

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

**FAO no. 3231 of 2022 (O&M)
Date of Decision:21.07.2022**

Haryana State Agriculture Marketing Board

.....Appellant

Versus

Bhoop Singh and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Lokesh Sinhal, Advocate
for the appellant.

LISA GILL, J(Oral).

This appeal has been filed by the Haryana State Agriculture Marketing Board, challenging order dated 16.03.2022 passed by the learned Additional District Judge, Rohtak, as well as Award dated 12.06.2017 passed by the learned Arbitrator.

Brief facts necessary for adjudication of the matter are that work of 'Construction of Link Road from village Bainsi to Village Girawar (Meham), District Rohtak' was allotted to respondent on 03.10.2006 with a time limit of nine months from the date of allotment with an estimated cost of Rs. 60,40,445/-. Contract agreement dated 29.12.2016 was executed between the parties. Dispute arose between the parties and respondent no.2 was appointed as Arbitrator vide order dated 13.12.2013 passed by this High Court. Claim submitted by respondent no.1 is as under:-

1. Claim No.1 of Rs. 3,89,574/- on account of the balance value of the work done;

2. Claim no. 2 of Rs. 4,80,000/- on account of the enforced idleness of road roller;
3. Claim no.3 of Rs. 4,80,000/- on account of the enforced idleness of men employed at site;
4. Claim no.4 of Rs. 1,20,000/- on account of travel expenses;
5. Claim no.5 of Rs. 1,00,000/- on account of enhancement of labour wages due to the government notification;
6. Claim no.6 of Rs.2,00,000/- on account of increase of prices of the material;
7. Claim no.7 of Rs. 50,000/- on account of costs of arbitration proceedings;
8. Claim no.8 for interest at the rate of 24% per annum on balance payment.

Counter claim of Rs. 50,000/- on account of litigation charges was filed by the appellant.

Learned Arbitrator after considering the material on record and keeping in view the facts and circumstances, pronounced Award dated 12.06.2017 partly allowing some of the claims set up by respondent no.1 as under:-

Claim No.1:

Rs. 2,44,378/- (Rs. Two Lacs Forty Four Thousand Three Hundred Seventy Eight Only) instead of claimed amount of Rs. 3,89,574/- awarded.

Claim Nos.2 and 3:

Rs. 2,70,000/- and Rs. 1,68,000/- instead of Rs. 4,80,000/- under each claim was awarded.

Claim No. 7:-

Rs. 50,000/- was awarded towards costs of the Arbitration proceedings.

Claim No. 8:-

Claim no.8 was partly allowed and claimant is entitled for the simple interest @ 15% per annum on the withheld amount of final bill plus 25% security amount to the tune of Rs.1,10,838/- with effect from 01.10.2010 i.e., 3 months after the date of completion of work till realization on 05.09.2011.

It was further directed that if the payment of Arbitral award is made within a period of three months from the receipt of a signed copy thereof, no future interest would be payable. However, if the same is not settled within the aforesaid period of three months, then the claimant shall be entitled to future interest also at the rate of 12% per annum simple interest on the awarded amounts till actual date of payment.

Claim no. 4, 5 and 6 were rejected.

Counter claim to the tune of Rs. 50,000/- on account of litigation charges filed by the appellant was dismissed.

Objections under Section 34 of the Arbitration and Conciliation Act (for short 'Arbitration Act') preferred by the appellant were dismissed by the learned Additional District Judge, Rohtak, vide impugned order dated 16.03.2022.

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

Learned counsel for the appellant submits that learned Arbitrator has incorrectly partly allowed claim nos., 1, 2 and 3 set up by respondent no.1 and wrongly rejected the counter claim set up by the appellant. It is submitted that claimant-respondent no.1 had got the final bills settled on 05.09.2011, therefore no claim whatsoever of the contractor survived. This fact, it is contended was not even taken into consideration either by the learned Arbitrator or the learned Additional District Judge, Rohtak, while passing the impugned order. Appellant, it is submitted has unnecessarily been involved in this frivolous litigation. It is further submitted that interest awarded by learned Arbitrator is on the higher side. It is thus prayed that this appeal be allowed.

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

Allotment of work in question, arising of dispute and appointment of the Arbitrator is not in dispute. Learned counsel for the appellant has vehemently argued that once the final bill was released by the department on 05.09.2011 and duly accepted by respondent no.1 without any objection, there was no question of any claim being considered by the Arbitrator and no arbitral dispute as such is existed. However, there is no merit in the said argument raised by learned counsel for the appellant. It is a matter of record that the Sole Arbitrator was appointed vide order dated 13.12.2013 passed by this High Court. Furthermore, it is a settled position that in case party has accepted the payment, the same by itself cannot be a ground for denial of arbitration. It has been held by the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Boghara Polyfab Private Limited, 2009 (1) SCC 267** that mere execution of a full and final settlement, receipt or a discharge voucher in a given factual matrix may not be a bar to arbitration. Illustrations were laid down as to whether the claims are arbitrable and the situation when not so. One of the illustration as narrated in para no.52 of **National Insurance Company Limited Vs. Boghara Polyfab Private Limited (Supra)** reads as under:-

“(iii) A contractor executes the work and claims payment of say Rupees Ten Lakhs as due in terms of the contract. The employer admits the claim only for Rupees six lakhs and informs the contractor either in writing or orally that unless the contractor gives a discharge voucher in the prescribed format acknowledging receipt of Rupees Six Lakhs in full and final satisfaction of the contract, payment of the admitted amount will not be released. The contractor who is hard pressed for funds and keen to get the admitted amount released, signs on the dotted line either in a printed form or otherwise, stating that the amount is received in full and final

settlement. In such a case, the discharge is under economic duress on account of coercion employed by the employer. Obviously, the discharge voucher cannot be considered to be voluntary or as having resulted in discharge of the contract by accord and satisfaction. It will not be a bar to arbitration.”

