

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4220-2023 (O&M)
Date of Decision:- 8.8.2023

The Chief Engineer, Chandigarh Zone, Chandigarh and another
...Appellants

Versus

M/s Anil Kumar Gupta and another
...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Shobhit Phutela, Advocate for the appellants.

GURVINDER SINGH GILL, J.

1. The appellants herein assail order dated 20.2.2023 passed by learned Additional District Judge, Chandigarh on an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '*the Act*') filed by the appellants vide which the application/objections filed against award dated 15.9.2016 (Annexure P-1) by the appellants, has been dismissed.
2. Learned counsel for the appellants submitted that the award dated 15.9.2016 (Annexure P-1) passed by the sole arbitrator has been passed without there being any evidence in support of the claim of the respondents-claimants and that even the learned Additional District Judge, Chandigarh while considering the objections under Section 34 of the Act did not take note of the relevant issues and dismissed the objections by passing a cryptic

order. Learned counsel has submitted that while a part of the claim may be justified but some of the claims, which had been accepted, have been accepted without there being any evidence in support. Learned counsel, in order to hammer forth his aforesaid submission, has referred to the findings returned by the Arbitrator on claim No.14 pertaining to Watch and Ward Charges claimed by the respondents-claimants to the tune of Rs. 8,10,000/-. The claimants had set up a case that while the work had been completed on 31.7.2012, but the building could not be handed over to the appellants and the respondents-claimants were forced to deploy Chowkidars from August 2012 onwards till March, 2014. It has been submitted that no receipts in respect of payment of any salary to Chowkidars was produced on record but yet the Arbitrator awarded an amount of Rs. 2 lacs under the said claim.

3. This Court has considered the aforesaid submissions.
4. While it may be correct that the receipts may not have been produced on record, but since it is not denied by the appellants that the building had not been taken over by the appellants though the construction stood complete in the year 2012, it goes without saying that the contractor had no choice but to keep the building secure and safe and for which he would have to hire Chowkidars. Although, the claim of the respondents is that they had hired three Chowkidars for about 2 years, but the Arbitrator has awarded a very conservative claim to the tune of Rs. 2 lacs, which cannot be said to be unjustified. Learned counsel also assails filing returns in respect of other claims pertaining to the price charged for TMT Bars etc. but this Court is of the opinion that the learned Additional District Judge, Chandigarh while deciding objections under Section 34 of the Act, is not required to reappraise the evidence or the findings. It is only on very limited grounds that the

award of the Arbitrator may be assailed in terms of Section 34 of the Act, which for the sake of ready reference is reproduced hereinunder:

“34 Application for setting aside arbitral award. —

1. Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

2. An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1 --For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

3. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

4. On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.
5. An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.
6. An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”

5. Upon perusal of the award, this Court does not find any infirmity in the same so as to justify any interference by the Court in terms of Section 34 of the Act, keeping in view the limitations prescribed under Section 34 of the Act. The award dated 15.9.2016 (Annexure P-1) and order dated 20.2.2023 of learned Additional District Judge, Chandigarh would not call for any interference.
6. There is no merit in the present appeal and the same is hereby dismissed.

8.8.2023

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Whether speaking /reasoned
Whether Reportable

(Gurvinder Singh Gill)
Judge

Yes / No
Yes / No