

FAO No. 2023 of 2016

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 2023 of 2016

Date of decision: 22nd May, 2023

Deva Singh

Appellant

Versus

Haryana State Agriculture Marketing Board and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ravinder Rana, Advocate for the appellant.
Mr. Sai Anukaran, Advocate for Mr. Amar Vivek,
Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed aggrieved of partial acceptance of objections under Section 34 of the Act filed by Haryana State Agriculture Marketing Board (for short, 'the Board').

2. The brief facts are that the appellant was allotted work for construction of a link road from village Kharar Alipur to Dhani Raipur. The work allotted on 28.6.1990 was to be completed within nine months. The arbitration initiated at the instance of the appellant culminated in award dated 23.8.2011. The Board filed objections under Section 34 of the Act and the claim of appellant vis-a-vis refund of 25% of the security amount was set aside vide order dated 7.1.2016. It was held that no reasons were recorded by arbitrator for concluding that record was forged. Further that

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findings qua claim Nos. 3 and 6 were contradictory.

3. The dispute is that as per the final bill prepared after completion of the work in 1992, the Board had to make payment to the appellant. On review of the final bill, after eighteen years i.e. in 2010, the amount was found recoverable from the appellant and 25% of the security was adjusted against the recovery.

4. Learned counsel for the appellant submits that after setting aside the award qua claim No (vi) the Addl District Judge erred in not remanding the matter.

5. Learned counsel for the Board submits that there was no basis with the arbitrator to record a finding that there was tampering/forgery in the rates and entries of the record.

6. Before proceeding further, it would be apposite to note that other claims are not being disputed except the one discussed above.

7. As per Section 31(3) of the Act reasons are to be recorded by the arbitrator for the finding arrived at, exception being where the parties had agreed that no reasons are to be given. From the perusal of the arbitral award, it is evident that the conclusion arrived at with regard to claim No. (vi) is not supported by reasons and is not in consonance with Section 31(3) of the Act.

8. The issue to be decided by the arbitrator was whether there was basis for reviewing of the final bill after eighteen years. The relevant documents were before the arbitrator, *albeit* it was concluded that review of the final bill was result of tampering and cutting of the record entry. The

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basis for arriving at the said conclusion were not recorded.

9. The contention of learned counsel for the appellant that the matter should have been remanded lacks merit. The Supreme Court in *Dr. A. Parthasarathy and others v. E. Springs Avenues Pvt. Ltd. and others, 2022(2) R.C.R. (Civil) 329* held that the matter cannot be remanded to the same arbitrator without consent of the parties.

10. In view of the above, setting aside of the award under Section 34 of the Act qua claim No. (vi) for the reasons that the award was non-speaking is upheld. It is clarified that setting aside of the award shall not debar the parties from pursuing fresh arbitration vis-a-vis claim No. (vi).

11. The appeal is disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

22nd May, 2023
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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |