

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

FAO No. 2720 of 2016 (O&M)
Date of decision: 21.2.2019

Kuldeep Kumar

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashok Gupta, Advocate,
for the appellant.

Mr. Pawan Kumar Jangra, Additional Advocate General,
Haryana.

JAISHREE THAKUR, J.

1. This appeal has been filed against the judgment of the Additional District Judge, Kurukshetra, dated 6.1.2011, who allowed the objections of the respondents—State filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') and set aside the award dated 1.10.2007 passed by the Arbitrator in favour of the appellant.

2. A few facts need to be noticed for the adjudication of the instant appeal. The appellant herein was awarded contract to construct 40 staff quarters for class IV employees on 26.9.1998 by an agreement entered into with the Irrigation Department, Haryana, vide Contract No. 1/C-14/98 dated 16.10.1998. As per terms of the contract, the work was to be

completed by 15.8.2000. After the work was done, the Contractor submitted his bills, which were not paid. Thereafter, he raised claim by letter dated 22.11.2002, which was rejected by the Executive Engineer. Eventually the matter was referred to an Arbitrator appointed by the Indian Council of Arbitration. Evidence was led by the respective parties and on consideration of the same, an award dated 1.10.2007 came to be passed in favour of the appellant herein.

3. Aggrieved against the award dated 1.10.2007, the respondent—State through its Executive Engineer filed objections under Section 34 of the Act before the Additional District Judge, Kurukshetra, who proceeded to frame issues on 16.11.2009. After framing of issues, the Additional District Judge, further proceeded to record the evidence of the parties and thereafter set aside the award of the Arbitrator. Aggrieved against the said judgment, the instant appeal has been filed.

4. Mr. Ashok Gupta, learned counsel appearing on behalf of the appellant herein, contends that the the Arbitrator can only proceed to decide the objections within the parameters provided under Section 34 of the Act and has exceeded his jurisdiction in so far as he framed the issues and then proceeded to decide the matter. It is argued that the law as settled is such that the Arbitrator cannot even go into the evidence led before the arbitrator and re-appreciate it .

5. Per contra, Mr. Pawan Kumar Jangra, Additional Advocate General, Haryana, appearing on behalf of the respondent—State, submits that there is no infirmity in the judgment so impugned and no interference is

called for in the instant appeal.

6. I have heard learned counsel for the parties and have also perused the judgment of the Additional District Judge, which is palpably without jurisdiction. The provisions of Section 34 of the Act provides for setting aside of an arbitral award under Section 34 of the Act, which is reproduced as under:-

“34 Application for setting aside arbitral award. — (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) 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 of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral

- procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or*
- (b) the Court finds that—*
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*
- (ii) the arbitral award is in conflict with the public policy of India.”*

A bare perusal of the Section would show that the provisions are stringent wherein it is specified that an arbitral award may be set aside by the Court only if: (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 of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; and or (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or if the Court finds that:- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for

the time being in force, or (ii) the arbitral award is in conflict with the public policy of India.

7. It is further well settled by the Supreme Court that the court, while considering the correctness of the award, does not examine it as an appellate court, and while exercising the said power, the court cannot re-appreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. The power and the jurisdiction of the Court to set aside an award are specifically laid down in Section 34 of the 1996 Act. If none of the conditions laid down in the said section is satisfied, the award cannot be set aside on re-appraisal of the evidence. Thus, there is no provision under Section 34 of the Act for the District Judge to act as a trial court, frame issues and decide the matter on the basis of the issues framed. Reference may be made to judgments rendered in **Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd., AIR 2003 SC 2629 : Associate Builders v. Delhi Development Authority (SC) (2015) 3 SCC 49.**

8. In view of the above settled law, the Additional District Judge has exceeded its jurisdiction by framing issues in the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996, allowing the parties to lead evidence and then proceeded to decide the same on the basis of the evidence so led by the parties.

9. Consequently, the appeal is allowed and the impugned judgment is set aside and the matter is remanded back to the District Judge, Kurukshetra to decide the objections filed by the respondent—State afresh

within the parameters as provided under Section 34 of the Arbitration and Conciliation Act, 1996 within a period of six months from receipt of a copy of this order.

21.2.2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No