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

(1) CM No. 12404 and 12405 CII of 2018 in/and
FAO No. 3541 of 2018 (O&M)
Date of decision: 15.7.2019

M/s Mubasa Electricals Pvt. Ltd. ...Appellant

Versus

Punjab State Power Corporation Limited and another

...Respondents

(2) FAO No. 3542 of 2018 (O&M)

M/s Bhushan Exports, Batala ...Appellant

Versus

Punjab State Power Corporation Limited and another

...Respondents

(3) FAO No. 3543 of 2018 (O&M)

M/s Shree Krishna Transformers, Bathinda ...Appellant

Versus

Punjab State Power Corporation Limited and another

...Respondents

(4) FAO No. 4825 of 2018 (O&M)

M/s Power Tech Transformers, Nabha

...Appellant

Versus

Punjab State Power Corporation Limited and another

...Respondents

(5) FAO No. 4858 of 2018 (O&M)

M/s Soni Conductors Pvt. Ltd., Bathinda ...Appellant

Versus

Punjab State Power Corporation Limited and another

...Respondents

(6) FAO No. 6341 of 2018 (O&M)

M/s Shiv Bhole Industries,Bhucho Mandi

...Appellant

Versus

Punjab State Power Corporation Limited and another

...Respondents

(7) FAO No. 6342 of 2018 (O&M)

M/s Shiv Shakti Electrical, Kangra

...Appellant

Versus

Punjab State Power Corporation Limited and another

...Respondents

(8) FAO No. 6343 of 2018 (O&M)

M/s Jyoti International, Ludhiana

...Appellant

Versus

Punjab State Power Corporation Limited and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Kamna Kumar Jain, Additional,
for the appellant.

JAISHREE THAKUR, J.

CM No. 12404 CII of 2018 in
FAO No. 3541 of 2018

This is an application that has been filed seeking for condonation of delay of 26 days in re-filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in re-filing the appeal is condoned.

CM No. 12405 CII of 2018 in
FAO No. 3541 of 2018

The application is allowed, exemption as prayed for is granted.

CM stands disposed of.

Main cases

1. This order shall dispose of the above mentioned First Appeals against Order, as they arise out of the similar set of facts and involving similar question of law. The appeals have been filed seeking to challenge the impugned judgments passed by the Additional District Judge, Patiala, whereby the objection petitions filed under Section 34 of the Arbitration and Conciliation Act (for short **'the Act')** against the award of the Arbitrator have been accepted.

2. A few facts need to be noticed in the instant appeals, which for the sake of brevity are being taken from FAO No. 3541 of 2018. The appellant and respondent No.1 entered into an agreement for repairs of damaged transformers of different ratings varying from 25 to 100 KVA. On account of a dispute that arose between the parties, the matter was referred to an Arbitrator, who gave his award dated 28.2.2015. Aggrieved against the award, respondent No.1 filed a petition under Section 34 of the Act, which was dismissed by the Additional District Judge, Patiala, vide order dated 1.12.2015. Aggrieved against the said order, respondent No.1 filed an FAO No. 157 of 2017, which was disposed of by this Court on 25.4.2017 and the matter was remanded back for a fresh decision in accordance with law. After remand, the Additional District Judge, came to the conclusion that the award being vague was not sustainable and thus, allowed the objection petition and set aside the award. Aggrieved against the said judgment, the instant appeal has been filed.

3. Learned counsel appearing on behalf of the appellant herein contends that the court below has failed to take note of the law pertaining to setting aside an arbitral award as laid down under Section 34 (2) of the Act and none of the grounds enumerated therein would be applicable to the present case so as to warrant setting aside of the award.

4. I have heard learned counsel for the appellant and find that there is no infirmity in the order so passed.

5. The very purpose for which the arbitration has been provided as a mode of settlement of dispute between the parties is that the burden on the courts should be reduced and it should be the resolve of the parties to decide the matters by amicable settlement with the intervention of a neutral party being the Arbitrator. It should be the endeavour of the Arbitrator to settle the dispute as expeditiously as possible and not to leave any scope for the parties to re-agitate the matter. In the instant case, a dispute arose between the parties pertaining to the issue, whether the appellant had been able to repair the transformers to the satisfaction of the respondent No.1 herein. At times, transformers were returned without adequate repair being done and supplied late or taken away but not returned after repairs. In this manner, a dispute arose between the parties regarding non-supply of the transformers within the contractual delivery period and the matter was referred to the sole Arbitrator Er. V.K. Gupta, who gave his award holding that the appellant had maintained the transformers properly. This award came to be challenged and the Additional District Judge, as already noticed, set aside the award holding that the same cannot be sustained being vague one. A reading of the award and the relief that has been allowed clearly reflects that there is no proper adjudication

of the dispute referred to the Arbitrator. In fact, it is an award which is bound to encourage further litigation. The relevant portion of the award reads as under:-

