

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

FAO No. 6708 of 2018(O&M)

Date of Decision: December 23 , 2021.

HAFED

..... APPELLANT (s)

Versus

M/s Hanuman Rice & General Mills and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vishal Garg, Advocate
for the appellant.

Mr. Ashwani Talwar, Advocate
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter was heard through video conferencing due to outbreak of the pandemic, COVID-19.

This appeal has been filed by the appellant-Hafed challenging decision dated 11.04.2018 passed by the learned Additional District Judge, Karnal whereby objection petition under Section 34(2) of the Arbitration and Conciliation Act, 1996 (for short, the 'Arbitration Act') filed by the appellant against award dated 15.09.2014 passed by the Arbitrator, has been dismissed.

Brief facts necessary for adjudication of the matter are that, an agreement was executed between the appellant-Hafed and respondent No.1-firm in the month of April, 2009 whereby the appellant agreed to take on rent the plinth area of capacity of 15,000 MT for storage of wheat w.e.f. 08.04.2009 to 31.03.2012. Dispute arose between the parties on account of payment of rent.

Appellant through its District Manager referred the dispute for arbitration to the District Food and Supplies Controller, Karnal, in terms of clause 15 of the agreement, which provides as under:-

“That in the event of any dispute arising between the party and the department the same will be referred to the arbitrator who will be the District Food & Supplies Controller or any person appointed by the District Food & Supplies Controller and his decision will be final and binding upon the parties.

The appellant had disputed the amount of rent payable to respondent No.1-firm on the ground that the plinth area was not 15,000 MT, but 13,600 MT, therefore the appellant was not liable to deposit the entire amount of rent for the plinth area of 15,000 MT. The said fact was duly controverted by respondent No.1 while submitting that possession of the plinth area was taken by the appellant after due inspection and verification by the competent authority of the appellant-Hafed, which was intimated vide communication dated 11.07.2009 and that as total loaded stock was 13,600 MT therefore, lame excuse has been made that the plinth was having less capacity. Arbitrator-cum-District Food & Supplies Controller, after reproducing the claim, reply and rejoinder thereto, pronounced the award, ordering as under:-

- “1. Rent of the agreed capacity of 15000 MT on account of storage of wheat w.e.f. 08.04.2009 to 31.03.2012 after deducting the actual amount already paid by the Hafed to the claimant.
2. No cut on account of poor quality of the plinth could be imposed as there is no clause in the agreement of this effect.
3. The claimant is liable for a recovery of Rs.40,000/- from the rent payable to him on account of repair incurred by the Hafed.
4. Interest @ 12% on the due amount w.e.f. Due date till the actual payment made by the respondent.”

The Arbitrator concluded that plinth area of 15000 MT was taken possession of, thus rent had to be paid accordingly. Appellant was held entitled to ₹40,000/- with interest at the rate of 12% on account of repair carried out by it.

Objections under Section 34 of the Arbitration Act were filed by the appellant-Hafed, a copy of which has been attached with this file. Learned Additional District Judge, Karnal dismissed the said objections vide decision dated 11.04.2018. Aggrieved therefrom, this appeal has been filed.

Learned counsel for the appellant vehemently argued that order dated 11.04.2018 and consequently award dated 15.09.2014 deserve be set aside as the impugned award is bereft of any reasoning. Learned Arbitrator, it is submitted, has merely reproduced the pleadings i.e., the claim, reply and rejoinder but has not applied his mind and neither is there any indication, whatsoever, on record as to how and on what basis the award in question has been passed. Learned counsel for the appellant submits that the specific ground of the plinth area being less than 15,000 MT being handed over to the appellant, has not been considered. Therefore, the appellant has been wrongly held liable to deposit the rent for the entire area of 15,000 MT whereas liability of the appellant is only for 13,600 MT. It is submitted that the Arbitrator has not touched upon this aspect at all. Therefore, the impugned award is *per se* illegal and liable to be set aside. Learned Additional District Judge, Karnal, it is submitted, without considering this aspect has dismissed objections filed by the appellant under Section 34 of the Arbitration Act, therefore, impugned decision dated 11.04.2018 passed by the learned Additional District Judge, Karnal is also liable to be set aside. Learned counsel for the appellant relies upon judgments

of the Hon'ble Supreme Court in **M/s Dyna Technologies Pvt. Ltd. v. M/s**

Crompton Greaves Ltd., 2019 (20) SCC 1 and M/s Som Datt Builders Ltd. v. State of Kerala, 2009 (10) SCC 259. It is thus prayed that this appeal be allowed.

