Court No. - 40

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 539 of 2023

Appellant :- Union Of India And Another
Respondent :- M/s Vishwa Mitra Bajaj and Sons
Counsel for Appellant :- Subodh Kumar

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

1. The respondent was a contractor, who had entered into an agreement with the appellants which resulted into dispute and the same was referred to a sole Arbitrator for its resolution. The settlement of claim was filed on 20.8.2005 after pleadings were complete, the Arbitrator on 16.5.2007 gave award in favour of respondent. It also carried simple interest of 10% per annum to be calculated with effect from 6.7.2006.

2. Aggrieved by the aforesaid order, the appellants preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 (for the sake of brevity, hereinafter referred to as 'the Act') before the Presiding Officer, Commercial Court, Meerut, which was numbered as Arbitration Case No.50 of 2007 (New No.174 of 2022).

3. Commercial Court, Meerut vide its judgment and order dated 9.6.2023 was pleased to reject the application filed by the appellants. Aggrieved by the said order, the appellants have preferred the instant appeal under Section 13(1)A of the Commercial Courts Act, 2015, which infact is an appeal normally filed under Section 37 of the Act.

4. Learned counsel for the appellants urged that the learned Arbitrator has acted beyond its jurisdiction and no reason has been assigned as to how the award has been arrived at. He further submitted that the interest awarded by the Arbitrator is also on the higher side and excessive.

5. Both these arguments raised by learned counsel for the appellants are not correct as the award is speaking one and each claim has been considered separately and on the basis of evidences available on record and on merits, the same has been passed. Even the simple interest of 10% per annum awarded, cannot be said to be excessive.

6. In the matter of **M/s L.G. Electronics India (P) Ltd. vs. Dinesh Kalra**[1]**,** the Hon'ble Court has held that the position of law stands crystallised to the effect that findings of fact as well as of law, of the Arbitrator/ Arbitral Tribunal are ordinarily not amenable to interference either under Sections 34 or Section 37 of the Act. The scope of interference is only where the finding of the tribunal is either contrary to the terms of the contract between the parties or ex facie, perverse that interference by this Court, is absolutely necessary. The Arbitrator/Tribunal is the final arbiter on facts as well as in law, and even errors, factual or legal, which stop short of perversity, do not merit interference under Sections 34 or 37 of the Act.

7. The scope of interference in appeal under Section 37 of the Act is very limited. In the matter of **Punjab State Civil Supplies Corporation Limited and another vs. M/s Ramesh Kumar and Company & Others**[2] the Hon'ble Supreme Court has held that while considering a petition under Section 34 of the 1996 Act, it is well-settled that the court does not act as an appellate forum. The grounds on which interference with an arbitral award is contemplated are structured by the provisions of Section 34 and these provisions shall be strictly followed. It has been repeatedly held that while entertaining appeals under Section 37 of the Act, the Court will not sit as a Court of Appeal over the award of the Arbitral Tribunal and, therefore, the Court would not re-appreciate or re-assess the evidence.

---

1 2018 SCC Online Delhi 8367
2 Civil Appeal No.6832 of 2021 (Arising out of SLP(C) No.10179 of 2017) decided on November 13, 2021

8. The Hon'ble Supreme Court in the matter of **Oil & Natural Gas Corporation Ltd vs Saw Pipes Ltd[3],** held that a court can set aside an award under Section 34(2)(b)(ii) of the Act, as being in conflict with the public policy of India, if it is (a) contrary to the fundamental policy of Indian law; or (b) contrary to the interests of India; or (c) contrary to justice or morality; or (d) patently illegal. It was held that to hold an award to be opposed to public policy, the patent illegality should go to the very root of the matter and not a trivial illegality. It was also observed that an award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court, as then it would be opposed to public policy.

9. As laid down by the Supreme Court in **Mcdermott International Inc vs Burn Standard Co. Ltd. & Ors[4]** the supervisory role of the Court in arbitration proceedings has been kept at a minimum level and this is because the parties to the agreement make a conscious decision to exclude the courts' jurisdiction by opting for arbitration as the parties prefer the expediency and finality offered by it.

10. In the matter of **Ssangyong Engineering and Construction Company Pvt. Ltd. v. National Highways Authority of India[5]**, the Hon'ble Supreme Court has clarified that, under no circumstances, can any court interfere with an arbitral tribunal on the ground that justice has not been done in the opinion of the Court. This would amount to, entering into the merits of the dispute, which is contrary to the ethos of Section 34 of the Act.

11. The law is settled that, where the Arbitrator has assessed the material and evidence placed before him in detail, the court while considering the objections under Section 34 of the Act does not sit as a court of appeal and is not expected to reappreciate the entire evidence and reassess the case of the

3 (2003) 5 SCC 750
4 (2006) 11 SCC 181
5 (2019) 15 SCC 131

parties. The jurisdiction under Section 34 of the Act is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the Court to interfere with the award merely because in the opinion of the Court, another view is possible. The duty of the Court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the fact, pleadings and evidence before the Arbitrator.

12. Arbitration is a form of alternate dispute resolution, running parallel to the judicial system, attempts to avoid the prolix and lengthy process of the courts and presupposes parties consciously agreeing to submit a potential dispute to arbitration with the object of actively avoiding a confrontation in the precincts of the judicial system. If a Court is allowed to review the decision of the arbitral tribunal on the law or on the merit, the speed and, above all, the efficacy of the arbitral process is lost.

13. In view of the aforesaid propositions of law, the law is well-settled that the scope of interference under Section 37 of the Act is very narrow and this is not a case which calls for an interference and hence, the instant appeal is devoid of merits and is, accordingly, dismissed.

Order Date :- 18.10.2023
Manish Himwan

Digitally signed by :-
MANISH HIMWAN
High Court of Judicature at Allahabad