

2023:PHHC:114468

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

ARB-195-2023 (O&M)
Date of Decision:- 31.8.2023

Vinod Sharma

... Petitioner

Versus

R.P. Nagrath and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. S.K.S Bedi, Advocate for the petitioner.

Dr. Neha Awasthi, Advocate with Mr. Ashok Gupta, Advocate
Mr. Parteek Mahajan, Advocate for respondent No. 2.

GURVINDER SINGH GILL, J.

1. The petitioner has filed this petition under Section 39 read with Section 11 of the Arbitration and Conciliation Act, 1996 (in short hereinafter referred to as 'the Act') for setting aside order dated 1.12.2022 (Annexure P-9), order dated 1.4.2023 (Annexure P-15), order dated 13.4.2023 (Annexure P-17) as well as order dated 27.1.2023 (Annexure P-14).
2. This gist of aforesaid four orders, may be stated as under :-
 - (i) Order dated 1.12.2022 (Annexure P-9)

Vide said order, the claimant Chandigarh Administration through Shri Raj Kumar, Revenue Accountant had been directed by Arbitrator to furnish

complete calculations with regard to the amount claimed along with interest, to all concerned parties.

(ii) Order dated 1.4.2023 (Annexure P-15)

The learned Arbitrator vide said order calculated the arbitral fee on the total amount claimed i.e. the principal amount of Rs. 1,85,83,280/- and the interest on the said amount @ 12% from the date of disconnection. The total claim was, thus, worked out as Rs. 3,77,24,058/-. The arbitral fee was accordingly calculated as per Fourth Schedule of the Act as Rs. 6,14,740/-, with an addition of 25% being a case of sole Arbitrator. By adding the said 25% i.e. Rs.1,53,685/-, the total arbitral fees was worked out as Rs.7,68,425/- and both the parties were directed to pay the fee in equal shares to the tune of Rs.3,84,212/- which was directed to be deposited in the bank account of the Arbitrator.

The parties were further directed to file affidavits of their authorized representatives regarding admission/denial of documents of the opposite party on the next date and also the proposed issues.

(iii) Order dated 13.4.2023 (Annexure P-17)

Vide this order, the learned Arbitrator disposed of an application filed by the petitioner seeking review of order dated 1.4.2023 and the review application was rejected.

(iv) Order dated 27.1.2023 (Annexure P-14)

Vide this order, the Arbitrator has dismissed application dated 14.12.2022 (Annexure P-11) filed by the petitioner under Sections 12 and 13(3) of the Act challenging the Arbitral Tribunal.

3. Since the petition has been filed under Section 39 read with Section 9 of the Arbitration Act, therefore, Section 39 of the Act needs to be borne in mind, which reads as under :-

"39. Lien on arbitral award and deposits as to costs.—

1. Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.
2. If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.
3. An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.
4. The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them."

4. At this stage, it will not out of place to refer to Section 37 of the Act which defines the orders which are appealable. Section 37 of the Act reads as under :-

“37. Appealable orders

- (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:--
 - (a) refusing to refer the parties to arbitration under section 8;
 - (b) granting or refusing to grant any measure under section 9;
 - (c) setting aside or refusing to set aside an arbitral award under section 34.
- (2) Appeal shall also lie to a court from an order of the arbitral tribunal--
 - (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or
 - (b) granting or refusing to grant an interim measure under section 17.
- (3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

5. A perusal of Section 39(2)(3) would show that remedy is provided to a party in case the Arbitrator refuses to deliver its award on account of non-payment of fee. However, the said situation has not arisen yet as the impugned orders do not indicate any such thing and the Arbitrator vide order dated 1.4.2023 (Annexure P-15) has simply assessed the arbitral fee and had directed the parties to deposit the same vide order dated 13.4.2023 (Annexure P-17). The

review application filed by the petitioner against said order was also dismissed.

6. A perusal of Section 39 of the Act would further show that in case any such application in terms of Section 39 of the Act is to be filed, the same is to be filed in 'Court'. The term 'Court' has been defined in Section 2(e) of the Act as follows :-

“2(e) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes”

7. The aforesaid definition of 'Court' makes it clear that the word 'Court', as existing in Section 39, has to be interpreted as the principal Court of Original jurisdiction in a District. The High Court would assume jurisdiction only in case it is exercising original civil jurisdiction. In the present case, it will be the District Court concerned where any such application under Section 39 would be required to be filed.
8. A perusal of Section 37 of the Act would also show that there is no provision for filing an appeal against an order vide which a challenge under Section 12 of the Act to Arbitral Tribunal has been declined as in the present case.
9. In view of the aforestated position, the instant petition is dismissed being not maintainable in this Court. The aforesaid dismissal is without prejudice to the rights of the petitioner to avail of any other remedy as and when available

including filing of an application under Section 39 of the Act before the District Court concerned, in case so advised.

31.8.2023

(GURVINDER SINGH GILL)
JUDGE

kamal

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No