inter alia, on the grounds that objections of the Finance Department as mentioned in para-9 of the Summary have not been addressed in a proper manner; that the Provincial Government being a necessary party was not made party and that the summary dated 7/4/2010 submitted by the Excise and Taxation Department for grant of remission to the Tobacco Development Cess Contractor was already rejected by the Chief Executive of the Province.

4. Perusal of record transpires that an agreement deed was executed by the plaintiff/appellant and Excise and Taxation Department, i.e. defendants Nos.1 and 2 where in para-15 it was mentioned that in case of any dispute between the parties, the dispute would be referred to arbitration under the Arbitration Act, 1940. In the case in hand, the controversy was not between the plaintiff and defendants Nos.1 and 2 but in order to compensate the plaintiff, the Excise and Taxation Department deemed it proper that since the matter involves financial implication, therefore, the Finance Department be add its view. The Arbitrators while passing the impugned Award were never assisted by the Finance Department which was proper and necessary party in the instant case, because without its impleadment no effective decree could be passed.

5. In wake of the above, the learned trial Judge has rightly passed the impugned order in impleading the Finance Department as party to the suit which needs no interference and is accordingly maintained.

6. Resultantly, we find no substance in this appeal which is hereby dismissed.

RR/376/P Appeal dismissed.

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