

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

CR No. 1034 of 2021 (O&M)

Date of Decision: 14.07.2022

Jai Bhushan Malik

.....Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Ms. Sunint Kaur, AAG., Punjab.

LISA GILL, J(Oral).

This petition has been filed by the petitioner challenging order dated 16.04.2021, passed by the learned Additional District Judge, Barnala, whereby applications under Section 36 and Section 9 of the Arbitration and Conciliation Act (for short Arbitration Act) read with Section 39 Rule 1 and 2 CPC, have been allowed while staying operation of the Arbitral Award dated 10.05.2016 as well as Interim Award dated 27.06.2015, subject to deposit of 25% of the awarded amount.

Brief facts necessary for adjudication of the matter are that petitioner, stated to be a contractor was allotted work as described, at Village Kattu, Block and District Barnala by respondent no.1. Dispute arose between the parties on account of which arbitration proceedings were invoked and respondent no.2 was appointed as the Sole Arbitrator. Interim Award dated

27.06.2015, was passed for release of Rs. 4,18,767/-, as it is stated that there was no dispute regarding entitlement of the petitioner *qua* this amount. No amount was however released pursuant to passing of Interim Award dated 27.06.2015. In response to petitioner's request for release of the amount in question, respondents took a stand as reflected in Communication dated 20.12.2015 that necessary action would be taken as per the final award only. Despite further request by the petitioner when respondent-department failed to release the payment in terms of Interim Award dated 27.06.2015, petitioner filed a petition under Section 36 of the Arbitration Act, seeking enforcement of the Interim Award dated 27.06.2015. However, in the meanwhile, final award was passed by the learned Arbitrator on 10.05.2016, wherein total sum of Rs. 1,67,50,524/- along with interest at the rate of 18% per annum was awarded for the pre-suit period, *pendent lite* interest as well as future period till realization of the amount. Another application under Section 36 of the Arbitration Act was filed by the petitioner seeking enforcement of the final award. As execution application remained pending for sufficiently long period, petitioner, it is stated filed CR No. 2561 of 2020, which was disposed of on 24.02.2021, directing the executing Court to dispose of the execution proceedings within three months from the date of receipt of certified copy of the order.

In the interregnum, respondent filed a petition under Section 34 of the Arbitration Act before the Court at Barnala, challenging final Award dated 10.05.2016. An application under Section 9 of the Arbitration Act, read with Order 39 CPC was filed by the respondent on 23.12.2016 seeking stay of operation of the final award. Said application, it is stated remained pending and was not pressed by respondent no.1. However, an application dated 07.12.2018, was again filed seeking stay of operation of Interim

Award dated 27.06.2015 and Final Award dated 10.05.2016, during pendency of petition under Section 34 of the Arbitration Act. Detailed reply, it is stated was filed by the petitioner. It is further stated that execution petition filed by the petitioner was pending adjudication before the learned Additional District Judge, Patiala, who had been directed to decide the same within three months vide order dated 24.02.2021 in CR No. 2561 of 2020. In the said execution proceedings, Sub Divisional Officer (SDO) of the respondent-department suffered a statement before the executing Court that the department is in the process of releasing the payment to the petitioner. Accordingly, following order was passed on 31.03.2021 by the learned executing Court:-

“SDO Kuldeep Singh is present on behalf of JD and has informed the Court that process for making payment within the time granted by the Hon’ble High Court has started. He has further submitted that the matter is pending in the Head Office before the Chief Engineer Sh. Anil Bansal and that the said process would most likely conclude within a period of 15 to 20 days.

In view of said submission of SDO Kuldeep Singh, the execution is adjourned to 22.04.202 for report regarding payment/further proceedings.”.

Learned counsel for the petitioner submits that respondents in a mala fide manner instead of releasing the payment, pressed for stay of the award and learned Additional District Judge, Barnala, vide impugned order dated 16.04.2021 erroneously stayed operation of Interim Award dated 27.06.2015 as well as Final Award dated 10.05.2016 subject to deposit of 25% of the awarded amount.