The Hon’ble Supreme Court in the case of **United India Insurance Company Limited Vs. Antique Art Exports Private Limited**, 2019(5) SCC 362 has held that each case has to be looked into on its own facts and circumstances taking note of the broad principles. Thus, this argument raised on behalf of the appellant is devoid of any merit in the given factual matrix where the respondent-claimant immediately took steps for recovery of the entire amount due after acceptance of the amount in question on 05.09.2011.

Perusal of Award dated 12.06.2017, reveals that learned Arbitrator has dealt with each and every claim in great detail with reference to material on record. It is specifically observed by the learned Arbitrator that as per record, it is undisputed that the work remained held up for about 24 months due to dispute of the respondent-department with the owners of adjoining land in regard to alignment of the road. It is specifically observed that various communications by the department as well as respondent-claimant would show that the matter was taken up assiduously with the concerned revenue authorities and the dispute was ultimately sorted out in April 2010 when demarcation was finally carried out by the revenue authorities.

In this view of the matter, it has been held that the claimant was well within its right to seek compensation on account of loss suffered due to delay in work as the appellant was under an obligation in terms of the

contract agreement to provide an encumbrance free site to the claimant for smooth and timely execution of the work. Learned Arbitrator has awarded the amount only after reference to the material on record and it is apparent that the entire amount as claimed has not been awarded in *toto* by the Arbitrator.

Similarly, argument raised by learned counsel for the appellant that interest on higher side has been awarded by the Arbitrator, is devoid of any merit. Learned Arbitrator, while dealing with the argument raised in this respect has observed as under:-

“I have considered the rival submissions of the parties to the reference and have also gone through the Clause No. 25-A of the Contract Agreement. I found that the Clause no.25-A of the Contract Agreement had been amended by the Haryana State Agricultural Marketing Board vide Resolution No. 27 dated 30.08.1994, wherein bar on grant of interest by the Arbitrator was removed. Otherwise also it is the settled law that after enactment of Interest Act, 1978, the interest is payable on illegally withheld payments, And, the learned Arbitral Tribunal is competent to grant interest for all the three periods i.e., Pre-suit, Pendente-lite and Future Interest.”

In this view of the matter, the claimant was found entitled to future interest at the rate of 12% per annum (simple interest) on the awarded amount till actual date of payment while observing that if payment of the arbitral award is made within three months from receipt of a signed copy thereof, no future interest will be payable. Claimant was held entitled for simple interest at the rate of 15% per annum on the withheld amount of final bills plus 25% security amount with effect from 01.10.2010 i.e., three months after the date of completion of work till realization on 05.09.2022.

Learned counsel for the appellant is unable to point out anything on record to indicate that interest has been incorrectly awarded by

the learned Arbitrator or that he has mis-conducted himself in any manner. It is a settled position that this Court does not sit in appeal over an award passed by the learned Arbitral Tribunal. Even though a different view may be possible in a given factual matrix, Court shall not interfere until and unless it is shown that award passed by the Arbitrator/Arbitral Tribunal suffers from perversity or error of law or that the Arbitrator has mis-conducted himself. These principals have been reiterated by the Hon'ble Supreme Court in **NTPC Ltd. versus M/s Deconar Services Pvt. Ltd.** **2021 AIR (Supreme Court) 2588** as under:-

“11. Before proceeding further, it is necessary to make note of the scope of interference by Courts in arbitral awards passed under the Arbitration Act, 1940. This Court has consistently held that the Court does not sit in appeal over an award passed by an arbitrator. In **Kwality Manufacturing Corporation V. Central Warehousing Corporation, (2009) 5 SCC 142** this Court held as follows:-

“10. At the outset, it should be noted that the scope of interference by courts in regard to arbitral awards is limited. A court considering an application under Section 30 or 22 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it reassess or reappreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Sections 30 and 33 of the Act. Therefore, on the contentions urged the only question that arose for consideration before the High Court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings.”

(emphasis supplied)

“12. Further, it is also a settled proposition that where the arbitrator has taken a possible view, although a different view may be possible on the same evidence, the Court would not interfere with the award. This Court in *Arosan Enterprises Ltd. v. Union of India*, (1999) 9 SCC 449 held as follows:

“36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the Court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the Court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

37. The common phraseology “error apparent on the face of the record” does not itself, however, mean and imply closer scrutiny of the merits of documents and material on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning containing therein cannot be examined...”

13. From the above pronouncements, and from a catena of other judgments of this Court, it is clear that for the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the Court.”

Learned counsel for the appellant is unable to point out any illegality or infirmity in order dated 16.03.2022 passed by the learned Additional District Judge, Rohtak or any ground for setting aside award dated 12.06.2017 passed by the learned Arbitrator.

No other argument has been addressed.

Appeal is, accordingly, dismissed with no order as to costs.

21.07.2022

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned

:

Yes/No.

Whether reportable

:

Yes/No.