IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2187-2013 (O&M)
Date of Decision:- 19.10.2023

M/s Amarjit Singh & Company ...Petitioner

Versus

Indian Oil Corporation Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. D.K. Singal, Advocate with
Mr. Rahul Garg, Advocate for the petitioner.

Mr. Ashish Kapoor, Advocate for the respondent.

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GURVINDER SINGH GILL, J.

1. The petitioner (Decree Holder) assails order dated 31.7.2012 (Annexure P-7) passed by learned Additional District Judge, Chandigarh vide which an application filed by the respondent-Indian Oil Corporation Ltd. (Judgment Debtor) for recalling order dated 29.11.2011 (Annexure P-4) has been accepted and the aforesaid order dated 29.11.2011 (Annexure P-4) directing payment of interest @ 18% to the petitioner from the date of award till payment has been recalled.

2. A few facts necessary to notice for disposal of this petition are that an Agreement dated 7.12.1998 had been entered into between the petitioner and the respondent-Indian Oil Corporation Ltd. for handling the transportation work of High Speed Diesel storage tanks of respondent. A dispute having arisen amongst the parties, the matter was referred to Arbitrator and an

award dated 5.3.2004 (Annexure P-3) for an amount of Rs. 18.31 lacs was passed in favour of the Contractor.

3. The respondent-Indian Oil Corporation Ltd. challenged the said order by way of filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as *'the Act'*), which was dismissed on 5.2.2009 by the Court of learned Additional District Judge, Chandigarh. The respondent also challenged the said order by way of filing FAO in this Court which came to be dismissed. The respondent-Indian Oil Corporation Ltd. consequently paid the awarded amount of Rs. 18.31 lacs to the petitioner on 21.4.2010 pursuant to an execution petition filed by the petitioner.

4. Thereafter, a second execution petition was filed by the petitioner claiming interest on the awarded amount and the Executing Court vide order dated 29.11.2011 directed that interest be paid @18% per annum from the date of award till the date of payment.

5. The respondent, aggrieved by aforesaid order dated 29.11.2011, moved an application to the Executing Court for recalling the said order which was accepted by the Executing Court vide impugned order dated 31.7.2012, which has been assailed by the petitioner.

6. Learned counsel for the petitioner submitted that order dated 29.11.2011 had been passed in accordance with provisions of Section 31(7)(b) of the Act providing for interest @18% and that the Executing Court had no jurisdiction to recall or review the said order once the same had been passed by it.

7. Opposing the petition, the learned counsel representing the respondent-Indian Oil Corporation Ltd. submitted that it is a case where the order dated

29.11.2011 (Annexure P-4) had been obtained by concealment and fraud and as a matter of fact was against the spirit of the award in question since the claim of interest had been specifically declined by the arbitrator and that as such, there is no infirmity in the impugned order recalling order dated 29.11.2011.

8. This Court has considered rival submissions addressed before this Court.

9. It is apposite to first of all refer to the specific claim made by the petitioner with respect to grant of interest in the statement of claims presented before the Arbitrator. The claims were delineated in Appendix A of the statement of claim. Claim No. 4, as extracted from the application dated 11.5.2012 (Annexure P-5) is reproduced herein-under :-

> "Claim No. 4.
>
> Interest
>
> Interest @ 24% on the amount of Bank Guarantee (Rs.18,75,000/-) and on the amount of demand drafts (Rs. 6,45,000/-) from the date they were deposited with you till date of payment.
>
> On the Handling charges outstanding from 16.12.98 till date of termination 31.8.1999 @ 24% from the date of termination of Contract till date of payment.
>
> On loss of earning (handling and transportation) on account of premature and wrongful termination of contract @ 24% from the date of termination till date of payment."

10. Issue No. 4, as framed by the Arbitrator during the course of adjudication is reproduced herein-under :-

> "Whether the claimant is entitled to claim as shown in the appendix A of statement of claim."

