

CR No.190 of 2019(O&M)
Date of Decision: 13.09.2019

M/s Shri Krishna BuildersPetitioner
Versus
Punjab State Agriculture Marketing Board and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.S. Rana, Advocate and
Mr. G.S. Rana, Advocate
for the petitioner.

Mr. Mukesh Singla, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has laid challenge to the order dated 06.12.2018 passed by the Additional District Judge, SAS Nagar, Mohali vide which application under Section 36(2) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting aside the award dated 24.03.2017 was allowed and operation of the award was stayed during pendency of objections under Section 34 of the Act.

[2]. After substitution of amended provision by Act No.3 of 2016 w.e.f. 23.10.2015, amended Section 36 of the Act reads as under:-

“[36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]”

[3]. Proviso to Section 36(3) of the Act would cast an obligation on the Court to stay the arbitral award by treating the award to be a decree for payment of money and due regard has to be given to the provision for grant of stay as if the same is a money decree under CPC. Money decree cannot be stayed arbitrarily without any cogent reasons. The reason put forward by the Court in the impugned order is that the respondent Board

is an instrumentality of the State and would not run away after the decision of the objections and the awardee/petitioner would be entitled to receive interest on the awarded amount. In case of payment of the money to the petitioner, it would be difficult for the respondent Board to recover at a subsequent stage.

[4]. In my considered opinion, impugned order is not in consonance with the amended provision of Section 36 of the Act and needs to be revisited by the Court by adhering to the real import of the amended Act/provision.

[5]. In view of above, impugned order is set aside. The case is remanded to the Court of Additional District Judge, SAS Nagar, Mohali for fresh decision in accordance with law. Both the parties would appear before the Additional District Judge, SAS Nagar, Mohali on 09.10.2019.

13.09.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No