> *"i) That proceedings under Arbitration and Conciliation Act are governed by Limitation Act and as per Section 43 of the Arbitration Act, even if the plea of limitation has not been taken as defence, adjudicating officer has to see whether the amount is within limitation or not. As per Article 25, limitation is 3 years prior to the claim lodged and in the present case claim would be deemed to be lodged on the day Arbitrator was appointed and in this case appointment of arbitrator was made on 17.4.2012. The time to file claim started the day when becoming due i.e. on date of returning back transformer to respondent and respondent should have adopted due course of claiming such amounts for getting adjudication of having a right to claim the amount. Petition under Section 9 of Arbitration and Reconciliation Act was not filed by respondent but by petitioner, as such respondent was never stopped to recover amount and so respondent cannot claim benefit of Section 14 of Limitation Act. Respondent, moreover never pleaded with regard to Section 14 of the Limitation Act so it is held that all claims beyond period of three years prior to 17.4.2012 i.e. when Arbitrator was appointed are barred by limitation and as such are rejected.*
>
> *ii) That it is wrong to say that as respondent has not maintained the transformers properly and since such obligations were never contested at the time of repairing transformers damaged within warranty period, as such it is held that petitioner is liable to pay the amount being claimed by respondent which is within limitation period.*

iii) *That now the question arises as to from which date respondent is entitled for interest on those transformers returned later than period as allowed in warranty clause because it has been pleaded time and again by petitioner that no intimation has ever been received by petitioner from respondent on damage of transformer and this information was taken by their representative during visits to stores. There is no evidence that intimation was sent to petitioner. In the absence of any evidence by respondent of having intimated about damage to transformer, it is held that petitioner is liable to pay interest "from date of lifting of transformer to date of return after repairs to respondent as both these transactions take place on challan"*

That in view of the above conclusion, I make this award in favour of respondent and respondent is entitled to recover interest @12% on 70% cost of new transformer as applicable in the year of repair from petitioner for those transformers which are within three years prior to date of appointment of arbitrator i.e. 17.4.2009 and this interest amount is to be calculated from "date of lifting of transformer by petitioner to date of returning back to respondent stores" in case this period exceeds permissible time limit of warranty clause of respective repair contract. It has also been brought out that recoveries are being made by respondent and such recoveries made by respondent relating to these transformers would be accounted for and adjusted in total liability. Cost of four transformers shown as recoverable from petitioner cannot be recovered as these transformers have been returned back by petitioner (though in 2014) as per challan put up with evidence (c-269,269/1). Since the date of lifting of these

> *transformers by petitioners is not available in records furnished, respondent is entitled for interest from date of lifting to date of return for the period delay exceeds permissible days as per warranty.*
>
> *Respondent will put calculations of amount due from petitioner within 30 days of award and thereafter petitioner will reconcile this data within 30 days of receipt of calculations from respondent. Payment will be made by petitioner within 10 days of checking of data put up by respondent."*

6. There is clearly no dispute with the proposition that the award passed by the Arbitrator need not be speaking, but it must be clear from the award as to which claims are being allowed and how the counter claims have been dealt with. A perusal of the award reflects that the Arbitrator has not adjudicated upon the issue as to how much interest has to be paid, nor settled the issue as to when the transformers were lifted and has left it upon the parties to sort out the issue by looking into the challan. The Arbitrator has ordered "since the date of lifting of these transformers by petitioners is not available in records furnished, respondent is entitled for interest from date of lifting to date of return for the period delay exceeds permissible days as per warranty." Furthermore, the Arbitrator in his wisdom has directed the parties to adjudicate the amount due to them as it evident from this direction—"Respondent will put calculations of amount due from petitioner within 30 days of award and thereafter petitioner will reconcile this data within 30 days of receipt of calculations from respondent. Payment will be made by petitioner within 10 days of checking of data put up by respondent."

7. This award leaves the dispute unsettled. Thus, from a close

scrutiny of the award, it appears that the same is vague, uncertain and against the public policy. A question that arises is if the accounts are not reconciled, what then? There is no adjudication of an amount due to either party and hence even if adjudication takes place there is no stamp of approval of the Arbitrator for the same to be executed in a court of law. It is settled that if a judgment is vague, it cannot be executed and vagueness of the judgment would only lead to a chaotic situation and plunge the parties in further litigation, which certainly is not the prime objective with which the Arbitration and Conciliation Act had been enacted by the Parliament.

8. The Additional District Judge has rightly allowed the objection petition and set aside the award. There is no merit in the appeals and the same deserve to be dismissed. For the reasons afore-stated, the appeals are dismissed, leaving it open to the appellants to invoke a fresh reference/arbitration, if the need so arises.

15.7.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No