11. The learned Arbitrator in the concluding portion of the award returned its findings on issue Nos. 3 to 6 collectively as under :-

"I hold that responsibility towards the loss of product in the tanks for the period of contract in question is contributory by the parties equally. The responsibility for the loss of 12.00 KL product caused by non-receipt of the TT at PDC lies fully with the claimant. Therefore, half of the product loss in tanks which comes to 127.22 KL during the contract period plus non delivery of 12.00 KL HSD, total 139.22 KL is calculated @ 14180/- per KL amounting to Rs. 19,74,169/- is awarded to the respondent against the claimant and deductions made beyond this amount by the respondent is not allowed, which comes to Rs. 19,74,169.71."

12. Further, the findings on issue No. 7 pertaining to relief were returned in the award as under :-

"Award :

Claimant has raised thier bills only for the period 04/99 to 8/99, however, the period 04/99 to 12/99 is being considered for fixed handling charges, which comes to Rs. 3.18 lac as the contract has been terminated in 12/99. Amount retained by the respondent Corporation is Rs. 38.05 lacs (BG-18.75 lac, SD-6.25 lac, Transportation bills = 9.87 lac & Admissible handling = 3.18 lac) Amount awarded to the Respondent Corporation is Rs.19.74 lacs as above.

To sum up the award, I hold that calculating what all amounts have been allowed to the respondents and also what all amounts have been recovered by the respondent from the claimant, <u>I award a sum of Rs.18.31 lacs to be refunded to the claimant by the respondent.</u>

<u>Rest all other claims/counter claims of the party are rejected.</u>

Made, signed and published by me on this 05th Day of March 2004 at Chandigarh.

Sd/-
Sole Arbitrator"

13. A perusal of the aforesaid extracts would show that while the claimant had raised a specific claim in respect of interest but the same was categorically declined and rejected by the Arbitrator. Section 31 (7) of the Act before its amendment in 2016 is reproduced herein-under :

"31. Form and contents of arbitral award

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

14. A perusal of sub-section 7(b) of Section 31 of the Act shows that unless anything is specifically ordered to the contrary, the award would carry an interest @ 18% from its date uptill the payment of the amount. However, in the present case, the Arbitrator while awarding an amount of Rs. 18.31 lacs to claimant has specifically rejected all other claims by stating so specifically in concluding portion of award while returning findings on Issue no. 7 pertaining to relief to be granted. As already stated above, the petitioner had raised a specific claim of interest in claim no. 4 and the Arbitrator by not awarding any interest in its findings on issue no. 4 and by specifically declining all other claims except refund of amount of Rs. 18.31 lacs while returning findings on issue No. 7 virtually expressed that petitioner is not entitled to interest.

15. It has specifically been noticed in the impugned order that 'Appendix A' to statement of claim, delineating different claims made by the petitioner was never brought to the notice of the Executing Court when order dated 29.11.2011 came to be passed. In other words, the factum of the petitioner having raised specific claim was never brought to the notice of the Court and was infact concealed. The said concealment assumes significance, when

examined in light of fact that not only an issue regarding interest was also framed but the Arbitrator in the relief clause specifically held that – *"Rest all other claims/counter claims of the party are rejected."* In other words, the Arbitrator having declined the claim with respect to interest, the petitioner could not claim interest @ 18% on the strength of Section 31(7)(b) of the Act. Rather, the Arbitrator having held to the contrary, his claims stood negated. In this context, a reference may be made to a judgment of Hon'ble Supreme Court rendered in *2000(2) RCR (Civil) 483 – United India Insurance Co. Ltd. vs. Rajendra Singh and others etc.* wherein it has been held as under :-

> "17. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

16. As such, the order dated 29.11.2011 having been obtained as a result of concealment and fraud could not possibly sustain and deserved to be set aside, as has been done so by the Executing Court vide its impugned order dated 31.7.2012. This Court does not find any infirmity in the impugned order and the same is hereby affirmed.

17. Finding no merit in the revision petition, the same is dismissed.

19.10.2023 **(Gurvinder Singh Gill)**

kamal **Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No