IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1651 of 2005 (O&M)
Date of decision: September 9, 2019

State of Punjab

...Appellant

Versus

Modern Co-operative Society and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sandeep Singh Deol, Deputy Advocate General, Punjab, for the appellant.

None for the respondents.

JAISHREE THAKUR, J.

1. The instant first appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (henceforth called **'the Act'** for short) seeking to challenge the dismissal of the objections filed by the appellant under Section 34 of the Act by the Additional District Judge, Patiala.

2. In brief, the facts are that work was allotted by the appellant to the respondents for construction of 100 rooms for Nurses in new Rajindra Hospital, Patiala. The work was allocated by letter No. 262-66 dated 21.4.1992 and the value of the work was fixed at ₹54.88 lakh. The work was to be completed within a period of 1-1/2 years in the light of the terms and conditions specified in the agreement duly signed between the parties. As the respondents did not complete the work within the stipulated period a

penalty of ₹ 5,48,000/- was imposed upon the respondents, vide letter dated 22.11.1993, which was subsequently reduced to ₹54,800/- by the Controlling Authority on 9.2.1994. On account of a dispute that arose regarding payment, the matter was referred to the Arbitrator Shri B.D. Gupta, Superintending Engineer, Patiala Circle No.1, who gave his award dated 6.2.1997. The award was remitted back by the Additional Civil Judge (Senior Division), Patiala, vide his judgment dated 6.6.1998 with a direction to the Arbitrator to pass a fresh and well reasoned award within a period of four months. The Arbitrator gave his award on 12.11.1998 allowing the claim of the respondents, while allowing 18% interest on the said amount.

3. Aggrieved against the said award, the appellant preferred objections under Section 34 of the Act for setting aside the award by taking the preliminary objections that the award had been passed beyond the period of four months and, therefore, the same would not be sustainable. It was also argued that the claim had been raised beyond the period of limitation, which has been specified in Clause 25-A of the agreement entered into between the parties. The objections were dismissed, which order has been challenged by way of instant appeal.

4. No one has put in appearance on behalf of the respondents despite service. Under this circumstances, this Court has no option but to proceed with the case in the absence of the respondents.

5. I have heard learned counsel for the appellant and with his assistance have perused the pleadings of the case.

6. Learned counsel appearing on behalf of the appellant would contend that the award itself is not maintainable since it was passed beyond

the period of four months that had been allowed by the Additional Civil Judge (Senior Division), vide judgment dated 6.6.1998. It is further argued that there was no application filed for extension of time for concluding the arbitration proceedings. In support of his contention, learned counsel relies on **Hardyal Versus State of Punjab 1970 PLR 206** and **Saraswat Trading Agency and another Versus Union of India and others 2006 (44) R.C.R. (Civil) 323.**

Thus taking it to be an admitted fact that the award was not passed within the stipulated period and there was no extension of time either sought for by the Arbitrator or allowed by the parties, the Arbitrator had become *functus officio* and any award rendered by him beyond the prescribed period would be *non-est.*

7. The Arbitrator is a creation of the statute/agreement entered into between the parties and is bound by the terms and conditions specified in the agreement. If an agreement specifies a particular period within which an award has to be passed, the Arbitrator is duty bound to comply with the same and he does not have the power or the mandate to extend the time *suo moto.* In **Housing and Urban Development Corporation Vs. DSA Engineers (Bombay) and others 2002 (1) Arb.LR 384 (Delhi),** it has been held as under :-

> *"24. No party including the Arbitrator can be allowed to travel beyond the arena of the agreement as terms of the agreement have almost a statutory force and do not admit waiver or acquisance or any of the terms either through the conduct of the party or conduct of the arbitrator in holding the proceedings. Not only the parties but the arbitrators are bound by the terms of the agreement. Conduct of the proceeding and*

parties and for that purpose of arbitrator by no stretch of imagination can render the terms of the agreement between the parties nugatory or tantologous."

8. Reliance can also be placed upon the judgments rendered in **N.B.C.C. Ltd. Vs. J.G. Engineering Pvt. Ltd., 2010 (1) SCC (Civil) 416; Teltech Instrumentation Pvt. Ltd. Vs. Bharat Petroleum Corporation Ltd., 2012 (3) BCR 743; B.K. Gopakumar Vs. National Film Development Corporation Ltd 2011(1), BCR 12, M.D. Army Welfare Housing Organization Vs Sumangal Services Pvt. Ltd. 2003(4) RCR (Civil) 767.**

9. In **Shyam Telecom Ltd. vs Arm Ltd 2004 (3) ARBLR 146 (Delhi),** the High Court at Delhi while dealing in a similar situation held:

"15. In the opinion of this Court, the expression "de jure" is amply wide so as to cover a situation like the case in hand. This view is based on the settled legal position that Arbitration agreement is the fountain head of the Arbitrator's power and authority and the parties as well as the Arbitrator are governed and controlled by the terms of the said Arbitration agreement. Unless parties agree to the contrary, the terms of Arbitration agreement must operate in full. The consequence of the Arbitrator not concluding the proceedings and rendering the Award within the period prescribed under the Arbitration agreement as in the present case would uncloth the Arbitrator of his legal authority to continue with the proceedings unless the parties agree to extend the period of making the Award or a party waives his right to such an objection. It must, therefore, be held that expiry of the prescribed period for making the Award, would render the Arbitrator 'de jure' unable to continue with the proceedings and has the effect of termination of the mandate of the Arbitrator within the meaning of Section 14 of

the Act."

10. Moreover, in the judgment rendered by Apex Court in **Oil & Natural Gas Corporation Limited Vs. SAW Pipes Limited, 2003 (5) SCC 705,** it has been held that the Court can set aside an Arbitral award under Section 34 (2) of the Act if the party making the application furnishes proof that "*If the award passed by the arbitral tribunal is in contravention of provisions of the Act or any other substantive law governing the parties or is against the terms of the contract."*

11. In the instant case, the award passed is clearly beyond the period as prescribed by the Additional Civil Judge (Senior Division). However, there is an observation in the impugned judgment that the time was mutually extended by the parties to pronounce the award, which award has been passed within the extended period of time and, therefore, the ground taken by the appellant that the award of the Arbitrator is beyond the four months prescribed would not be sustainable. However, a perusal of the pleadings would reflect that the objection petition had been filed under Section 34 of the Act taking several pleas therein, namely that the respondent did not submit his claims to the Arbitrator as per provision in Clause 25-A of the Work Agreement, which stipulates that the claim had to be submitted within a period of 180 days from the date of final bill. A specific plea had been raised therein which was not dealt with by the Additional District Judge. Another plea had been taken that the Arbitrator could not have allowed the interest at the rate of 18% in the Award dated 12.11.1998, since there was no provision of interest in the Work's Contract Agreement No.3 of 92-93 or Indian Arbitration Act, 1940. In the objections,

it was stated that the work was completed in the year 1994 well before enforcement of the Arbitration and Conciliation Act, 1996 and, therefore, the Act of 1996 would not be applicable. This ground too has not been dealt with by the Additional District Judge, while dismissing the objections filed. The plea of limitation qua filing the claim petition before the Arbitrator and being hit by Clause 25-A of the Work Agreement has not been dealt with; nor has the issue of whether interest could be awarded. An Arbitrator could not go beyond the terms of condition of the agreement.

12. In view of the above, the appeal is allowed and impugned judgment dated 8.11.2004 is set aside and the matter is remanded back to the Additional District Judge, Patiala, with a direction to decide the objections afresh in terms of the objections raised by the appellant.

September 9, 2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No