IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5482 of 2017 (O&M)
Date of Decision: 23.08.2017

Smt. Sunyana Gupta

.... Appellant

Versus

Nirmal Bang Securities (P) Ltd. and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Bikramjit Aroura, Advocate for the appellant.

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JASWANT SINGH, J.

1. The appellant invoking jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'Act'), has filed present appeal, aggrieved from the Order dated 20.02.2017 passed under Section 34 of the Act, whereby her objection Petition under Section 34 has been dismissed by Ld. Additional District Judge, Bhatinda on the ground that there is no reason to interfere with award dated 10.06.2013 passed by Arbitrator.

2. The brief facts emerging from pleadings and arguments of counsel for the appellant are that appellant-client on 16.06.2012, with respondent-Trading member, opened a trading account for dealing in commodity market of MCX and equity trading account for trading on National Security Exchange (NSE) and for the said purpose deposited a sum of ₹ 3 lakhs as margin money in her equity account. During 24.07.2012 to 26.07.2012, trading of shares took place which resulted into loss and appellant became liable to pay debit balance amounting to ₹ 4,09,062/-. The

appellant did not pay said amount which resulted into accrual of interest amounting to ₹ 20,520/- from 27.07.2012 to 05.11.2012 @ 18% per annum. NSE referred the matter for arbitration to Sh. Mehmood Ali Khan as sole arbitrator, who vide Order dated 10.06.2013 allowed claim petition and held the appellant liable to pay a sum of ₹ 385991.69/- and interest @ 10% from the date of award to date of payment. The appellant filed objection petition under Section 34 of the Act, before the Objecting Court and Ld. ADJ, Jalandhar vide Order dated 20.02.2017 dismissed objection petition holding that no case is made out for interference under Section 34 of the Act.

3. Mr. Bikramjit Aroura, counsel for the appellant argued that the appellant was inexperienced lady and had not entered into alleged trading of shares on 24/25/26 July 2012. The appellant supported his contention with the fact that as per record, the appellant had carried out trading of approximately ₹ 60 Crores which required margin money of at least ₹ 7 crore whereas the appellant had margin of just ₹ 2,57,000/- and it totally against Rules of National Stock Exchange and guidelines relating to margin money required for trading. The respondent had actually entered into transactions to earn heavy brokerage and without knowledge of the appellant.

4. After hearing learned counsel for the appellant and perusing the record, this Court is of the opinion that present appeal is devoid of any merit and same is liable to be dismissed.

5. It would be gainful to consider the law laid down by Supreme Court, with respect to interference of Courts in arbitral award. The Supreme Court in ***ONGC versus Saw Pipes, 2003(2) R.C.R. (Civil) 554:2003 (5) SCC 705*** held:

31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public goods and the public interest. What is for public goods or in public interest or what would be injurius or the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/Judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in Renusagar case [1994 Supp (1) SCC 644] it is required to be held that that award could be set aside if it is patently illegal. The result would be-award could be set aside if it is contrary to:

(a) Fundamental policy of Indian law; or

(b) The interest of India: or

(c) Justice or morality, or

(d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

74. In the result, it is held that:

(A) (1) The court can set aside the arbitral award under Section 34 (2) of the Act if the party making the application furnishes proof that:

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms or the submission to arbitration, or it contains decisions on matters beyond the scope of the submission

to arbitration.

(2) The court may set aside the award:
(i) (a) if the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties,
(b) Failing such agreement, the composition of the Arbitral Tribunal was not in accordance with Part I of the Act.

(ii) if the arbitral procedure was not in accordance with:
(a) the agreement of the parties, or
(b) failing such agreement, the arbitral procedure was not in accordance with Part I of the Act.

However, exception for setting aside the award on the ground of composition of Arbitral Tribunal or illegality of arbitral procedure is that the agreement should not be in conflict with the provisions of Part I of the Act from which parties cannot derogate.

(c) If the award passed by the Arbitral Tribunal is in contravention of the provisions of the Act or any other substantive law governing the parties or is against the terms of the contract.

(3) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to :
(a) fundamental policy of Indian Law; or
(b) the interest of India: or
(c) Justice or morality, or
(d) If it is potently illegal.