Assailing order dated 16.04.2021, learned counsel for the petitioner vehemently argued that operation of neither of the awards can be

stayed in this manner. It is submitted that Interim Award dated 27.06.2015, at no stage has been challenged by the respondent. Reference is made to the objections filed under Section 34 of the Arbitration Act, where in it is only the final Award dated 10.05.2016, which has been challenged. It was urged that Interim Award dated 27.06.2015, has been passed on the basis of admitted claims of the petitioner. There can be no question of any challenge thereto. It is further argued that Interim Award dated 27.06.2015, does not merge with the Final Award as has been observed in the impugned order. Moreover, the award could not have been stayed by the learned Court in *toto*. The award being a money decree could not have been stayed except with a direction to deposit 100% of the awarded amount. Learned counsel for the petitioner also submits that objections under Section 34 of the Arbitration Act are not maintainable at the Court at Barnala as it does not have the territorial jurisdiction, therefore the order in any case, is not sustainable. Reliance was placed by learned counsel for the petitioner on **Toyo Engineering Corporation and another Vs. Indian Oil Corporation Limited, Civil Appeal Nos. 4549-2550 of 2021, decided on 02.08.2021** and **Manish Vs. Godawari Marathawada Irrigation Development Corporation, SLP (c) No(s). 11760-22761 of 2018, decided on 16.07.2018.**

It is thus prayed that this petition be allowed.

Per contra, learned counsel for the respondent while supporting the impugned order submitted that there are arguable points which have to be thrashed out before the learned Additional District Judge, in the petition under Section 34 of the Arbitration Act. It is submitted that impugned order is a well reasoned order passed after proper consideration of the facts and circumstances of the case and also takes into consideration the fact that there would be grave loss to the public exchequer, in case interim

order was not passed. It is thus prayed that this petition be dismissed.

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

Factual position regarding allotment of work to the petitioner arising of the dispute, appointment of the Arbitrator, passing of the interim award as well as final award and proceedings thereafter are not in dispute. Respondents have admittedly filed a petition under Section 34 of the Arbitration Act, challenging Final Award dated 10.05.2016. Learned counsel for the respondent was unable to deny that there is no prayer whatsoever for setting aside Interim Award dated 27.06.2015 which has been passed on the basis of the admitted claim of the petitioner. There is a specific recital in the Interim Award dated 27.06.2015 that only that part of the claim where items/quantities of work is admitted, are included in the Interim Award. It is further recorded that respondent in its reply has stated that entries of measurements of quantities of work claimed to be done by the petitioner as per directions of the respondent, have been made in the measurement book on actual basis and denied the claim for quantities mentioned in the claim statement. It is observed that since measurements have been made in the measurement book by the respondent, claimant is entitled for the payment as per the accepted measurements. Details of the item-wise measurements claimed by the claimant as accepted by the respondents, are thereafter detailed in the Interim Award and a sum of Rs. 4,18,767/- awarded, which is reproduced as under:-

Item No.	Description	Quantity claimed	Quantity accepted	Quantity already paid	Amount of claim accepted
Item no.1	Providing fixing of 110 mm UPVC pipes	3721.98m	3144.15 m	2784.15 m	360*310* Rs. 111600.00.p
Item no.2a	Providing	935 Nos.	840 nos.	755 Nos.	85*700*

	and fixing of 160 mm Tee in each house				Rs.59500.00 p
Item no.4	Excavation for 160mm UPVC pipe	16341.58 cum	13691.30 cum	13293.79 cum	397.51*230 Rs.91427.00 p
Item no.5	Dismantling of brick paving and its relaying	8674.00 sqm	5738.80 sqm	4870.00 sqm	868*180 Rs.156240.00p
Total					Rs.4,18,767.00/-

Perusal of the final award dated 10.05.2016 reveals that learned Arbitrator has accepted some claim of the petitioner in addition to the claim accepted in the interim award.

Admittedly, Interim award dated 27.06.2015 was never challenged by the respondents within the stipulated time as provided under the Arbitration Act, respondents did not release the amount awarded in terms of the interim award. In-fact, SDO Kuldeep Singh suffered a statement before the executing Court on 31.03.2021 that process for making payment within the time granted by the High Court has started and is likely to be concluded within a period of 15 to 20 days. However, respondents pressed for stay of arbitral award dated 10.05.2016 as well as interim award dated 27.06.2015 passed on the basis of admitted claims, whereas it is a matter of record that objections under Section 34 of the Arbitration Act have been filed challenging award dated 10.05.2016 only. Learned counsel for the respondents is unable to deny this fact, though has sought to explain the same by urging that interim award has merged with the final award.

