

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

FAO-2975-2019 (O&M)
Date of Decision:- 31.10.2023

Anand Industries

...Appellant

Versus

The Punjab State Cooperative Supply and Marketing
Federation Limited and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. R.K. Girdhar, Advocate for the appellant.

Ms. Deepali Puri, Advocate for the respondents.

GURVINDER SINGH GILL, J.

1. The appellant herein assails order dated 21.1.2019 passed by learned Additional District Judge, Faridkot whereby the learned Court while setting aside the award passed by the Arbitrator, has granted liberty to respondent no. 1 to make a fresh reference to the Arbitrator.
2. The dispute arises out of an agreement dated 14.10.2010 between the parties pertaining to milling of paddy. Since a specific provision was there in the contract for resolving the dispute by way of arbitration, the respondent invoked arbitration. The Arbitrator returned its award in favour of the respondent directing the appellant to pay an amount of Rs. 14,64,972/- alongwith interest @ 12%.

3. Aggrieved by the aforesaid award, the appellant filed objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), which was accepted and the award dated 2.12.2013 was set aside while granting liberty to respondent No. 1 to make a fresh reference to the Arbitrator.
4. The learned counsel for the appellant has vehemently argued that the learned Additional District Judge, Faridkot fell in error in granting liberty to the respondent to make a fresh reference to the Arbitrator whereas there is no such provision of remand under the Scheme of the Act.
5. This Court has considered the aforesaid submission and has also perused the impugned judgment as well as award dated 2.12.2013.
6. A perusal of the award would show that no reasons have been assigned for accepting the claim of the respondents. Further, while setting aside the award, the learned Additional District Judge noticed that while the agreement stipulated that 5% of the paddy was to be milled and rice was to be delivered by October, 2010 and another 40% was to be delivered upto December, 2010 whereas the agreement itself is dated 14.12.2010 and which would make the execution of the contract impossible. Upon perusal of the impugned judgment, this Court does not find any illegality or perversity in the same and affirms the opinion of the learned Additional District Judge, Faridkot to the effect that the award deserved to be set aside.
7. As far as the contention of the appellant to the effect that the Court fell in error in granting liberty to the respondent to initiate a fresh reference is concerned, the said issue is fairly well settled now. Hon'ble Supreme Court in 2021(9) SCC 1 – Project Director, National Highways No. 45-E and 220

National Highways Authority of India versus M.Hakeen & Another held as under :-

“39. As has been pointed out by us hereinabove, McDermott (supra) has been followed by this Court in Kinnari Mullick (supra). Also, in *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd.*, 2021 SCC OnLine SC 157, a recent judgment of this Court also followed McDermott (supra) stating that there is no power to modify an arbitral award under Section 34 as follows: -

(f) In law, where the Court sets aside the award passed by the majority members of the tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding.

Under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award.

40. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the ‘limited remedy’ under Section 34 is co- terminus with the ‘limited right’, namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.”

8. Even the ratio of judgment of Hon’ble the Supreme Court in Dr. A. Parthasarathy Versus E. Springs Avenues Pvt. Ltd., 2022 (1) Apex Court Judgments (SC) 130, is to a similar effect wherein it has been held as follows:

“3. By the impugned judgment and order passed by the High Court in exercise of power under Section 37 of the Arbitration and Conciliation Act, 1996, the High Court has set aside the award passed by the learned Arbitrator and has remanded the matter to the Arbitrator for fresh decision. As per the law laid down by this

Court in the case of *Kinnari Mullick v. Ghanshyam Das Damani (2018) 11 SCC 328* and *I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd. (2022) SCC OnLine SC 4*, the same is wholly impermissible. Only two options are available to the Court considering the appeal under Section 37 of the Arbitration Act. The High Court either may relegate the parties for fresh arbitration or to consider the appeal on merits on the basis of the material available on record within the scope and ambit of the jurisdiction under Section 37 of the Arbitration Act. However, the High Court has no jurisdiction to remand the matter to the same Arbitrator unless it is consented by both the parties that the matter be remanded to the same Arbitrator.”

9. In view of the consistent ratio of judgments referred to above, this Court does not find any infirmity in the impugned judgment dated 21.1.2019 passed by learned Additional District Judge, Faridkot and the same is hereby affirmed.
10. It is clarified that it shall be open to either of the parties to invoke arbitration afresh.

31.10.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No