

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 206 (2 cases)

FAO-4893-2013 (O&M)
Date of decision : 12.03.2020

Om Parkash

..... Appellant

VERSUS

Haryana State Agriculture
Marketing Board and another

..... Respondents

2.

FAO-4892-2013 (O&M)

Om Parkash

..... Appellant

VERSUS

Haryana State Agriculture
Marketing Board and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Amit Choudhary, Advocate, for the appellant.

Mr.Vishal Garg, Advocate, for the respondents.

DEEPAK SIBAL, J. (ORAL)

As similar issues of fact and law are involved in FAO-4892-2013 and FAO-4893-2013 both these appeals between the same parties are being disposed of through the present order. However, for the sake of convenience, facts are being taken from FAO-4893-2013.

The noticeable facts in brief are that on 21.04.1998 the work for the construction of a road between the villages of Amani and Fatehpuri was allotted by the respondents to the appellant. Initially the parties agreed that the work shall be completed within six months but this period was extended from time to time. Finally, the work was completed on 10.11.2004. At the time of preparation of the final bill an amount of ₹66,620/- was deducted by the respondents on the ground that the appellant had failed to complete the work within the stipulated period. Penalty @ 10% amounting to ₹1,64,900/- was also imposed. This led to disputes between the parties, which as per agreed terms, were referred to an Arbitrator.

Through award dated 04.05.2010 the Arbitrator held the appellant entitled to claim from the respondents an amount of ₹70,120/-. However, no interest was granted. The respondents filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) seeking therein setting aside of the aforesaid award. Such application was dismissed by the District Judge, Fatehabad on 19.10.2012.

No application under Section 34 of the Act was filed by the appellant.

Against the dismissal of the application under Section 34 of the Act the respondents did not file any appeal. However, the appellant who had not filed any application under Section 34 of the Act has filed the present appeal seeking therein modification of the impugned award on the ground that he was not granted any interest.

Learned counsel for the parties have been heard and the record perused.

Section 37 of the Act may be advantageously referred to. The same reads as under: -

“37. Appealable orders.

- (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders and from no others to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-
 - (a) refusing to refer the parties to arbitration under section 8;
 - (b) granting or refusing to grant any measure under section 9;
 - (c) setting aside or refusing to set aside an arbitral award under section 34.
- (2) An appeal shall also lie to a court from an order of the arbitral tribunal,-
 - (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or
 - (b) granting or refusing to grant an interim measure under section 17.
- (3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

As per Section 37(1) of the Act which starts with a non-obstantive clause an appeal lies from the orders so specified under Sections 37(1)(a), (b) and (c) to the Court authorised by law to hear appeals from original decrees of

the Court passing the order. The usage of the words “Court and from no others” in Section 37(1) clearly reveals the legislative intent which is that appeals under Section 37(1) shall lie “only” against the orders which are specifically referred to in Section 37(1) (a), (b) and (c).

Thus an appeal under Section 37(1) is maintainable “only” against an order of a Court refusing to refer the parties or granting or refusing to grant and setting aside or refusing to set aside an award and under Section 37(2) from an order of an arbitral Tribunal accepting the plea referred to in sub Sections 16 (2) or 16(3) or granting or refusing to grant an interim measure under Section 17.

When the above provisions are applied to the case in hand it is found that the present appeal under Section 37 of the Act is not maintainable for the simple reason that the appellant herein did not file any application under Section 34 of the Act to challenge therein the arbitral award dated 04.05.2010. Thus, no order against which an appeal under Section 37(1) could have been filed came into existence. In the absence thereof and in line with the afore legislative intent, the present appeal filed by the appellant to challenge therein the final arbitral award without taking recourse to the remedy under Section 34 of the Act would not lie.

In view of the above, both appeals being FAO-4892-2013 and FAO-4893-2013 “*Om Parkash vs Haryana State Agriculture Marketing Board and another*” are dismissed.

12.03.2020
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No