In my considered opinion, the entire amount of Rs. 4,18,767/-, awarded vide Interim Award dated 27.06.2015, on the basis of the admitted claim of the petitioner cannot be withheld by the respondents in the given factual matrix. The question of whether this amount awarded by way of Interim Award dated 27.06.2015 has been taken into account or not by the

Arbitrator at the time of passing of final award is not in the realm of consideration in these proceedings and it is open to the parties to raise all available pleas before the Court seized of the petition under Section 34 of the Arbitration Act.

Learned Additional District Judge, Barnala, while passing the impugned order dated 16.04.2021, has observed that in case execution is not stayed, it would frustrate the very purpose of filing of the objection application. Therefore, execution of both the awards has been stayed subject to deposit of 25% of the amount of both the awarded amount/s by the objector within 30 days. Relevant portion of order dated 16.04.2021 reads as under:-

“If the execution has not been stayed, it would frustrated the purpose of filing of the objection application as main award has been passed for some of Rs. 1,67,50,524/- whereas interim award has been passed for Rs. 4,18,767/-. So, in pursuance of the Proviso of section 36(3), the execution of both the awards stands stayed, subject to the deposit of 25% amount of both the awarded amounts by the objector within 30 days. The deposit amount of 25% would be the condition precedent for staying the execution application.

Thus, in view of the above discussion, both the applications dated 07.12.2019 and 23.12.2017 stands allowed, subject to deposit of 25% of both awarded amount of award dated 27.06.2015 and 10.05.2016.”

In respect to security deposit when the party concerned is the government or government undertaking etc., it is useful to refer to the judgment of Hon’ble Supreme Court in **Pam Development Private Limited Vs. State of West Bengal, 2019(3) R.C.R (Civil) 603**, wherein submission on behalf of the State that under provisions of Order 27 Rule 8 A of CPC , no security shall be required from the Government in case of there being a

money decree passed against the government and execution of which is prayed for was negated. It was held by the Hon'ble Supreme Court as under:-

“ If such submission of the respondent is accepted then the same would mean that mere filing of an objection under Section 34 of the Arbitration Act by a Government shall render the award unenforceable as the stay order would be passed in a mechanical manner and as a matter of course, without imposing any condition against the Government judgment debtor. If the contention is accepted, the effect would be that insofar as the Government is concerned, the unamended provision of Section 36 of the Arbitration Act would automatically come into force.”

It is further held by the Hon'ble Supreme Court that insofar as the provisions of the CPC are concerned, they would only apply insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act. It is further observed by the Hon'ble Supreme Court in the said judgement as under:-

“27. Although we are of the firm view that the archaic Rule 8A of Order XXVII CPC has no application or reference in the present times, we may only add that even if it is assumed that the provisions of Order XXVII Rule 8A of CPC are to be applied, the same would only exempt the Government from furnishing security, whereas under Order XLI Rule 5 of CPC, the Court has the power to direct for full or part deposit and/or to furnish security of the decretal amount. Rule 8A only provides exemption from furnishing security, which would not restrict the Court from directing deposit of the awarded amount and part thereof.”

Learned counsel for the petitioner has relied upon order dated 02.08.2021, passed by the Hon'ble Supreme Court in **Toyo Engineering Corporation's case (supra)** to submit that 100% deposit of the awarded amount should be directed with liberty to the petitioner to withdraw the

amount of security. Perusal of the order reveals that Section 34 petitions in those matters stood dismissed.

In the given facts and circumstances of the case, in my considered opinion stay of Interim award dated 27.06.2015 is unjustified and is accordingly set aside. It is directed that the amount of 4,18,767/- as directed vide Interim Award dated 27.06.2016 passed on the basis of admitted claims, be released to the petitioner. Insofar as the final award dated 10.05.2016 is concerned, let 50 % of the amount be deposited to be kept in FDR earning maximum interest till decision of the petition under Section 34. Keeping in view the fact that the Arbitration Act itself entails decision of the petition under Section 34 of the Arbitration Act, within one year from the date of which notice under Section 34 (5) is served upon the other party, let objection petition be decided by the learned Additional District Judge, Barnala expeditiously and preferably within four (04) months from the date of receipt of certified copy of this order.

Revision petition is accordingly disposed of.

14.07.2022
s.khan

[LISA GILL]
Judge

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