Learned counsel for respondent No.1 while refuting the said arguments, vehemently argued that not only has the Arbitrator, who is none other but an officer of the appellant and appointed by the appellant itself, reproduced the entire pleadings but has also given succinct reasoning for the conclusion arrived at by him. Mr. Talwar, learned counsel for respondent No.1 submits that the Arbitrator i.e., the District Food & Supplies Controller, Karnal is not a legally trained professional who is expected to render the award in a refined language acceptable to a legally trained mind. It is submitted that the learned Arbitrator has clearly given the reasons for the award so made. Learned Additional District Judge, Karnal has also considered the objections raised by the appellant and rightly rejected them. It is thus prayed that this appeal be dismissed being devoid of any merit.

Heard learned counsel for the parties and have gone through the record with their able assistance.

At the very outset, it is gainful to refer to Section 34 of the Arbitration Act, which reads 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 establishes on the basis of the record of the arbitral tribunal 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.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face

of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”

It is a settled position that challenge to an award is permissible to a limited extent on the grounds so mentioned in the abovesaid provision. The Hon'ble Supreme Court in **M/s Dyna Technologies** (supra) specifically held as under:-

“26. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without

there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

27. Moreover, umpteen number of judgments of this Court have categorically held that the Courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

Thereafter while dealing with the question of necessity to provide reasons in the award in terms of Section 31 of the Arbitration Act, it is held that,

“35. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the Courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regards to the speedy resolution of dispute.

36. When we consider the requirement of a reasoned order three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same

would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.”

It is further observed by the Hon'ble Supreme Court that in the absence of reasoning, the utility has been provided under Section 34(4) of the Arbitration Act to cure such defect and when there is complete perversity in the reasoning, in that case it can be challenged under the provisions of Section 34 of the Arbitration Act and that the power vested under Section 34(4) of the Arbitration Act to cure defects can be utilized in cases where the arbitral award does not provide any reasoning or the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. In the case of **M/s Som Datt Builders** (supra) it has been held that recording of reasons are not an empty formality.

Keeping in view the facts and circumstances of the present case and

applying the above to the given factual matrix, it is seen that the learned Arbitrator has doubtlessly proceeded to reproduce the entire claim petition with the corresponding paras of the reply filed by the present appellant in a tabular form in the award. The rejoinder/replication filed by the claimant has thereafter been produced in toto. Under the headnote of the admitted facts, the Arbitrator has observed that as per the agreement dated 01.04.2009 the appellant had agreed to hire 15,000 MT storage capacity open plinth at Assanth and agreed to pay rent @ Rs.5/- per MT per month for the plinth. It is further observed that as per clause 5 of the agreement, it is mentioned that the said agreement will come into force from the date of actual possession or from the date of storage whichever is later. It is specifically observed by the Arbitrator that as per procedure adopted by the Hafed in respect to some other service provider, rent was calculated by the field inspector on full capacity basis and this practice continued upto January, 2011 and it is thereafter that capacity was reduced to 13,600 MT without notice. Hafed imposed 10% cut on the ground that the plinth was not upto specification. It is further clearly observed that at the time of taking over possession, Hafed had not raised any objection/made any remark. Thus, the reason for holding Hafed liable to pay for the entire area of 15,000 MT has been duly given. In regard to the expenditure incurred by Hafed on repair of the plinth, amount of ₹40,000/- has been awarded as per the bills produced by them, as has been referred to. Therefore, in my considered opinion, it cannot be said that there is an absence of reasoning in the award rendered by the Arbitrator, even though the award lacks finesse and refinement of a judicial order.

Learned Additional District Judge, Karnal has duly considered the

objections raised by the appellant and has rightly rejected the objections. Argument raised by learned counsel for the appellant that objection regarding measurement of the plinth area being 13,600 MT not being considered, is not borne out from the record. Learned Arbitrator has specifically observed that rent was calculated by the Field Officer on full capacity basis, which continued upto January, 2011 and the capacity was reduced to 13,600 MT without any notice and that at the time of taking over possession, the appellant-Hafed had not recorded any such remarks. Therefore, to say that the argument raised by the appellant was not considered, is not correct and neither can it be held that award dated 15.09.2014 is bereft of reasoning. Learned Arbitrator has taken note of the grounds taken by the appellant as well as respondent No.1 and thereafter rendered the award. As has been held by the Hon'ble Supreme Court in **M/s Dyna Technologies** (supra) arbitral award should not be interfered with in a casual or cavalier manner unless perversity of the award goes to the root of the matter. Merely because there is a possibility of an alternate view on facts and interpretation, the same cannot be a ground for interference.

No other argument has been raised.

There is a delay of 3 days in filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal is rendered academic. Application is disposed of accordingly.

Keeping in view the facts and circumstances as discussed above, I do not find any illegality or perversity in the impugned decision dated 11.04.2018 passed by the learned Additional District Judge, Karnal.

Present appeal is, consequently, dismissed with no order as to cost.

Pending application(s), if any, is/are accordingly disposed of.

December 23 , 2021.
'om'

(LISA GILL)
JUDGE

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