IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1335 of 2012 (O&M)
Date of Decision : 09.02.2017.

M/s Sohal Tractors & Farm Machinery through its Prop. and another

......Appellants

Versus

HMT Ltd. and another

...... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. Sameer Sachdeva, Advocate for the appellants.

Mr. Vaibhav Sahni, Advocate for respondent No.1.

ARUN PALLI, J. (Oral)

The objectors are in appeal against the arbitral award, dated 6.2.2009, as also the judgment, dated 7.12.2011, rendered by the Additional District Judge, Panchkula, vide which, their objections, under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), thereto were dismissed.

Briefly, the dispute is; the appellant firm (objectors) happened to be the authorised dealer of the respondents-claimants i.e. HMT Limited for the sale of its tractor and spare parts. The case of the claimant-respondents is that the appellant firm (objectors) used to purchase tractors and spare parts from the claimants from time to time on credit basis and would make part payments towards the costs of the merchandise. The respondents have been maintaining a running account of the appellant firm (objectors) in its regular course of business, and the said accounts were mutual, regular and reciprocal. A sum of ₹20,53,488.02 were due as on 30.11.2006 on account of the tractors, and ₹4936/- as on 28.02.2007 on account of spare parts from the objectors. There was also a pending liability of ₹12,641/-towards form 'C'. The security furnished by the appellant firm (objectors) had already been adjusted on 1.7.2006. Although, the appellant firm (objectors) appeared before the Arbitrator and filed the written statement as also a counter claim, but did not chose to participate in the proceedings thereafter. On an analysis of the material and the evidence on record, the Arbitrator reached a conclusion that the claim of the claimant-respondents was conclusively proved. Resultantly, the Arbitrator awarded the claim of the respondents with interest. Being aggrieved against the arbitral award the appellant firm (objectors) filed objections under Section 34 of the Act which were dismissed. That is how, as indicated above, the appellant firm (objectors) are before this Court.

Learned counsel for the appellant firm (objectors) merely seeks to reiterate the stand that was set out in reply to the claim preferred by the respondents before the Arbitrator as also in their objections under Section 34 of the Act. He submits that in fact, the entire principle amount stood paid to the respondents and nothing was due.

As opposed to this, learned counsel for the respondents submits that the evidence led before the Arbitrator fully substantiates the claim of the respondents-claimant. The Arbitrator, comprehensively examined every aspect of the matter, and has rendered a speaking award. Further, he submits that appellant firm (objectors) failed to make out any ground, in terms of Section 34 of the Act, upon which the Arbitrator's award could be set aside.

I have heard learned counsel for the parties and perused the records.

On a due and thoughtful consideration of the matter in issue and the material on record, I am of the considered view that the present appeal is wholly devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, the appellant firm (objectors) appeared before the Arbitrator on 20.10.2007 and filed their written statement as also the counter claim. However, thereafter, they did not choose to participate in the arbitration proceedings and were proceeded against ex parte. The respondents examined Shri S.K. Khullar, DGM (CW1) and Shri Rajeev Chadha, DGM (Finance) (CW2), who fully substantiated the claim of the respondents in their deposition. In the letter dated 16.06.2004 (Ex.C32) written by none other than the appellant firm (objectors) they did not dispute the principle balance as on 31.03.2004, but only the interest. Whereas, vide a subsequent communication dated 14.01.2005 (Ex.C33) the appellant firm (objectors) conceded the principle amount as also the amount due on account of interest. And, vide communication (Ex.C35) the appellant firm (objectors) admitted the balance amount due. So much so, vide letter dated 13.08.2005, the appellant firm (objectors) confirmed that the balance amount that was outstanding as on 1.11.2004 was above ₹17,00,000/-. Not just that an analysis of Ex.C-33 and Ex.C-34, further, revealed that the appellant firm (objectors) had even suggested some payment plans to clear the liability, which it failed to adhere to. I am reminded to point out at this juncture that neither did the appellant firm (objectors) lead any evidence in support of its counter claim nor adduced any evidence in rebuttal. Meaning thereby, the entire evidence led by the respondents has gone un-rebutted, for even their witnesses were not cross-examined. Thus, the argument advanced by learned counsel for the appellants that the entire principal amount stands paid and nothing indeed was outstanding pales into insignificance. Clause-21 of the Dealership Agreement (Ex.R1) postulates that in the event of any dispute or differences between the parties the matter would be referred to the sole Arbitrator to be appointed by the HMT. Thus, the plea set out by the appellant firm (objectors) that the current dispute was not covered under the express terms i.e. Clause-21 of the agreement was apparently mis-conceived. Even otherwise, as observed by the learned Additional District Judge, if the appellant firm (objectors) had any reservation about the constitution of the Arbitral Tribunal, it could always raise an objection under Section 13 of the Act, in this regard. Ex facie, the award rendered by the Arbitrator was preceded by a comprehensive analysis of the matter and material on record. Needless to assert that the arbitral award could only be set aside on the grounds envisaged under Section 34 of the Act, however, the appellant firm (objectors) failed to make out any such ground. Learned counsel for the appellants could not show or point out that the conclusion arrived at by the Additional District Judge, Panchkula was either contrary to the record or suffered from any material illegality. No other argument was advanced.

In conspectus of the position as set out above, no ground is made out to interfere. The same being wholly devoid of merit is, accordingly, dismissed.

09.02.2017 **(ARUN PALLI)**
Manoj Bhutani **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No