

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO no. 1017 of 2022 (O&M)
Date of Decision:25.03.2022

Haryana State Agriculture and Marketing Board

.....Appellant

Versus

The Dhan Laxmi Co-operative L&C Society Limited and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Padamkant Dwivedi, Advocate
for the appellant.

Mr. Saurabh Dalal, Advocate
for the Caveator.

LISA GILL, J(Oral).

Appellant-Haryana State Agriculture and Marketing Board, has filed this appeal challenging order dated 08.11.2021, passed by the learned Additional District Judge, Rewari, whereby application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act') filed by the present appellant, has been dismissed.

Brief facts necessary for adjudication of the matter are that a contract for construction of link road from village Nangal Pathani to Kosli was allotted to respondent no.1-Contractor by the appellant. Contract Agreement was executed between the parties on 24.03.2008. The work, it is stated was not completed within time, despite respondent no.1 being advised to expedite the same. Therefore, the appellant, it is stated, proceeded to take action against respondent no.1 under Clause II of the Contract agreement and compensation amounting to Rs. 3,38,150/- only i.e., 10% of the agreement amount in question was imposed. As dispute arose between the

parties, respondent no.2 was appointed as Arbitrator by the then Chief Administrator-HASAM Board vide memo dated 14.08.2014 for settlement of disputes between the parties. Four (04) Claims were raised by the present appellant, which are reproduced as under:-

- “A. Risk and cost amount Rs.7,86,770/- under Clause III:**
- B. Amount of Advertisement Charges: Rs.50,000/-**
- C. Litigation Charges: Rs.50,000/-**
- D. Claim of Interest:** At the rate of 18 % per annum on a sum of Rs. 8,86,770/- only till its realization of the aforesaid amount in favour of claimant/Board along with litigation charges i.e., Rs.50,000/- only please.”

Ten (10) counter claims were raised by respondent no.1 and the same are reproduced as under:-

“Counter claim No.1: On a/c of illegal operation of clause-2 & 3 Rs.5,00,000/-.

Counter claim No2: On a/c of work done but not paid Rs.3,00,000/-

Counter Claim No.3: On a/c of security deducted from running bill and the earnest money deposited at the time of bid.

Counter Claim No.4: On a/c of escalation Rs.1,50,000/-.

Counter claim No.5: On a/c of expected profit on the remaining work.

Counter Claim No.6: Rs.6,66,000/- on a/c of establishment, idle labour and machinery.

Counter Claim No.7: Rs.6,75,000/- on a/c of re-const., of damaged road by P.H department.

Counter claim No.8: Rs.20,000/- on a/c of shifting of earth between RD 900 to 2100.

Counter claim No.9: Rs.1,00,000/- on a/c of litigation charges.

Counter Claim No.10: On account of interest.”

Learned Arbitrator finding no merit in the claim raised by the appellant, rejected the same and awarded a sum of Rs.94,099/- *qua* counter claim no.3, Rs.80,000/- *qua* counter claim no.6, Rs.6,75,000/- along with 12% interest w.e.f., 29.03.2011 *qua* counter claim no.7, Rs.30,000/- *qua* counter claim no.9 and directed the appellant to make the payment of awarded amount within a period of three months, failing which interest @12% shall accrue on the total consolidated amount from the date of issue of award. Rest of the counter claims were rejected by the Arbitrator.

Aggrieved from Award dated 24.11.2017, objections under Section 34 of the Arbitration Act, were filed by the appellant, which were rejected by the learned Additional District Judge, Rewari, vide impugned order dated 08.11.2021.

Aggrieved therefrom, present appeal has been filed by the appellant.

Learned counsel for the appellant argues that the impugned award has been incorrectly passed by the Arbitrator while erroneously allowing the counter claim. Furthermore, interest has been illegally awarded by the Arbitrator. Respondent no.1, it is submitted was responsible for the delay in execution of the contract, but the learned Arbitrator has ignored this aspect and wrongly rejected the appellants claim. Therefore, it is prayed that this appeal be allowed.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

There is no dispute regarding allotment of the work in question and arising of the dispute between the parties as well as appointment of the Arbitrator by the Chief Administrator, vide order dated 14.08.2014. It has been vehemently argued that there was delay on the part of respondent no.1

in execution of the contract, therefore, the appellant's claim has been incorrectly rejected. However, learned counsel for the appellant is unable to deny that decision of action under Clause 2 of the contract was referred to the concerned Superintending Engineer who in his memo no.1201-02 dated 22.06.2012 clearly opined that delay in execution was not on the part of respondent no.1. It is recorded therein that there was delay of about two years in demarcation of some portion of the road along the railway line. It is further concluded that the contractual agency metalled the road in some portion and the Public Health Department damaged the road for laying the sewer line which was the main cause of delay and that the XEN Rewari has admitted in his statement that Clause 2 was imposed before providing a clear site to the agency. It was thus held that respondent no.1 was not responsible for delay and the compensation amount of Rs.3,38,150/- imposed by the Executive Engineer, was reduced to Nil. Counter claim to the extent as mentioned above including the one regarding reconstruction of the road damaged by the Public Health Department has been correctly allowed. Argument raised by learned counsel for the appellant that a sum of Rs.8,79,094/- has been awarded beyond the terms of the agreement, is not borne out from the record.

Learned counsel for the appellant has also raised a plea that interest has been incorrectly awarded by the learned Arbitrator. There is clearly no merit in this argument as the grant of interest at the rate of 10% by the Arbitrator, cannot be considered to be unjustified. Moreover, learned counsel for the appellant is unable to indicate any negative covenant in respect to award of interest. Furthermore, it is a settled position of law that interference by this Court under Section 37 of the Arbitration Act is limited.

Section 34 of the Arbitration Act provides that Award can be set aside only

on the conditions as are mentioned therein.

Learned counsel for the appellant is unable to point out the existence of any ground which calls for setting aside of the impugned Award dated 24.11.2017 or any irregularity, illegality or infirmity in decision dated 08.11.2021 passed by learned Additional District Judge, Rewari.

No other argument has been raised.

Present appeal is accordingly dismissed with no order as to cost.

25.03.2022
s.khan

[LISA GILL]
Judge

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