(4) It could be challenged:
(a) as provided under Section 13(5); and
(b) Section 16(6) of the Act.

(B) (1) The impugned award requires to be set aside mainly on the grounds:
(i) there is specific stipulation in the agreement that the time and date of delivery of the goods was of the essence of the contract:
(ii) in case of failure to deliver the goods within the period fixed for such delivery in the schedule, ONGC was entitled to recover from the contractor liquidated damages as agreed;

> *(iii) it was also explicitly understood that the agreed liquidated damages were genuine pre-estimate of damages;*
>
> *(iv) on the request of the respondent to extend the time-limit for supply of goods, ONGC informed specifically that time was extended but stipulated liquidated damages as agreed would be recovered;*
>
> *(v) Liquidated damages for delay in supply of goods were to be recovered by paying authorities from the bills for payment of cost of material supplied by the contractor;*
>
> *(vi) there is nothing on record to suggest that stipulation for recovering liquidated damages was by way of penalty or that the said sum was in any way unreasonable.*
>
> *(vii) In certain contracts, it is impossible to assess the damages or prove the same. Such situation is taken care of by Section 73 and 74 of the Contract Act and in the present case by specific terms of the contract.*

The Supreme Court in case of ***Associate Builders versus Delhi Development Authority 2015 (3) SCC 49*** in Para 22 held:

> *22. Here again, the Division Bench has interfered wrongly with the arbitral award on several counts. It had no business to enter into a pure question of fact to set aside the Arbitrator for having applied a formula of 20 months instead of 25 months. Through this would inure in favour of the Appellant, it is clear that the appellant did not file any cross objection on this score. Also, it is extremely curious that the Division Bench found that an adjustment would have to be made with claims awarded under claims 2, 3 and 4 which are entirely separate and independent claims and have nothing to do with claims 12 and 13. The formula then applied by the Division Bench was that it would itself do "rough and ready justice". We are at a complete loss to understand how this can be done by any court under the jurisdiction exercised under Section 34 of the Arbitration Act. As has been held above, the expression "justice" when it comes to setting aside an award under the public policy ground can only mean that an award shocks the conscience of the court. It cannot possible include that the court thinks is unjust on the facts of a case for which it then seeks to substitute its view for the Arbitrator's view and does what it considers to be "justice". With great respect to the Division Bench, the whole*

> *approach to setting aside arbitral awards is incorrect. The Division Bench has lost sight of the fact that it is not a first appellate court and cannot interfere with errors of fact.*

As per various judgments of Supreme Court, the Court should refrain from interfering in award if there are two possible views; pure question of facts is involved; illegality is of trivial nature and it does not go to the root of the matter; award is not against the public policy. The Court should interfere, if there is patent illegality, however, must go to the root of the matter, there is violation of the public policy and it should be so patent and unreasonable as to shock conscious of the Court; the arbitration agreement is not valid under the law to which the parties have subjected etc.

6. By applying the principles laid down in Section 34 and by Hon'ble Supreme Court in various judgments, I find that in the present case, there is dispute of pure facts qua trading of shares. As per appellant, she has not traded into shares on 24/25/26 July' 2012 whereas claim of respondent is that on the instructions of the appellant trading of shares took place on the dates in question. The question that whether on the instructions of appellant respondent traded in shares or respondent at its own traded in the account of appellant. The arbitrator after examining conversation which took place between both the parties *inter alia* had recorded a categoric finding that appellant was very much aware of transactions and trading took place with her consent, instructions and knowledge, only premium was required to be paid in derivative option trading and premium is lesser if the trading is done on the settlement day, therefore, her contention that margin money ₹ 7 crore was required for trading of ₹ 60 crore is incorrect. This Court finds that view expressed by arbitrator is a plausible view and it is not appropriate to

take a view contrary to view expressed by the Arbitrator, therefore, no ground is made out to interfere under Section 37 of the Act.

In view of the discussion made above, no ground for interference is made out and accordingly the instant appeal is dismissed and consequently award dated 10.06.2013 and impugned order dated 20.02.2017 stands affirmed.

August 23, 2017 **(JASWANT SINGH)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No