

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

**FAO No. 904 of 2015 (O&M)
Date of Decision: 17.05.2019**

Punjab State Civil Supplies Corporation Limited (PUNSUP)

..... Appellant

VERSUS

M/s Parkash Industries and another

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Deepak Sabherwal, Advocate,
for the appellant.

Mr. Mukand Gupta, Advocate,
for respondent No.1.

JAISHREE THAKUR, J. (ORAL)

1. This is a first appeal that has been filed under Section 37 of the Arbitration & Conciliation Act, challenging the order dated 30.08.2014 whereby the petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 for setting aside the arbitration award dated 15.01.2013 stands dismissed.

2. In brief the facts that need to be noticed are that there is a custom milling agreement that had been entered into between the parties, namely the appellant and the miller for the crop year 2002-03. On account of a dispute that arose, the matter was referred to the Arbitrator by the Managing Director of the appellant.

3. The appellant herein filed a claim of ₹ 20,89,874/- which would be including the interest as claimed @ 21% per annum from 01.09.2003 to 30.06.2007. During the pendency of the proceedings an amount of ₹ 8,65,000/- inclusive of the principal amount and excess interest was deposited with the appellant. Mr. Sita Ram, Junior Assistant, PUNSUP, Sangur appeared and acknowledged the fact that the respondent had deposited the principal amount due and stated that the interest as claimed had yet to be recovered. Thereafter, even though evidence had been led in the proceedings that had been held before the Arbitrator, the appellant herein sought time to get necessary instructions regarding the amount that stood deposited. It was stated that a reference had been made to the Head Office regarding the said deposit and reply to the reference was yet awaited. The Arbitrator while taking into account that five opportunities had been availed of by the claimant, came to the opinion that no interest was being taken by the claimant for continuing the proceedings and no evidence had been produced by the appellant after receipt of the said amount from the respondent as to how much amount remained due after adjustment of the amount received, terminated the arbitration proceedings. He concluded that the claimant was not interested in continuing the arbitration proceedings further and thereby terminated the proceedings by his order dated 15.01.2013.

4. Aggrieved against the said order, appellant filed an objection petition under Section 34 of the Act for setting aside the award, which too was dismissed by the District Judge, by the impugned order dated 30.08.2014.

5. Learned counsel appearing on behalf of the appellant urges

that the District Judge erred in dismissing the objection petition on a limited point that the grounds raised do not fall within the four corners of Section 34 of the Arbitration & Conciliation Act, totally ignoring all the claims of the appellant still survive and the Arbitrator illegally terminated the proceedings. It is also argued that since all the record was available before the District Judge he ought to have exercised his jurisdiction and gone into the evidence.

6. Per contra, learned counsel appearing on behalf of respondent No.1 herein raises an argument that the District Judge would have no jurisdiction to go into the evidence that was before him. Scope and ambit of interference by a Court in proceedings under Section 34 of the Act of 1996 is limited and the District Judge cannot under any circumstances re-appreciate the evidence of his own. It is also argued that once the Arbitrator came to the conclusion that the appellant herein was not interested in pursuing the arbitration proceedings and had terminated the said arbitration, objections before the District Judge would not have been maintainable nor would the present First Appeal against order. It is argued that under Section 14 read with section 32(2)(c) there is a provision under the Arbitration & Conciliation Act, 1996 for laying challenge to termination of proceedings before a Court. The only option available with the appellant was to have challenged the order before a competent Court.

7. I have heard the counsel for the parties and have also perused the pleadings.

8. The arbitrator terminated the proceedings on coming to a conclusion that the appellant was not interested in the proceedings as it had recovered the principal amount along with a small portion of the interest.

He arrived at this conclusion based on the fact that despite five opportunities availed of, no person appeared. If dissatisfied with the interest is still to be recover, the appellant had a remedy of challenging the order under Sections 14 and 32 which read as under:-

“14. Failure or impossibility to act.—

(1) The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]—

- (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and*
- (b) he withdraws from his office or the parties agree to the termination of his mandate.*

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

32. Termination of proceedings.—*(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).*

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

- (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,*
- (b) the parties agree on the termination of the proceedings, or*

(c) *the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.*

(3) *Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.*

9. Therefore, in view of the specific provision provided under the Act of 1996, the instant appeal is hereby dismissed by giving liberty to the appellant to approach the Civil Court along with filing of application for condonation of delay which would be dealt with on its own merits.

17.05.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.